

ARTHUR COX

FINANCIAL SERVICES

What does CRD VI mean for financial services in Ireland?

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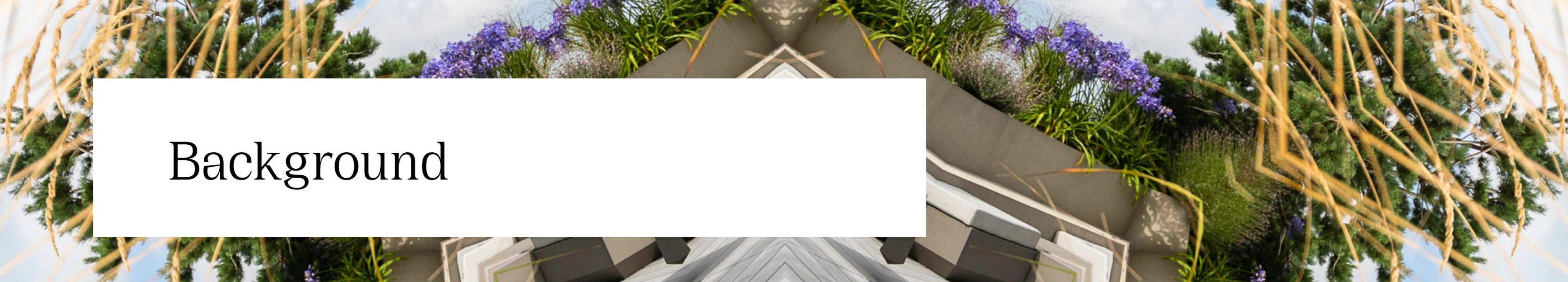
Introduction

As Article 21c of CRD VI ushers in a new era for third-country access to the EU banking market, firms need clarity, strategy and the right expertise beside them.

Undoubtedly, the requirement for EU branches for core banking services will reshape operating models from 11 January 2027, but with carefully calibrated use of available exemptions, evolving national transpositions and a policy landscape still settling into place, there is room to navigate confidently.

Arthur Cox is working with clients to cut through the complexity, anticipate what matters, and chart a smooth, assured path through Article 21c, turning regulatory change into practical, actionable solutions.





Background

Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 (CRD VI) amending Directive 2013/36/EU (CRD IV) entered into force in July 2024. CRD VI, together with Regulation (EU) 2024/1623 (CRR III) form the “Banking Package” and aim to implement the final elements of Basel III. At a high level, CRD VI makes amendments to CRD IV with the intention of promoting harmonisation across Member States and deepening the internal banking market.

One feature of the Banking Package that has been of particular interest to market participants is Article 21c of CRD VI, which introduces a general prohibition on the direct provision of core banking services - deposit-taking, lending, and issuing guarantees or commitments - by third-country undertakings (**TCUs**) into the EU (the **General Prohibition**).

The General Prohibition was born out of the recognition that cross border lending and a fragmented regulatory landscape give rise to risks to financial stability and market integrity.

From **11 January 2027**, TCUs will be required to establish a licensed branch in each Member State where they wish to provide core banking services or operate through an authorised EU entity when providing core banking services. TCUs comprise non-EU banks and non-EU significant investment firms (which deal on their own account and have assets exceeding €30 billion) which are engaged in the provision of core banking services into the EU.

