# CRD6 – Article 21c and its impact for third country banks and the international finance sector

September 2025

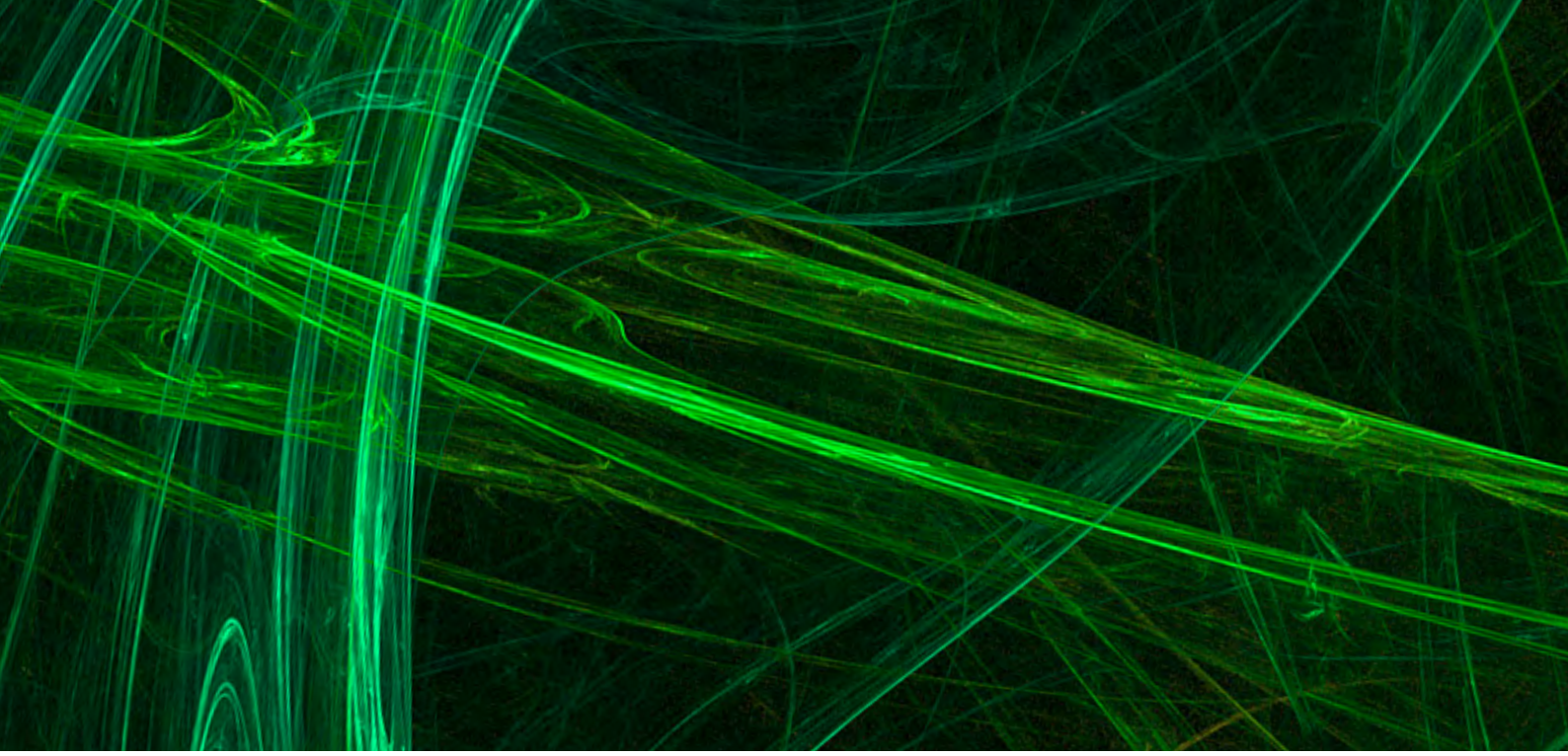
# Overview

The EU legislative package known as CRD6 and, in particular, the introduction of the so-called Article 21c requirement for third country undertakings providing core banking services to establish a regulated branch in the EU has been long in development. The main legal texts were finalised and published on 19 June 2024, with the key provisions relating to the Article 21c third country branch requirement set to apply from **11 January 2027**.

