

Navigating Article 21c of CRD VI: The New Cross-Border Lending Restrictions in Practice

October 9, 2026

AT A GLANCE

What's changing: Article 21c of CRD VI will prohibit non-EU credit institutions from providing core banking services (including lending, guarantees, commitments and deposit-taking) to borrowers in the EU on a cross-border basis unless an exemption applies or the bank operates through an authorised EU branch or subsidiary. References in this alert to "EU borrowers" mean borrowers established or situated in the EU, not only those incorporated there.

Why it matters now: The restrictions will apply from 11 January 2027 and will cover syndicated lending, bilateral corporate loans, fund finance and letters of credit. Contracts entered into after 11 July 2026 cannot benefit from grandfathering.

A London and New York perspective: Non-EU credit institutions such as London-based and New York-based banks serving EU clients cross-border are in scope. Most prominent non-EU banks operating in Europe have already restructured their operations post-Brexit such that CRD VI has limited impact on their European lending arrangements. In practice, the restriction tends to have the greatest impact in the documentation of New York law-governed facilities.

What this alert covers: The scope of the cross-border prohibition; available exemptions; the treatment of secondary market activity; grandfathering and break events; where the practical exposure sits for lenders; and the documentary strategies being developed for loan facilities. This alert draws on the [LMA's May 2026 paper](#) on [Article 21c](#) and the [LSTA's CRD VI Market Advisory](#) (updated July 2026).

What to do next: Non-EU credit institutions should review current EU client activity to identify exposures within scope, assess the availability of exemptions, confirm the grandfathering status of existing facilities, monitor Member State transposition and evaluate loan documentation strategies for future English law and New York law facilities.

BACKGROUND

As a directive, CRD VI requires transposition into national law by each EU Member State. Early indications suggest that Article 21c will not be transposed consistently across the EU, resulting in some variation in its application. Nevertheless, the directive should bring a greater degree of consistency to the current fragmented landscape, where national regimes range from “permissive” jurisdictions in which non-EU banks may lend without a local licence (e.g., Luxembourg and Ireland) to jurisdictions that effectively prohibit such activity (e.g., France and Italy).

Both London-based and New York-based banks constitute third-country institutions for CRD VI purposes and are therefore subject to the same restrictions. The practical impact may differ, however: London-based banks have operated without EU passporting rights since Brexit, whereas US banks have historically been able to rely on permissive national regimes in certain Member States that Article 21c will now constrain.

1. SCOPE

THE CROSS-BORDER PROHIBITION

Article 21c will prohibit non-EU banks (and certain large non-EU investment firms) from providing “core banking services” to EU borrowers on a cross-border basis unless an exemption applies. The services subject to the prohibition include lending, deposit-taking, and the issuance of guarantees and commitments – meaning that its practical reach extends to syndicated lending, bilateral corporate loans, fund finance, trade finance, letters of credit and guarantees, subject to the approach adopted in each respective Member State.

Importantly, the prohibition applies only to cross-border activity: it does not extend to services provided through a non-EU bank’s locally authorised EU subsidiary or licensed branch.

2. KEY EXEMPTIONS

WHEN CAN NON-EU CREDIT INSTITUTIONS CONTINUE TO LEND?

Reverse solicitation – the reverse solicitation exemption permits a non-EU bank to lend where an EU borrower approaches it “at its own exclusive initiative.” The exemption extends to “closely related services” in respect of products and services that have previously been reverse solicited. The exemption is not available where the non-EU bank, its group, or their agent solicits the EU borrower.

Regulators have indicated that this exemption is to be interpreted strictly, and institutions should maintain governance frameworks and documentary evidence to support reliance on it. This makes the manner in which a financing is initiated, and the evidence supporting this process, particularly important. Relatedly, the LMA has expressed its expectation that market practice will develop to include drafting in arranger mandate letters

instructing arrangers to approach non-EU lenders on the borrower's behalf, supporting reliance on the reverse solicitation exemption.

Interbank – services provided by a third-country undertaking to an EU credit institution are exempt. For example, a US bank (without a branch or a subsidiary in the EU) could lend directly to a licensed European bank without establishing a branch under Article 21c.

Intragroup – services provided to entities belonging to the same group are exempt. For example, a non-EU parent bank could lend to an EU subsidiary within its group without establishing a branch under Article 21c.

Ancillary to MiFID services – investment services within the scope of MiFID II (such as underwriting bonds on a firm commitment basis and dealing in derivatives), and lending that is genuinely ancillary to them, are expressly excluded from the prohibition. For example, a non-EU bank could provide interest rate hedging to an EU borrower without establishing a branch under Article 21c, although its commitment under the loan being hedged would remain in scope.

3. SECONDARY MARKET ACTIVITY

WHAT HAPPENS TO TRANSFERS AND PARTICIPATIONS?

Article 21c does not distinguish between primary and secondary lending and is silent on the treatment of key secondary market structures. In the absence of express guidance in the legislation, the LMA has set out its expectations for how the market may approach these issues in practice:

Sub-participations: Participations and sub-participations may be treated as exposure to the grantor rather than the underlying EU borrower. Where the grantor is a credit institution, the inter-bank exemption should be available.

