Fund Finance Friday

Article 21c of CRD VI: LMA issues Practical Guidance on Cross-Border Corporate Lending – An Irish Perspective

May 15, 2026

By **Kevin Lynch**
Partner, Fund Finance | Arthur Cox

By **Ben Rayner**
Of Counsel, Fund Finance | Arthur Cox

This week the Loan Market Association ("**LMA**") published **a paper on the introduction of Article 21(c) of the EU's Capital Requirements Directive1** (**Article 21c**) (the **LMA Paper**). With effect from 11 January 2027, Article 21c will introduce changes to the way in which non-EU banks access EU borrowers.

From an Irish perspective, the publication of the LMA Paper is particularly welcome and timely. Arthur Cox has been advising clients on the operational and structural implications of Article 21c since the CRD VI text was finalised, and the questions raised in practice have already moved well beyond the threshold issue of whether Article 21c applies.

Clients are now grappling with grandfathering eligibility, exemption reliance, and the structural choices required to future-proof their lending arrangements before the 11 July 2026 grandfathering cut-off. This article sets out our views on those questions, drawing on the LMA's analysis and our own experience advising lenders, sponsors, and borrowers on transactions across Irish and EU jurisdictions.

What Will Article 21c Do?

At its core, Article 21c creates a broad prohibition on non-EU banks, and certain large non-EU investment firms, extending credit to EU-based borrowers on a cross-border basis. The prohibition is subject to four exemptions, namely: (i) intragroup lending; (ii) interbank lending; (iii) ancillary to MiFID (investment) services; or (iv) reverse solicitation.

It is important to note that CRD VI is a directive, not a regulation, and requires transposition into national law to have effect. Ireland has not yet enacted implementing legislation, placing it among the majority of Member States that have yet to finalise transposition. This creates a dual layer of uncertainty: not only are certain concepts in Article 21c itself undefined at EU level, but the precise form in which those concepts will be embedded in Irish law remains unclear.

Importantly, where a non-EU bank has already established a locally authorised subsidiary or branch within an EU Member State, the activities of that entity fall outside the scope of Article 21c. In practice, this could mean that international banking groups may look to route EU lending through their existing EU-incorporated bank subsidiaries.

The distinction between EU-incorporated bank subsidiaries and branches is particularly significant in the Irish context given that Ireland hosts the EU subsidiaries of several major non-EU banking groups. For groups that currently lend to Irish borrowers directly out of a non-EU head office, the question of whether to migrate that business to an existing Irish or other EU-incorporated subsidiary, or to establish a new branch, is a live structural question.

Impact on the Market

The LMA Paper observes that practical disruption will be felt most acutely in jurisdictions that currently operate 'permissive' cross-border lending regimes – Ireland and Luxembourg being the most prominent examples given. In the

Irish market in particular, Article 21c will introduce cross-border licensing requirements where none previously existed.

Our experience advising on cross-border fund finance and corporate lending transactions into Ireland makes clear that the volume of affected arrangements is substantial. Ireland is home to a large number of borrowing vehicles, including funds, treasury entities, holding companies, and SPVs, that currently access facilities provided by non-EU banks on a cross-border basis without any licensing requirement. Article 21c will require each of those arrangements to be assessed on its own terms.

The bifurcation risk identified by the LMA is, in our view, a structural challenge. In fund finance we frequently encounter a single facility to serve both non-EU and EU-incorporated fund entities as co-borrowers, with a non-EU lender providing the facility on a cross-border basis. Re-engineering those structures could require renegotiation of the facility terms, consent from all lenders, and potentially the restructuring of security packages.

<u>The Reverse Solicitation Exemption</u>

This is likely the most practically significant exemption for the loan market.

Under the reverse solicitation exemption, the key question is whether the EU borrower acted entirely on its own initiative in approaching a non-EU lender. Where it is the non-EU bank (or any member of its group or an agent acting on its behalf) that has made the approach, the exemption will not be available. The distinction between a borrower-led approach and lender-led solicitation is therefore critical and will require careful factual analysis in each case.

The three scenarios identified in the LMA Paper, namely co-borrowing, sponsored transactions, and syndicated lending, are all patterns that arise with regularity in transactions. For example, in fund finance transactions it is very common, to facilitate the structuring and tax planning needs of investors, that a Sponsor will establish an Irish fund or SPV.

We agree with the LMA's view in this regard that in the identified scenarios the market may rely on reverse solicitation. We echo however that, where used, reverse solicitation should be supported by Irish legal advice and robust internal governance and record keeping. As the application of the exemption is extremely fact specific, using reverse solicitation is unlikely to be a universal panacea.