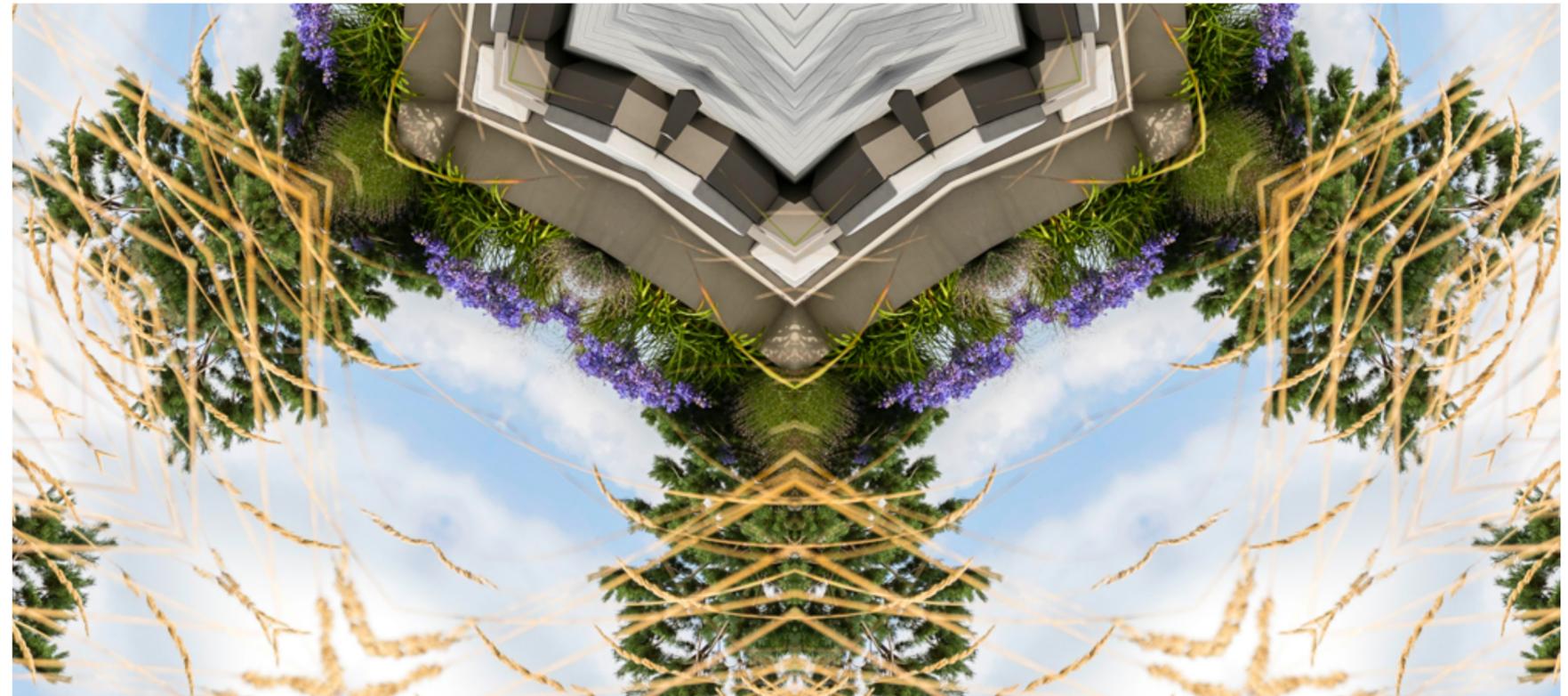
The requirements of Article 21c represent a significant change to how TCUs access the European market, particularly for jurisdictions like Ireland that have historically permitted cross border lending without requiring a local, regulated presence.

Although the rationale behind the General Prohibition is well understood, its implementation will occur in an economic and political landscape that has evolved considerably since its inception. While the pursuit of regulatory harmonisation and financial stability continues to underpin European policy, there is now heightened emphasis on fostering growth and competitiveness. As a result, the impact of these new requirements on cross-border financial services activity will be closely scrutinised by market participants.

TRANSPOSING MEASURES

Member States were required to publish national transposing measures in respect of CRD VI by 10 January 2026. Most Member States missed that deadline, Ireland included. There is currently a degree of uncertainty as regards when the domestic transposing measures will be published, and, when they are made available, whether they will be aligned with the European level text or aim to introduce clarifications and/or new requirements. We, along with all market participants, will be watching developments in this regard closely.

This briefing will look at Article 21c and the General Prohibition in more detail, including the branch authorisation requirements, exemptions and carve outs, and specific considerations for sectors such as Financial Regulation, Financial Services Compliance and Regulation, Asset Management and Investment Funds, Fund Finance, Debt Finance, Aviation, Debt Capital Markets and Insurance. We hope this will provide a helpful introductory guide as the Irish financial services sector works to interpret the provisions of the new CRD VI regime and the regulatory compliance challenges it presents.



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Article 21c presents a market access hurdle for TCUs. As noted above, from 11 January 2027 TCUs will be required to establish a licensed branch in each Member State where they wish to provide core banking services or operate through an authorised EU entity when providing core banking services into the EU.

These core banking services include:

- deposit-taking;
- lending; and
- the provision of guarantees and commitments.

How the CRD VI understanding of these services compares with how Irish national law understands them is a key point to be further explored when the transposing measures are published.

¹ CRD VI Recital 6

There are a number of exemptions and carve outs to the General Prohibition, which we step through below.

EXEMPTIONS AND CARVE-OUTS

Reverse solicitation (client initiates the service)

“The requirement to establish a branch in the Union should not apply to cases of reverse solicitation, that is where a client or counterparty approaches an undertaking established in a third country at its own exclusive initiative for the provision of banking services, including their continuation, or banking services closely related to those originally solicited.”¹

The General Prohibition does not apply where a TCU provides a service or activity to an EU-located or EU-established client or counterparty (including a retail client, an eligible counterparty, or a professional client) where that client or counterparty approaches the TCU at its own exclusive initiative for the provision of any core banking service. The key concept is “own exclusive initiative”.

The reverse solicitation exemption is likely to be important for Ireland's financial services industry and to be widely used by market participants. It is important to note, however, that this exemption cannot be used to circumvent the General Prohibition where there is any element of marketing or solicitation.

It is also important to be aware that a client will not be regarded as approaching a TCU on its "own exclusive initiative" if the TCU "solicits" the client through an entity acting on behalf of the TCU or an entity having close links with the TCU or through any other person acting on behalf of the TCU. The meaning of "solicits" for this purpose will depend on the interpretation and application of this term in Ireland, but broadly we would expect that it is likely to include the offering and/or promotion of such services.

