

Fund Finance Friday



What Fund Finance Lenders Need To Know About CRD VI

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One of the aims of the European Union's Capital Requirements Directive VI^[1] (CRD VI) is to harmonise the banking supervisory and access framework across the EU, including in relation to the provision of core banking services.

In broad terms, Article 21c of CRD VI prohibits the provision of cross-border core banking services into the EU by non-EU entities (the CRD VI Prohibition). This article looks at who the CRD VI Prohibition applies to, and what exemptions apply to the CRD VI Prohibition. And finally, it looks at possible solutions that could be available for non-EU entities to whom the CRD VI Prohibition applies and for whom an exemption is not available.

The CRD VI Prohibition will apply from 11 January 2027, so all fund finance lenders should be thinking now about whether this will affect their business and if so what they can do about it, if they have not already done so. Note also that because this is a Directive, it will need to be implemented separately by each EU member state, which may in turn lead to variations in its application in each EU member state.

So let's start with what are 'core banking services'? In short, these include lending. So the CRD VI Prohibition has the potential to impact lending by non-EU entities into the EU. But not every loan will be caught: the answer will depend on who is lending and who is borrowing.

In terms of which non-EU lenders are caught by the CRD VI Prohibition, it does not apply to all lenders. It only applies to entities that would be 'credit institutions' (broadly, deposit takers) if they were based in the EU, and to large investment firms. Large investment firms are investment firms which deal on their own account or underwrite financial instruments above a threshold of €30 bn. Private funds are not investment firms.

So, whilst a non-EU bank is very likely to be a credit institution for the purposes of the previous paragraph, a private credit fund is not. Similarly, a non-EU investment bank may, depending on its size, be a 'large investment firm', but a private credit fund will not.

The next point to consider for non-EU banks is whether one of the exemptions to the CRD VI Prohibition applies to their proposed lending activities. One exemption is if the lending is provided to an EU credit institution. Other

exemptions apply if the EU borrower approached the non-EU lender under a reverse solicitation (which can be tricky to demonstrate and which is interpreted strictly), or if the EU borrower is in the same group as the non-EU lender. Certain banking services provided as ancillary to MiFID II activities are also exempt. And there is provision for the grandfathering of certain lending contracts entered into before 11 July 2026, although it should be noted that grandfathering may not automatically roll through to all later extensions and amendments of lending agreements.

The European Banking Authority (EBA) published a report on 23 July 2025 which considered whether the exemption to the CRD VI Prohibition for lending to EU credit institutions should be extended to other EU 'financial sector entities'. However, the EBA concluded it did not support such extension.

Where does this leave non-EU fund finance lenders? A non-EU fund finance lender which is a private credit fund is unlikely to be caught by the CRD VI Prohibition. Conversely, a non-EU fund finance lender which is a bank is very likely to be caught by the CRD VI Prohibition and unless it can use an exemption such as reverse solicitation or (for a while, anyway) grandfathering, it will need to either establish a subsidiary in the EU or a branch in each EU country it is lending into. The subsidiary option requires a subsidiary to be established in one EU country which can then passport into all the other EU countries. The branch option only applies for the provision of banking services in the EU country in which that branch is established, so if lending is planned to be made into several different EU countries, a branch will be required in each country. In any event, both subsidiaries and branches will be subject to EU prudential supervision and capital requirements of the (or each) relevant EU country.

If we can help you work through the application and implications of the CRD VI Prohibition for your fund finance business please get in touch with one of the Cadwalader fund finance team.

[\[1\]](#) Directive (EU) 2024/1619 amending Directive 2013/36/EU.