Regulatory Blog

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CRD VI - Restriction of cross-border banking services from third countries

The EU is harmonizing the rules for third country institutions operating within its jurisdiction.

Content

So far cross-border services from third countries have been subject to diverging regulations across member states. With the approval of CRD VI banking services will encounter restrictions, particularly in previously non-restrictive member states. This will compel institutions to relocate their services and respective activities to the EEA.

1 Background and objective of the new restrictions on cross-border banking services from third countries

Third country institutions have different options of providing services to clients and counterparties in the European Economic Area (EEA):

1. Establish a CRD-licensed subsidiary in an EEA member state. This will grant passporting rights to provide services across member states in EEA.
2. Establish third country branches in each EEA member state, where services to clients and counterparties are provided.
3. Provide cross-border services to single EEA member states through third country entities outside the EEA.

Relevant factors to decide on the operating model include access to funding, capital requirements, availability of personnel, distribution of clients and counterparties as well as regulatory regimes in member states. Hence, in many cases financial institutions use a combination of the above. For instance, a non-EEA bank may have a subsidiary in one member state and branches in other member states while some services and activities are provided from third countries.

The extent to which third-country banks are legally allowed to provide cross-border services to local clients and counterparties largely depends on national rules of the member states. Consequently, non-EEA financial institutions engaging with clients and counterparties in the EEA are faced with a fragmented landscape of various national regulations. This creates a complex and challenging environment for these entities to navigate.

The prudential regulation on market access for providing banking services in member states will now change with the amendment of the Capital Requirements Directive 2013/36/EU (CRD VI), specifically article 21c. This change is part of a larger legislative package, including various amendments to CRD and the Capital Requirements Regulation 575/2013 (CRR) that implement final elements of global Basel III standards into EU law.

CRD VI harmonizes the prudential requirements for providing banking services to EEA clients and counterparties by third-country banks. As a result, specific cross-border banking services will be materially restricted, and third-country institutions will need to establish branches or subsidiaries in the EEA.

2 Who and what is affected by the new restrictions on banking services?

The new harmonized rules will be **applicable to third-country banks** that would qualify as CRR-credit institutions, as investment firms within the meaning of article 4 (1), point b1 – b3 CRR, or are engaged in taking deposits and other repayable funds.

Affected banks are required to establish or move business to branches or subsidiaries in the EEA member states. The provision of cross-border services is restricted with regards to the ‘core banking services’ as defined in points 1, 2 and 6 of Annex I to Directive 2013/36/EU: Lending, guarantees and commitments and taking deposits and other repayable funds.

Restrictions apply to third-country entities that…	Restrictions apply to banking services
… would qualify as a CRR credit institution; or	• Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting) • Guarantees and commitments
... would fulfil the criteria laid down in points (i) to (iii) of Article 4(1), point (b) of CRR if it were established in the Union; or	
are engaged in taking deposits and other repayable funds.	Taking deposits and other repayable funds

Table 1: Entities and activities in scope of CRD VI

The restriction of cross-border core banking services is subject to various **exemptions** and exclusions, specifically regarding

- reverse solicitation,
- interbank transactions,
- intragroup transactions and
- core banking services ancillary to MiFID services.

Additionally, CRD VI includes provisions for the **grandfathering of contracts** that were entered into prior to the date of application of article 21c CRD VI. That means contracts entered into 6 months or more before date of application (i.e., June 2026) may continue to be serviced cross-border without a local branch or subsidiary.

Note that there are some regulatory ambiguities left. The degree to which a service must be considered ancillary to MiFID services to qualify for the exemption is unclear. For example, granting credits to allow investors carrying out transactions may likely fall within the services that are exempted from the scope of CRD VI.

3 Current status of implementation and roadmap

After extensive negotiations and final approval by both the Parliament and the Council of the European Union, the CRR III and CRD VI proposals have been published in the Official Journal on June 19th, 2024. It will enter into force 20 days later.

There is a transposition period of 18 months for member states to implement CRD VI into national law by 10 January 2026. Following this, there will be a 12-month period until 11 January 2027 of transitional relief for licensing applications before all restrictions on cross-border services apply.

The European Banking Authority (EBA) will develop draft regulatory technical standards (RTS) and guidelines, specifying the information to be provided to supervisors and other aspects of CRD VI.

Note that these details may not be available until the new rules come into effect, as the EBA has 24 months from the entry into force of CRD VI to deliver the draft RTS and guidelines to the Commission.

CRD VI: Key dates for cross-border business of non-EEA entities CRD VI enters into force June 2024 EBA to review scope of exemption for financial sector entities June 2025 Member states to transpose CRD VI into national law January 2026 Grandfathering period ends June 2026 Member states to comply with rules for cross-border business restrictions January 2027 Table 2: Key dates for cross-border business of non-EEA entities

4 Implications of the restriction of banking services for non-EEA banks

The restriction of core banking services from third countries encompasses substantial implications for third country banks, including business, operational and financial/ risk dimensions of their business in the EEA.

- **Strategic considerations:**
  Third-country banks must reconsider their overall presence in the EEA market taking into account the new rules applying to banking services and re-authorization requirements. With additional assets resulting from the migration of business in the EEA, non-EEA banks, third country branches and subsidiaries may face additional **prudential** requirements if they cross the materiality thresholds which require restructuring to establish an subsidiary in the EEA in line with article 48i CRD VI or supervision under the single supervisory mechanism (SSM) or an intermediate parent undertaking (IPU).
- **Control frameworks:**
  The activities in the value chain of banking services need to be monitored. Respective control frameworks ensure compliance of regulated activities. Existing frameworks – usually composed of three dimensions: jurisdiction, products, and lifecycle activities – need to be revised for the new CRD VI requirements.
- **Relocation of business:**

The transfer of banking activities from third country entities to the EEA invokes significant efforts on the business side. Affected cross-border services need to be identified. Operating models need to be overhauled. This includes adjusting roles, responsibilities, processes and may affect IT infrastructure. This will also entail the relocation of certain activities in the value chain from third countries (e.g. UK) to member states, including the relocation of bankers. Restructuring the operating model and ensuring sufficiently qualified local staff will entail substantial costs and challenges.

- **Finance, capital and risks:**
  In order to manage an increased balance sheet, additional capital requirements will be required, funding sources must be available and new risk positions must be managed resulting from heightened risk exposures and increased total risk-weighted assets (RWAs).
- **Intra-group hedging:**
  Non-EEA banks often mitigate market and counterparty risk by hedging these risks. However, if these banks must transfer services and associated risks to EEA branches and subsidiaries, it will be necessary to recalibrate these risk management strategies.

5 Banks need to take action

The new rules of CRD VI will only take effect by 11 January 2027. However, potential implications are substantial and may cause significant costs and difficulties. The sooner banks start to assess the impact of the restriction of cross-border banking services, the more time they will have to prepare for the new rules.

6 Your contact

PwC can support you throughout the entire process–from reviewing the scope and assessing the impact to implementing the final decisions. We have an international team, combining expertise in Basel III requirements with extensive experience in advising non-EEA banks to develop customized solutions.

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Schlagwörter

Bankenaufsicht (Europäische und Internationale Organisationen), Capital Requirements Directive (CRD VI), Risk Management Banking, Single Supervisory Mechanism (SSM)

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