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Insights

CRD VI: PREPARING FOR CHANGES IN CROSS-BORDER LENDING IN 2026

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With only 12 months until CRD VI starts to reshape cross-border lending, non-EEA banks face a fundamental question: how — and whether — they can continue serving European clients. Many global banks are well advanced in planning, but smaller and mid-sized lenders may need to accelerate preparations. The good news: it's not too late.

WHAT IS CHANGING?

Until now, each EEA Member State has set its own rules on whether non-EEA banks can provide core banking services — such as lending, deposit-taking, and issuing guarantees — without a local licence. This has allowed UK, US, and other international banks to serve corporates and commercial borrowers in many jurisdictions directly, subject to local rules.

This will change with the implementation of a short but significant provision in the EU's Capital Requirements Directive VI (CRD VI) (Directive 2024/1619). From 11 January 2027, non-EEA banks will only be able to provide core banking services to EEA clients if they have registered a branch or established a licensed subsidiary within the EEA. Exemptions exist, but they are limited.

KEY DATES

- **11 January 2026** – Member States must implement most CRD VI provisions.
- **11 July 2026** – Transitional period ends for agreements signed before this date.
- **11 January 2027** – Article 21c (branch/subsidiary requirement) takes full effect.

Restructuring business models or applying for licences will take time – planning should start now. Here are some insights on how banks and lenders can prepare for these heightened regulations coming into effect.

HOW WILL IT WORK?

CRD VI introduces a new provision, Article 21c, into the existing Capital Requirements Directive framework, which states that third-country undertakings can only lend, offer guarantees, or accept deposits from EEA clients if appropriately licensed. Unlike the consumer credit and residential mortgages regimes, this applies to all client types – not just retail customers.

Third-country undertakings can become authorised by either: (a) registering a branch in the EU country in which they are operating, or (b) establishing a local subsidiary with full banking licence. A branch can only offer services in the relevant Member State where it is registered, whereas a subsidiary can obtain passporting rights to provide services across the whole EEA (but would in return have to maintain its own regulatory capital and full compliance systems and personnel).

CRD VI will only directly apply to third country credit institutions and small number of very large financial institutions. Other types of non-bank lenders, such as funds, fund managers, insurers and investment banks other are not directly in-scope for Article 21c, but there is a concern that some European regulators may apply similar standards and interpretations around when non-bank lenders are carrying out business "in" the jurisdiction, such that they may also need to fall into line with the approach taken under CRD VI. Consequently non-bank lenders should also consider their own procedures for how they engage with EEA borrowers and clients.

WHAT ARE THE EXEMPTIONS?

Only a limited selection is available. A non-EEA bank will not need to establish a branch if:

1. The client (retail, professional or an eligible counterparty) is approaching the bank at "its own exclusive initiative" (i.e. reverse solicitation);
2. The client or counterparty is itself another credit institution (i.e. interbank lending); or
3. The client or counterparty is in the same group as the non-EEA institution (i.e. intra-group lending).

However, the legislation includes robust provisions for anti-avoidance. Lenders are therefore likely to feel these exemptions do not land them safely in a CRD VI-compliant position, and they may need to revisit their lending models.

WHAT IS THE STATUS OF IMPLEMENTATION?

As a Directive, CRD VI needs to be implemented by each EEA Member State. Over the last few months, we have seen European regulators release their rules. It is clear that there is likely to be some divergences, for example around the exact application of the transitional provisions. In addition, the European Banking Authority (EBA) is in the process of consulting on guidelines for the content, assessment and forms for authorisation applications for third country branches. Consequently, firms that are in-scope for these rules may need to monitor changes on a

jurisdiction-by-jurisdiction basis and be prepared for further changes and guidance as we move closer to the July 2026 and January 2027 deadlines.

IS THERE ANY WAY OF RESTRUCTURING TRANSACTIONS AROUND THIS?

While different jurisdictions will have different practices, it may be possible to restructure the lending as a bond issue instead. This alters the arrangement such that the bond will be issued by the formerly borrowing party and the party intending to lend becoming the bondholder. The transaction then falls outside the remit of CRD VI, concerned with loan making and the acceptance of deposits, but it may be regulated by MiFID II. This means the bondholder will not have to comply with the CRD VI requirements described above, but it will have to consider regulatory obligations associated with MiFID II, such as proper classification and treatment of clients and compliance with transparency, transaction reporting and disclosure requirements.

Other alternatives that lenders may consider include participating in syndicated lending or acquiring loans that have been initially advanced by a third-party bank with an existing licence in the EEA.

WHAT DO LENDERS NEED TO DO NOW?

If a lender is currently making loans without a presence in a Member State, they should review the new rules and, if caught, consider whether any exemptions may apply. If not, they will need to either restructure how they organise their lending processes and arrangements or seek authorisation.

If lenders suspect they will need to put in an application for authorisation, that should be done as soon as possible. It may be helpful for lenders to partner with a fronting bank or adviser with a licence in the local jurisdiction, which could itself take some time to arrange.

WHAT DO WE EXPECT FOR THE PROVISION OF BANKING SERVICES INTO GERMANY?

The recent German Government Draft Legislation (Regierungsentwurf) of the Bankenrichtlinienumsetzungs- und Bürokratieentlastungsgesetz (BRUBEG) dated 3 December 2025, essentially transposes CRD VI on a like-for-like basis, with limited highlights. However, the minimum CRD VI standards regarding services from third-country banks are, largely, already exceeded in Germany by the provisions of the Kreditwesengesetz (German Banking Act).

In most cases, non-European banks lending, accepting deposits, or issuing guarantees to German clients have already had to either (a) establish a BaFin authorised and regulated third-country branch in Germany, or (b) operate through a subsidiary from an EU Member State with “passporting rights”.

Therefore, the main effect of the BRUBEG is that waivers (Freistellungen), which were previously granted under the German Banking Act, could be revoked if non-compliant with Article 21c of CRD VI. Further, a new authorisation process, additional reporting obligations and adjustments regarding resolution capital will apply. However, exemptions such as reverse solicitation shall remain recognised under German administrative practice.

Non-European Banks currently operating under a BaFin waiver assessment (Freistellungsbescheid) should consider whether their waiver assessments (Freistellungsbescheide) will survive or if they need to apply for authorisation before January 2027.

Overall, Germany as a location may be more competitive, as its already robust regulatory framework will require fewer adjustments ahead of CRD VI.

A decision and the adoption of the BRUBEG is expected in the first quarter of 2026, meaning the CRD VI implementation deadline on 11 January 2026 will not be met.

Please note that on 12 January 2026 a public hearing of the draft will be held, which could change the position on this.

WHAT DO WE EXPECT FOR THE PROVISION OF BANKING SERVICES INTO FRANCE?

The CRD VI framework ought to be welcomed as it offers greater opportunities for third-country undertakings to conduct business in France, provided they carefully structure their operations to fall within the exemptions.

The French banking regulator, the Autorité de contrôle prudentiel et de résolution ("ACPR"), has not yet published any draft legislation or consultation on how it plans to implement CRD VI. The key question is whether the new rules will soften France's traditionally strict banking monopoly regime, as the exemptions set out in Article 21c of CRD VI are not currently recognised under French law.

LOOKING AHEAD

By early 2026, firms should expect a patchwork of national rules, with Germany moving quickly and France yet to clarify its stance. The clock is ticking: lenders must act now to avoid disruption when CRD VI takes full effect in January 2027.

If you have any queries about what CRD VI could mean for cross-border lending activities, please don’t hesitate to get in touch with Matthew Baker (London), Thomas Prüm (Berlin & Frankfurt), or Damien Luqué (Paris).

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