It should also be noted that where a client has approached a TCU at the client's "own exclusive initiative", this does not permit the TCU to "market other categories of products, activities or services than those that the client or counterparty had solicited, other than through a third-country branch established in a Member State". However, the TCU would be permitted to provide "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."²

At present, the concept of "reverse enquiry" has no separate statutory basis with respect to banking services under Irish law. We note, however, that the Central Bank of Ireland (**CBI**) issued guidance in the context of Brexit (the **CBI Brexit Guidance**) which indicates that, provided certain conditions are satisfied, the provision of services to Ireland-based customers may not constitute banking business "within the State" (i.e. Ireland).

The CBI Brexit Guidance states that, when assessing such cases, the CBI may take some or all of the following considerations into account:

- Whether the firm has a presence in Ireland (i.e. whether it is operating on a cross-border basis);
- Whether there are marketing materials targeted at Irish-based customers to inform them of the services provided by a credit institution authorised in another jurisdiction;
- Having in place, or adapting, operational infrastructure or policies specifically to facilitate the provision of banking services to Irish-based customers;
- The volume of the Irish customer base (a material number of customers in Ireland availing of a banking service provided by a credit institution authorised in another jurisdiction is indicative of the conduct of banking business in Ireland); and
- The classification of customer (a proportionally higher number of Irish-based customers would tend to indicate that such customers are being targeted).

Accordingly, the provision of banking services to Ireland-based clients by a TCU should not trigger a licensing requirement provided that the TCU satisfies at least some of the conditions above (e.g. the TCU provides the banking services on a cross-border and unsolicited basis).

Services to other credit institutions

The provision of core banking services to credit institutions is not subject to the General Prohibition. This exemption was built into Article 21c to maintain liquidity and stability within the global banking system.

Intragroup transactions

The provision of core banking services to an undertaking within the same group as that of the TCU is not subject to the General Prohibition. In this context, the provision of core banking services by a TCU to a European custodian/depositary within its group that is acting as a fiduciary for one or more European fund clients can pose certain issues for consideration, as to which see the **Asset Management and Investment Funds** section below.

MiFID investment services and related ancillary services

*"... not apply to cases where third-country credit institutions provide in the Union the investment services and activities listed in Annex I, Section A, to 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 that Directive, including the provision of trading of financial instruments services or private wealth management."*³

The exact scope of the MiFID exemption, as set out in the text of CRD VI, is unclear, and has been the subject of much discussion to date. Whilst Article 21c(4) states that Article 21c will not apply to the MiFID services or activities listed in Annex I, Section A to Directive 2014/65/EU (**MiFID II**) it is not clear from the text that Annex I, *Section B* services / activities (such as custody) are also excluded from the scope of Article 21c. We discuss this further in the [Asset Management and Investment Funds](#) section below.

Grandfathering for pre-existing contracts entered into before 11 July 2026

*"... measures to preserve clients' acquired rights under existing contracts. Such measures should apply solely for the purpose of facilitating the transition to implementation of this Directive, and should be narrowly framed to avoid instances of circumvention."*⁴

Contracts entered into before 11 July 2026 are not subject to the General Prohibition, however clients should be cautious of contractual amendments and lifecycle events that could potentially lead to a loss of grandfathering.

³ CRD VI Recital 6, see also Article 47(2)

⁴ CRD VI Recital 6

A note on characteristic performance in Irish law

Certain jurisdictions have traditionally applied a "place of characteristic performance" test when determining whether a licence is required to provide certain regulated financial services within that jurisdiction. Historically, firms wishing to do business in Ireland have not utilised the characteristic performance test because lending to corporates is subject to limited regulation in Ireland and, on the MiFID side, Ireland has a useful overseas persons safe harbour.

This does not mean that a characteristic performance test could not be applied in the future. However, the test is not explicitly referenced in the text of CRD VI and there is no direct European or domestic guidance on the application of the test in this context, opening the door to an element of regulatory uncertainty and compliance risk.

THIRD COUNTRY BRANCH REQUIREMENTS

If an exemption or carve out is not available to a TCU which intends to provide core banking services into the EU, then that TCU will need to establish a branch in each Member State where they operate and obtain authorisation under Title VI of CRD VI. Title VI sets out the framework for authorisation, supervision, and regulatory cooperation concerning branches of TCUs operating in the EU. It aims to ensure consistent prudential standards and mitigate risks posed by non-EU entities.

Branch requirements

Third country branches are subject to standalone regulatory capital and liquidity requirements as well as minimum requirements related to staffing, governance and risk management. Bookkeeping and regulatory reporting requirements will also apply.