Internationally active banking and finance groups must assess how their business models will be affected by the new regime, which aims to harmonise the previously uneven approach across EU Member States to the regulation of cross-border banking and finance. EU and third country regulators increasingly expect firms to be able to explain in detail how they will be impacted by CRD6 and what active steps they are taking to plan for it.

As the requirement has been introduced through a Directive, it will need to be transposed into national laws and implemented in practice by national competent authorities. Through our international network of offices with extensive coverage in the EU, we are already starting to see draft laws published in various jurisdictions. Firms will need to track developments in the jurisdictions where they are active as national laws are published, consulted on and finalised and it becomes clearer how the requirement and the exemptions from it will be applied in practice. We also expect further commentary from the EU Commission as practical implementation challenges continue to emerge and calls for greater clarity and/or carve-outs for certain market participants grows.

We set out further detail on the third country branch requirement, together with our commentary on emerging issues and suggested next steps for potentially affected firms below.



# Summary of Article 21c third country branch requirement

Under Article 21c of the Capital Requirements Directive ("**CRD**"), as inserted by the sixth Capital Requirements Directive (known as "**CRD6**" or "**CRD VI**"),[1] third country undertakings intending to provide "core banking services" in an EU Member State will be required to establish a regulated branch in the EU ("**third country branch**" or "**TCB**"), unless an exemption applies.

There will be specific exemptions for interbank services/interdealer transactions and intra-group services, reverse solicitation, and acquired rights under certain existing contracts. Additionally, MiFID investment services or activities or "accommodating ancillary services", such as deposit-taking or lending that supports the trading of financial instruments or private wealth management, will be excluded from the scope of the new harmonised requirements. The European Banking Authority ("**EBA**") has already expressed the view (which is reportedly shared by the EU Commission) that the carve-out for MiFID investment services or activities does not extend to core banking services provided in relation to standalone custody services.[2]

The Article 21c third country branch requirement must be transposed into national laws by **10 January 2026** and will apply from **11 January 2027**. The grandfathering exemption for acquired rights under existing contracts in relation to core banking services will apply to contracts entered into before **11 July 2026**.

1 Directive (EU) 2024/1619.

2 Paragraph 96, EBA "Report to the European Parliament, the Council and the European Commission on the exemption of third country undertakings from the requirement to set-up a branch for the provision of banking services to EU financial sector entities" (EBA/REP/2025/21), July 2025 (the "**EBA Report**").

# Further detail

## What "core banking services" are in scope of the Article 21c third country branch requirement?

The third country branch requirement only applies in respect of so-called "core banking services", which are defined as:

— deposit-taking by any third country undertaking; and
— lending and/or guarantees and commitments made by a third country undertaking that would qualify as a credit institution, or that would fulfil the EU's "class 1"/EUR 30 billion size criteria, if it were established in the EU. (This will impact third country banks and large broker/dealers that provide credit and/or guarantees and commitments.)

In principle, this means that third country undertakings that do not engage in deposit-taking, but undertake lending and/or guarantees and commitments, but would not qualify as a credit institution or class 1 investment firm if established in the EU, will not be caught by the new requirement. Instead, they will continue to be subject to the currently applicable position in each Member State. This means that certain non-bank entities, for example debt funds, may not be directly impacted by the Article 21c third country branch requirement.

## What are the exemptions and carve-outs?

**Banking services that are ancillary to MiFID investment services**

— Significantly, there is a carve-out where a third country undertaking is providing MiFID investment services and activities and any accommodating ancillary services such as related deposit-taking, granting credits or loans the purpose of which is to provide services under MiFID. We note that this is not an exhaustive list, and therefore it is possible that other activities could potentially be carved out where they can be categorised as "accommodating ancillary services" the purpose of which is to provide services under MiFID.