<u>Secondary Market Activity</u>

As the LMA Paper notes, Article 21c does not distinguish between primary and secondary lending – this is a significant gap. It is silent on the treatment of sub-participations and does not specify whether a purchaser in the secondary market of a fully drawn loan would be considered to be lending to the EU borrower for the purposes of Article 21c.

The LMA Paper explores the following three practical scenarios relating to the secondary market:

- For sub-participations, the LMA anticipates that the common market approach will be to treat structures where the participant never becomes lender of record (such as under the LMA form of sub-participation agreement) as lending to the grantor of the participation rather than to the underlying EU borrower.
- For novations and assignments of fully drawn loans, the purchaser of the loan will become a lender of record but will not be providing a commitment or extension of credit to the borrower. Whilst the prevailing market expectation - consistent with the LMA's anticipated approach - is that most Member States will treat the transfer of a fully drawn loan as not amounting to lending, the Central Bank of Ireland has not yet confirmed this position in the context of Article 21c.
- The novation or assignment of a loan with remaining commitments to EU borrowers would be in scope of Article 21c, subject to the availability of exemptions such as reverse solicitation. This scenario is, in our view, a practically significant issue for the Irish secondary market. Revolving credit facilities and subscription line facilities, both of which are heavily used in the Irish fund finance sector, almost invariably carry undrawn commitments at any given point in time. Any transfer of such a facility to a non-EU lender after 11 January 2027 will need to be assessed for Article 21c compliance and the availability of any exemption.

<u>Grandfathering: Key Principles and Break Events</u>

Importantly, Article 21c includes a transitional relief mechanism (grandfathering) under which contracts entered into before 11 July 2026 may continue after Article 21c takes effect. The rationale of grandfathering is to preserve the acquired rights of EU borrowers under existing contracts. However, as the LMA Paper notes, a fundamental difficulty is

that Article 21c provides no definitions of either ‘acquired rights’ or ‘existing contracts’, and is entirely silent on what constitutes a ‘break event’.

The grandfathering analysis is one of the most commercially time-sensitive aspects of Article 21c for the Irish market. With the 11 July 2026 cut-off less than two months away, institutions and their advisers are prioritising the identification of facilities that will qualify for grandfathering and the steps required to protect that status. In the Irish market, we are seeing multiple instances of non-scheduled extensions of facilities being agreed now in anticipation of the July 2026 cut-off. While the LMA Paper’s indicative table of lifecycle events is a useful starting point, it is not a substitute for a contract-by-contract review.

Immediate Actions for Banks and Their Advisers

The regulatory environment created by Article 21c is one of uncertainty, compressed by an imminent effective date and limited formal guidance at both EU and national level. With the grandfathering cut-off of 11 July 2026 approaching, structuring decisions and portfolio reviews should be undertaken now.

In practical terms, we recommend that institutions take the following minimum steps:

- **Review existing loan portfolios** to identify all contracts with EU borrowers that involve non-EU lenders and assess grandfathering eligibility before 11 July.
- **Audit pipeline transactions** to determine whether they can be structured to rely on a recognised exemption, particularly reverse solicitation.
- **Obtain jurisdiction-specific legal advice**. Given inconsistent Member State transposition, a one-size-fits-all approach is not currently viable.
- **Implement governance and record-keeping frameworks** to evidence compliance with the reverse solicitation exemption where relevant.
- **Assess secondary market activity**, particularly in relation to loans with undrawn commitments to EU borrowers.

For Irish-connected transactions specifically, we recommend that clients monitor the progress of Irish transposing legislation closely. Arthur Cox will be preparing ongoing updates in this regard. If and when the Central Bank publishes guidance on specific aspects of Article 21c, including, in particular, the reverse solicitation exemption and the treatment of sub-participations, that guidance may require a reassessment of positions already taken. Governance and compliance frameworks should therefore be designed with sufficient flexibility to be updated as the regulatory picture develops.

Conclusion

The LMA Paper reflects a pragmatic and market-oriented response, encouraging participants to adopt reasoned positions and begin implementation ahead of full clarity. In practice, the success of the new regime will depend not only on regulatory interpretation but also on the ability of the loan market to adapt established structures and develop a coherent and consistent approach across jurisdictions.

The Arthur Cox fund finance team has extensive experience advising lenders, sponsors and managers on fund finance transactions and on Article 21c. Please reach out if you would like to discuss further.