A point to bear in mind is that a third-country branch may only conduct its regulated activities within the Member State where it is established. The branch will be prohibited from offering or conducting those activities in other Member States on a cross-border basis, except for intragroup funding transactions concluded with other third-country branches of the same head undertaking and for transactions entered into on the basis of reverse solicitation of services in accordance with Article 21c.

As such, TCUs considering structuring options will need to assess whether a third-country branch is the best option, or if establishing a full European subsidiary with passporting rights would be a better fit for their current and future business models, notwithstanding the associated timing and cost implications.

Supervisory Powers in respect of third country branches

Competent authorities have powers to:

- Assess branch significance and apply intensified supervision for “significant-plus” branches.
- Conduct on-site inspections, risk assessments, and enforce sanctions.
- Require detailed reporting and recovery planning.

Cooperation Framework in respect of third country branches

Home and host authorities must coordinate through supervisory colleges, sharing information and aligning recovery and resolution planning.

Enhanced Monitoring of Significant Branches

Significant branches will be subject to enhanced monitoring and stricter compliance obligations. Significance will be assessed based on factors such as size, risk profile, and systemic importance.



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Branch establishment – process and considerations

TCUs intending to establish a branch in Ireland will require authorisation under Section 9A of the Central Bank Act 1971, for which the CBI acts as the competent authority. The CBI's priority will be to ensure that third country branches operate within a robust prudential and governance framework.

As such, TCUs seeking a third-country branch authorisation will need to demonstrate strong capital and liquidity arrangements, effective local governance structures, and resilient risk and operational processes aligned with evolving CBI and European Banking Authority (**EBA**) requirements.

For TCUs requiring a third country branch authorisation, early engagement with the CBI will be essential. The application process will include an assessment of a branch's envisaged business, regulated activities, organisational structure and risk management framework. These details must be included in a programme of operations accompanying an application.

Following initial discussions, third country branch applicants will gain access to the European Central Bank's (**ECB**) IMAS portal to progress the application. As well as the CRD VI requirements themselves, branch applicants will be expected to adhere to CBI guidelines addressing governance, risk management, operational resilience, and prudential standards, and the EBA guidelines on third party risk management aligned with Regulation (EU) 2022/2554 (**DORA**).

The EBA is required to issue guidelines by 10 July 2026 to further specify the information to be provided as part of applications for authorisation, the procedure for authorisation (including standard forms and templates for the provision of such information) and conditions for authorisation, and the EBA published draft guidelines for consultation in November. TCUs considering a branch application should ensure that they are horizon scanning for the final guidelines and are ready to action their requirements when live.

Ongoing supervisory engagement

CRD VI will materially influence how non-EU lenders structure their Irish facing activities, whether they establish a third country branch or utilise one or more of the Article 21c exemptions. Exemptions, such as reverse solicitation, will require clear internal governance and substance to demonstrate compliance. In this regard, it should be noted that Article 21c sets out that competent authorities should have the power to require credit institutions and branches established in their territory to provide them with the information they require to monitor the services provided at the own exclusive initiative of the client or counterparty established or situated in their territory where such services are provided by undertakings established in third countries that are part of the same group. As such, CBI monitoring of the application of the reverse solicitation exemption will be possible in many circumstances.

However, the impact of CRD VI will extend far beyond lenders to other entities such as funds, depositaries, insurers, and corporate borrowers that rely on TCUs for financing, guarantees, or cash management arrangements. Fund depositaries in particular, will need to consider, and possibly restructure, existing non-EU banking relationships to maintain compliance under the new regime.

Other financial institutions that rely on TCUs should assess how CRD VI may directly or indirectly affect their operational models and proactively engage with their CBI supervisors if necessary. Early dialogue will help clarify whether adjustments to outsourcing, depositary arrangements, liquidity management or counterparty structures are required (even where the full third country branch authorisation process may not apply).

Ongoing supervisory engagement will also support financial institutions in managing any transitional, contractual, or risk management implications arising from the new regime and in demonstrating that they remain compliant within the evolving regulatory framework.

It is essential, and timely, that regulated entities consider CRD VI in the context of their current business model to clarify its applicability, assess restructuring needs, address contractual implications, and plan strategically for authorisation requirements or changes to business models ahead of the 2027 implementation timeline.



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CRD VI will have a significant impact on the Irish funds industry, particularly in the areas of financing and custody arrangements. Given the opaque interface with UCITS/AIFMD and the narrow exemptions and carve-outs, fund managers should consider what work needs to be done to ensure compliance readiness.

Suggested action points include the following: review legacy positions; clarify third-country counterparties strategies; and consider/prepare fallback structures. Early action will safeguard continuity in operations and position structures for compliance with CRD VI.

Borrowing / lending arrangements

For any new borrowing arrangements executed post-July 2026 with TCUs, funds and fund managers should ensure that the relevant counterparties are engaging through an EU branch or subsidiary, or else be satisfied that the relevant TCU can rely on a relevant exemption like reverse solicitation.