**Interbank and intra-group transactions**

— The requirement will not apply in relation to the provision of relevant services to credit institutions and undertakings in the same group that are established in the EU.

**Acquired rights**

— The requirement is without prejudice to existing contracts that were entered into/will be entered into before 11 July 2026. However, the precise scope of this grandfathering derogation remains unclear (e.g. how significant amendments to a contract would be treated).

**Reverse solicitation**

— Under the reverse solicitation carve-out, while a third country undertaking may not market other categories of products, activities or services than those that have been solicited by the client or counterparty, they may market those that are "necessary for, or closely related to" the provision of the service, product or activity originally solicited by the client or counterparty.

## How will compliance be monitored?

— National competent authorities will have the power to require credit institutions and branches established in the EU to provide them with the information they require to monitor services provided on a reverse solicitation basis (e.g. by non-EU affiliates).

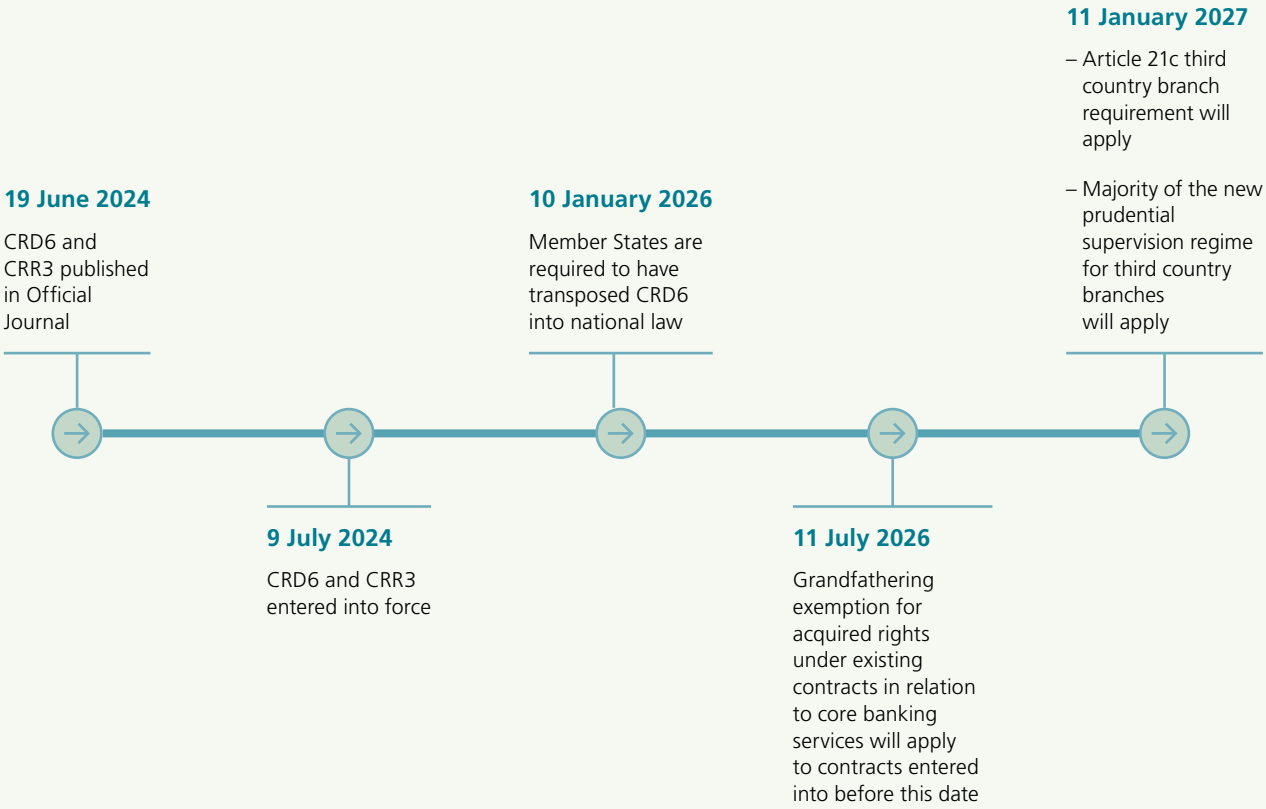
## Extension of the interbank transaction exemption?