Novation/assignment of fully drawn loans: Transfers of fully drawn loans may be treated as transfers of receivables rather than new lending to the underlying EU borrower.

Novation/assignment with remaining commitments: Assignments involving undrawn commitments to EU borrowers may still fall within scope, and exemptions (e.g., reverse solicitation) should be assessed.

4. GRANDFATHERING AND TRANSITIONAL PROVISIONS

EXISTING FACILITIES AND BREAK EVENTS

Contracts signed before 11 July 2026 may benefit from transitional relief under the grandfathering provisions, which are intended to “preserve the acquired rights” of EU borrowers under existing contracts. Rather than providing an exemption, grandfathering operates as a phase-out mechanism on a contract-by-contract basis. A grandfathered contract remains protected until its maturity or term, or until the occurrence of a “break event.”

What is a “break event”? Article 21c does not provide a definition. The LMA describes it as an event that would trigger a new contract between lender and borrower and encourages market participants to assess “whether the

changes impact the rights of borrowers at the outset of the contract, and whether the event introduces terms that were not in the contemplation of the parties at the outset of the contract.”

The practical consequence is that amendments to grandfathered facilities will need to be considered not only under the ordinary amendment provisions of the relevant credit agreement, but also through the lens of whether the amendment could result in the loss of Article 21c grandfathering.

Break events (loss of grandfathering):	Non-break events (grandfathering preserved):
Material amendments (e.g., extending term, increasing credit limit)	Corrections, technical updates, economically immaterial amendments
Replacing lenders / adding new lenders	Exercising unilateral borrower rights (e.g., extension option not subject to lender consent)
Adding new facilities or tranches	Drawing, repaying, and re-drawing under a revolving credit facility
Adding new borrowers	Waivers of covenant breaches
	Decrease of credit limit permitted by the contract

The gap period: Facilities signing between 11 July 2026 and 11 January 2027 should be structured on the assumption that grandfathering will not be available.

5. PRACTICAL IMPACT

WHERE DOES THE EXPOSURE SIT?

Following Brexit, most prominent non-EU banks operating in Europe have already restructured their operations by establishing or expanding EU-authorised subsidiaries to book EU-facing business. As a result, their European loan documentation (where the lending entity is the EU subsidiary) is largely unaffected by Article 21c.

The more significant documentary implications may therefore arise in New York law facilities involving US or UK lending entities, particularly where a facility includes, or may subsequently include, EU borrowers.

6. DOCUMENTARY RESPONSES

WHAT SHOULD LENDERS DO DIFFERENTLY?

The LSTA published its CRD VI Market Advisory (updated 10 July 2026) providing key guidance for loan market participants and proposing practical solutions for compliance in New York law commitment letters and credit agreements. Types of provisions being developed include, among others:

- Creating separate tranches bifurcating lenders and borrowers according to their EU or non-EU status, whether at the outset or upon a subsequent joinder;
- Restricting the ability to designate EU borrowers or providing consent rights or notice periods prior to an EU borrower being added, if separate tranches are not created;

- Permitting lenders to utilise yank-a-bank-style provisions where they are unable to provide funding on the entry of an EU borrower to a facility;
- Allowing lenders with licensed EU entities to designate those entities to fund an EU borrower upon its accession; and
- Providing tailored accession mechanics for EU borrowers where their joinder is otherwise permitted.

The LMA is also considering updates to its own documentation in light of Article 21c. Documentation is therefore likely to continue developing as market practice emerges and Member States complete the transposition process.

7. HOW CAHILL CAN HELP

Cahill's Leveraged Finance practice advises global financial institutions, borrowers, sponsors, and affiliated funds on complex European, cross-border, and US financing transactions across the full spectrum of leveraged finance, including broadly syndicated loans, private credit, high-yield bonds, and restructurings.

Our transatlantic platform, with teams in London and New York, allows us to advise banks and financial institutions navigating the implications of CRD VI. We can assist with assessing Article 21c exposure and available exemptions, grandfathering and potential break event reviews and developing documentary strategies across English law and New York law facilities. As transposition develops across key jurisdictions, Cahill is monitoring developments closely and is available to discuss.

[Disclaimer- This article is provided by Cahill Gordon & Reindel LLP for educational and informational purposes only and should not be construed as legal advice. Readers should consult with qualified legal counsel for advice relating to any particular legal matter. If you have any questions about the issues addressed in this client alert, please do not hesitate to call or email the authors below.]

CONTACT

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Jeremy Duffy (partner) at 44.20.7920.9803 or jduffy@cahill.com; Shane McDonald (partner) at 44.20.7920.9808 or smcdonald@cahill.com; Christina Jowett (associate) at 44.20.7947.9328 or cjowett@cahill.com; or email publications@cahill.com.



Jeremy Duffy
Partner
44.20.7920.9803
jduffy@cahill.com



Shane McDonald
Partner
44.20.7920.9808
smcdonald@cahill.com



Christina Jowett
Associate
44.20.7947.9328
cjowett@cahill.com