Funds should audit any upcoming lending to determine exposure and confirm compliance strategies. As mentioned in the **Financial Services Compliance & Regulation** section above, funds will need to be able to demonstrate compliance, in particular when relying on exemptions like reverse solicitation, and as such will require clear internal governance and substance strategies around this.

MiFID exemption

As mentioned in the **Financial Regulation** section above, the exact scope of the MiFID exemption as set out in the text of CRD VI is unclear. Whilst Article 21c(4) states that Article 21c will not apply to the MiFID services or activities listed in Annex I, Section A to MiFID II, it is not clear from the text that Annex I, Section B services / activities (such as custody) are also excluded from the scope of Article 21c.

On 23 July 2025 the EBA published a report (the **Report**), mandated under Article 21c(6) CRD VI, which examined whether TCUs should be allowed to provide core banking services directly to all EU financial sector entities (**FSEs**) (in addition to credit institutions) without establishing a branch in the Union. In the Report, the EBA noted that “Article 21c CRDVI does not expressly address the interaction with those AIFMD and UCITS Directive provisions entitling the concerned EU FSEs to receive core banking services for their ongoing operationality in third countries in accordance with their business.” Particular reference was made to sub-custody and deposit arrangements made by fund managers.

The EBA suggested that further clarifications, perhaps via the Single Rulebook Q&A Tool, could help national competent authorities with navigating these points.

In Ireland, through industry engagement in 2025, we understood that the European Commission had verbally confirmed that Annex I, Section B services / activities (such as custody) were also excluded from the scope of Article 21c, and that the Irish Department of Finance shared this view. Unfortunately, further communications in 2026 suggest that the CBI is not aligned on this point.

There have been some discussions at the European level as regards whether the Commission will use the Single Rulebook Q&A Tool to issue guidance on the implementation of Article 21c, in particular the scope of the MiFID exemption. At this point in time, it is unclear whether the Commission will issue any guidance or, if they do, in what timeframe.

The absence of tailored guidance in this regard, and conflicting communications from legislative and regulatory bodies, poses an element of compliance risk, including the possibility for unintended regulatory breaches and operational discontinuities. Close engagement with local transposition developments is critical, and Irish funds should be aware that they may need to proactively restructure third-country arrangements into EU-authorized entities or subsidiaries and otherwise be positioned to act if any formal domestic or European guidance is provided.

Intragroup arrangements – custody

As mentioned in the **Financial Regulation** section above, the provision of core banking services by a TCU to a European custodian/depositary within its group that is acting as a fiduciary for one or more European fund clients, can pose issues for consideration. In this context, and while each structure and scenario will require careful factual review, generally speaking, where a custodian/depositary acts as a fiduciary, and receives a TCU's services for the benefit of underlying funds, this does not mean that the services provided by the TCU to the custodian/depositary should be regarded as provided by the TCU to the underlying funds.

This is because while the custodian/depositary is acting as a fiduciary in opening the cash accounts with the TCU, is not acting as an agent of the funds. Furthermore, Article 21c(2)(c) does not require that the services received by the undertaking in the same group as the TCU must be received for its own account/benefit, and we see no reason why this should be implied. However, each case should be considered on its own facts in order to assess compliance with the CRD VI requirements.

In each case, funds and custodians must evaluate whether current cross-border custody/deposit arrangements will be compliant under the new CRD VI regime.



Action points & recommendations

Focus Area	Recommended Actions
Existing Contracts	Review all non-EU lending, deposit, custody arrangements before 11 July 2026 to establish grandfathering eligibility.
Regulatory Engagement	Monitor Irish transposition of CRD VI and European Q&A updates; consider early submission of queries on fund-sector implications.
Counterparty Readiness	Inventory lending/custody providers; assess whether they are planning EU-branch establishment or qualify under exemptions.
Documentation	Ensure documentation clearly evidences reverse solicitation or MiFID ancillary services where relied upon.
Contingency Planning	Model potential scenarios - e.g. EU-based subsidiaries, stepping up caution on new non-EU exposures.
Governance & Risk	Obtain board-level awareness and legal counsel to manage and report risks arising from CRD VI obligations.

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In the Fund finance context, the market for lending to Irish funds is dominated by non-Irish lenders. While many of these lenders are EU based, non-EU banks, primarily US, play a significant role in providing funding for Irish funds. As such, CRD VI and the Article 21c requirements in particular, represent a significant development for the Irish Fund Finance market.

We continue to receive multiple queries from our lender and borrower side clients on the implications for them of CRD VI. On the lender side, key questions relate to the regulatory perimeter and, if in scope, what exemptions might be available. As noted in the **Financial Regulation** and **Financial Services Compliance & Regulation** sections above, establishing a third country branch has limitations in terms of passporting, and setting

up a new EU subsidiary bank has significant timing and cost implications.

For these reasons and others, clients remain interested in potential structuring solutions, for example structures that utilise a private credit fund or SPV, or perhaps lending to an unregulated non-EU entity that on lends funds into Ireland. We continue to discuss various options with clients to ensure that any structuring solutions deliver on regulatory compliance requirements.