— The EBA published a **report** in July 2025, assessing whether the interbank exemption should be extended to include core banking services provided to any EU financial sector entities ("**FSEs**"). This would allow third country undertakings to provide core banking services directly to EU FSEs without establishing a branch in the EU.
— The EBA determined that the current framework, with its combination of exemptions and carve-outs, offers sufficient flexibility to enable EU FSEs to receive core banking services from third country undertakings without a third country branch. As a result, the EBA does not currently consider there to be a clear case for extending the exemption.

## Territorial scope – what is deemed "in" a Member State?

— Article 21c refers to activities being carried out "in the relevant Member State." CRD6 does not define or offer guidance on how to interpret the provision of core banking services "in" a Member State.
— No further clarity has been provided on the extent to which core banking services will be deemed to be provided "in" a Member State, albeit it can be expected that Member States will individually re-visit their historical interpretations of the characteristic performance test, given CRD6 is a clear tightening of the current regime. We also expect further commentary from the EU Commission as practical implementation challenges such as this continue to emerge.

## Timeline at EU level



# Other practical considerations and emerging issues

## Non-EU lenders

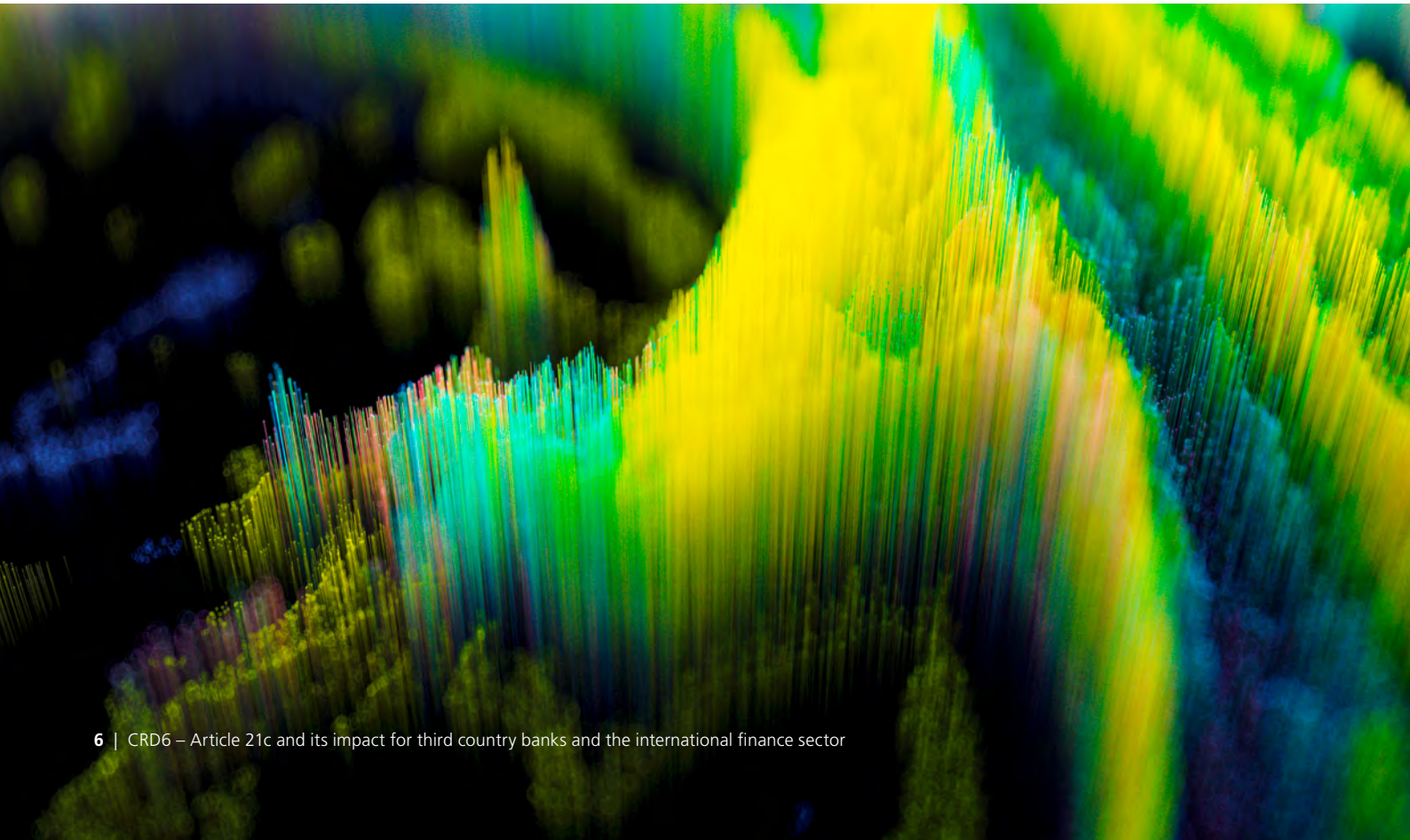
— Lenders based in non-EU jurisdictions who provide finance to clients in EU Member States should consider whether they are caught by the scope of the third country branch requirement and, if so, whether any of the exemptions might be available. Alternatively, some lenders might decide to plan to restructure their lending operations (e.g. to use regulated EU subsidiaries to provide certain services).
— Certain types of lenders (e.g. non-bank lenders, debt funds, pension funds, and insurers) may be exempt. In some cases, it may be possible for groups to restructure their operations using new lending vehicles that fall outside the scope of the rules.