The potential use of the reverse solicitation exemption is also a common question we are asked in the Fund Finance context. As the application of the exemption is extremely fact specific, using reverse solicitation is unlikely to be a universal panacea. We do, however, expect to see a market practice develop in this area, and we also will continue to horizon scan for any domestic or European level guidance. We are monitoring with interest whether any divergence emerges between Member States in relation to the interpretation of this exemption and others, such as the characteristic performance test. It should also be borne in mind, and as flagged in the **Financial**

Regulation section above, that the CBI will be in a position to monitor the application of the reverse solicitation exemption in certain circumstances, and will undoubtedly have questions if they believe that the scope has been expanded beyond the legislative intention.

As with many other pieces of EU based legislation, there are also grandfathering provisions to assist lenders and borrowers to transition loans that are documented prior to 11 July 2026 but which continue to operate after that date. A multitude of potential considerations and scenarios need to be considered in respect of the grandfathering exemption.

For example, would a facility with optional extension period(s) be able to avail of the grandfathering provisions, how would an upsize be dealt with, how should 364-day facilities be treated which are not subject to automatic renewal rights? Without careful consideration of these issues, and future-proofing contracts now as needed, arrangements could be at risk of losing the protection of the grandfathering exemption post 11 July 2026, with associated regulatory implications for transaction parties.

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In the wider financing context, Ireland has a robust domestic banking sector providing the full range of debt finance and invoice finance facilities to market participants. This is supplemented by a diverse group of non-Irish banks and non-bank lenders who operate across the capital stack.

Given the growing and open nature of the Irish economy, we commonly act for non-Irish lenders in a multitude of cross border scenarios, for example on large M&A transactions, deals involving US multinationals, infrastructure deals and project finance deals.

While on many of these deals the lenders are EU regulated or are non-bank lenders, we frequently act for US and Asian banks on transactions involving Irish entities. These lenders will be in scope for CRD VI and the considerations mentioned above in respect of Fund Finance lenders will equally apply to them.

In Ireland, invoice finance traditionally has been subject to limited regulation. It is important to note that invoice finance will be in scope for CRD VI. This will, for example, present challenges for in-scope invoice finance providers where they add Irish entities to group facilities, however we are of the view that in many cases structuring solutions will be available to mitigate this issue.

Aviation

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On the aviation side, Ireland remains a global hub for aircraft leasing. As such, CRD VI and the Article 21c requirements in particular, will have a direct and significant impact on participants in the Irish aviation market. Many Irish leasing platforms borrow extensively from non-EU banks, and those banks are highly active in the sector.

Non-EU banks providing core aviation finance services into Ireland will be required to establish regulated EU branches or develop robust and defensible positions relying on the relevant exemptions. Whichever approach gains dominance, this will reshape how non-EU lenders participate in Irish aviation finance transactions.

In our view, these developments have the potential to accelerate the shift toward alternative funding strategies, including capital markets, securitisation, and private investment. For aviation participants, understanding these changes and adapting financing models will be critical to ensuring the ongoing resilience of their operations, and to maintaining Ireland's leadership in global aircraft leasing. Practical steps will include assessing funding structures, engaging with non-EU lenders, updating compliance frameworks, and aligning financial strategies early to avoid disruption. Ireland's robust legal framework, tax regime, and international conventions will remain key strengths, but proactive compliance planning will be essential to navigate the new regulatory framework.

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Ireland plays a core role in the European and global structured finance and securitisation market. Ireland's securitisation vehicle, the section 110 company, offers flexibility and innovation which continues to attract business to Ireland from across the globe.

Consequently, the implications of CRD VI for TCUs involved in financing transactions structured through Ireland and on a cross-border basis are of particular importance.

In the case of vanilla securitisations, such as RMBS and CMBS transactions, an Irish securitisation vehicle or SPV acquires underlying loans from an originator and issues securities to investors. Helpfully, the issuance of such securities is not a core banking service within the context of Article 21c and therefore is not captured by the CRD VI prohibition.

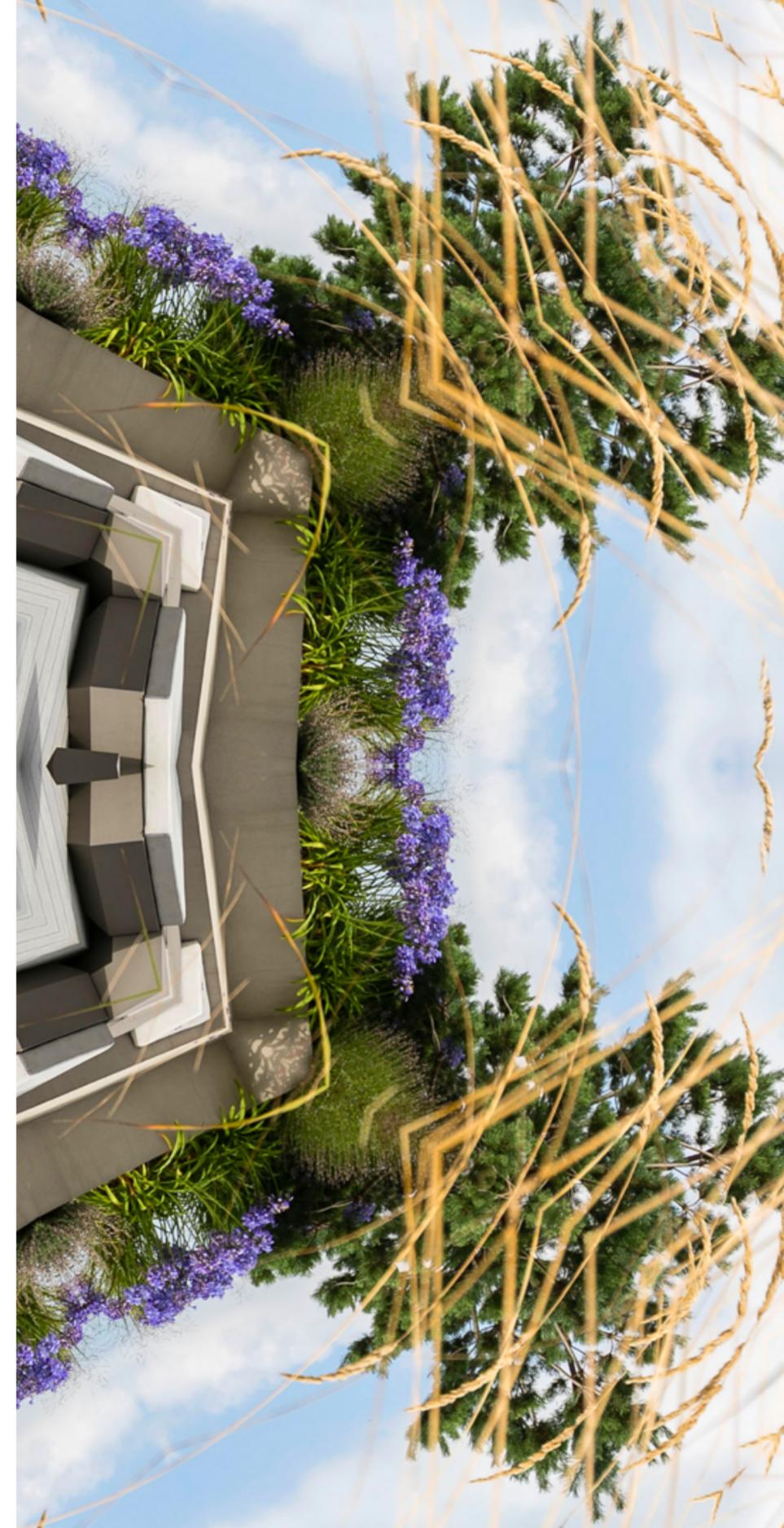
However, the General Prohibition can still be of relevance in various transactions, for example:

- Securitisation structures are always evolving and often feature bespoke features such as liquidity facilities for credit enhancement, subordinated loans to fund reserves and loans to SPVs to satisfy risk retention requirements. Where these features exist and the provider of such loan or facility is a TCU, the General Prohibition under CRD VI will need to be considered and accommodated in the structure.
- Structured trade receivables financings and securitisations often involve cross-border businesses, with transaction parties within the EU and third countries, including TCUs. When this is the case, the parties will need to consider whether the structure of the transaction constitutes factoring, which is a core banking activity and thus an in-scope service for CRD VI.
- TCU funders of forward flow securitisations and also will have to consider CRD VI on new and existing transactions. Where an existing transaction is grandfathered under CRD VI, transaction parties will have to monitor amendments, extensions, upsizes and other lifecycle events in case such events result in a loss of grandfathering and trigger the prohibition under CRD VI.

In terms of structuring solutions, the considerations mentioned in the **Asset Management and Investment Funds, Fund Finance, Debt Finance** and **Aviation** sections above apply equally. Parties will need to consider what exemptions and carve outs may be available based on the specific fact pattern, bearing in mind local transposition measures and any available guidance.

In the absence of an available exemption, the relevant service may need to be provided through a third country branch or an authorised EU subsidiary. Structuring solutions that re-route the provision of the core banking service through an unregulated entity may also be feasible.

Structured finance transactions are invariably undertaken on a cross-border basis, involving multiple jurisdictions. This international dimension means that transaction parties and their counsel must carefully consider all relevant legal and regulatory frameworks when structuring a financing or securitisation. CRD VI will now be added to this range of regulatory frameworks that need to be taken into account when putting a transaction together, and parties should remain live to how it may impact on each individual structure.