## Lending to EU-incorporated entities in relation to non-EU assets

— For various reasons, finance may be provided to entities established in the EU which do not have any assets in the EU and/or in respect of which finance is provided for non-EU assets/projects. Additionally, entities established in the EU may be tax resident and largely operate in other jurisdictions. It may be necessary for borrowers and lenders to consider how lending can continue to be provided to such entities/assets/projects in the future and whether alternative structures can be used.

## Considerations for EU branches in London

— In the past, the European Central Bank has expressed the view that it does not expect branches of EU firms established in third countries to provide services back to customers based in the EU. However, the legal basis for such statements (which later appear to have been withdrawn) has been questioned.



# Next steps

EU Member States must transpose the Article 21c third country branch requirement into their national laws by **10 January 2026**, with the rules taking effect from **11 January 2027**. The grandfathering exemption for acquired rights will apply to contracts entered into before **11 July 2026**.

From **11 January 2027**, certain third country undertakings providing core banking services within a Member State will no longer be permitted to do so on a cross-border basis. Instead, they must either cease such activities, establish a third country branch, deliver these services through an alternative EU-based or non-EU-based entity and/or rely on any available exemptions.

## Suggested actions for firms

— To the extent that this has not already been undertaken, firms should undertake a scoping review to determine whether they fall within the scope of CRD6 as a result of any EU lending activities. Firms should also consider how any changes to business operations would affect commitments to regulators or compliance with regulatory expectations in other jurisdictions (e.g. with respect to international booking models).
— Firms should consider whether they can rely on any exemptions and whether any changes may be necessary to their operating model (depending on where implementation lands).
— Should licensing be necessary now or in the future, firms should assess which EU Member States would be most suitable for establishing a subsidiary (given that would enable access to the CRD passporting regime) or branches (e.g. where there is need to continue to service a client population in a specific Member State).

# How can we help?

We are currently assisting various types of firms with CRD6 implementation projects and related queries and are closely tracking the implementation of CRD6, including in the various EU jurisdictions where we have offices. If you would like to discuss the potential impact of the third country branch requirement on your business, emerging market responses and/or how we can help you to track transposition, please get in touch with any of the contacts listed or your usual CMS contact. If you would like to receive the latest summary version of our transposition tracker, please let us know.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