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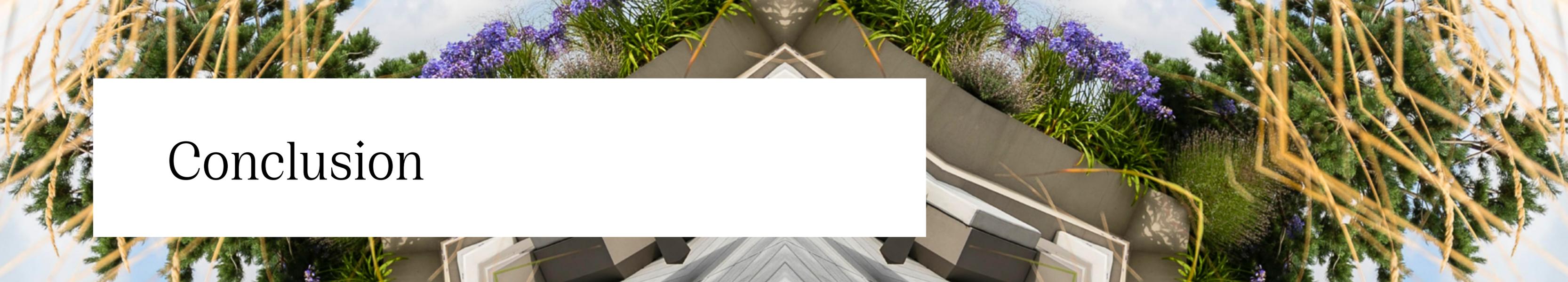
On the insurance side, we are often asked to consider the regulation of “trade finance” products (such as letters of credit, bank guarantees and performance bonds) as insurance business by large international lenders who wish to offer these products to Irish borrowers or beneficiaries on a stand-alone basis or as part of financing arrangements being offered to their clients across multiple jurisdictions.

The usual question is whether the provision of trade finance products constitutes the carrying on of insurance business in Ireland, requiring the issuer to be authorised in Ireland or another EEA state as a non-life insurer for the relevant class of business (suretyship) or otherwise come within an exemption, such as the exemption in favour of EEA authorised credit institutions. As well as considering these regulatory perimeter issues, TCUs who wish to offer trade finance products in Ireland will now also need to consider the implications of CRD VI as well.

Assuming that trade finance products will fall within CRD VI, which we think is likely, TCUs will now need to navigate both the banking and the insurance regulatory environments in order to offer these types of products. It remains to be seen whether authorisation of an EEA branch of a non-EEA lender under CRD VI will permit a TCU to issue these types of products under Irish law.

If this proves not to be the case, there will be a number of possible alternatives, such as the creation of a subsidiary in Ireland or elsewhere in the EEA and obtaining authorisation (either as a non-life insurer or a bank) or, depending on the specific circumstances, determining if the provision of specific trade finance products crosses the Irish regulatory perimeter and if CRD VI exemptions can be relied upon.

In each case, the particular facts of the transaction and the business will be important in determining the exact legal obligations and the appropriate way forward to ensure compliance.



Conclusion

As will be clear from the above, CRD VI and the Article 21c requirements touch on all areas of the financial services industry in Ireland. For TCUs, it presents a new hurdle to market access. For Irish based financial market participants, it adds new layers of complexity and regulatory overlay to traditional financing arrangements.

CRD VI was intended to drive consistent regulatory standards across Member States, enhance supervisory transparency, and strengthen overall financial stability. In the context of third country access to the EU market, there was a clear desire to harmonise market access requirements across Member States and to drive the onshoring of the provision of core banking services to European market participants. However, whether Article 21c will achieve those aims remains to be seen.

From our discussions with clients and colleagues, we see Article 21c as having the potential to pose competitiveness issues, both within the single market and externally, and this may jar with the recent European focus on growth and economic resilience. As CRD VI is a directive and requires national transposition, the potential for inconsistent implementation and supervision and, consequently, regulatory arbitrage between Member States, poses a real risk. This will be a particular focus in the areas of the Article 21c exemptions and European level guidance, if forthcoming, may be the only way to promote harmonised implementation.

More broadly, TCUs may choose to restrict or end their EU based relationships, rather than onshoring (with the costs and complexities involved) or navigating the intricacies of the exemptions and carve outs. There is also the potential that legitimate structuring solutions using unregulated entities will move more of what has traditionally been bank-led lending into the non-bank (**NBFI**) sector, with its lighter capital, liquidity and transparency obligations, which is far from what was envisaged by the European legislators when designing the Banking Package.

From a practical perspective, the legislation is what it is, and market participants now need to consider and prepare. Our cross-departmental team of lawyers drawn from our Financial Regulation, Compliance, Asset Management and Investment Funds, Fund Finance, Debt Finance, Aviation, Debt Capital Markets and Insurance practices are well positioned to assist with all queries relating to CRD VI implementation and compliance. Please do reach out to discuss, we would be delighted to help.

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What does CRD VI mean for financial services in Ireland? - Contact us



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