

Third-country branches: Article 21c CRD

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The sixth Capital Requirements Directive of 2024, which implements the final elements of Basel III in Union law and which Part F, Chapter II has described, introduced a harmonised regime for third-country branches. Its Article 21c requires undertakings established in a third country to establish a branch in a member state and to obtain authorisation there before they provide certain core banking services in that member state. The services concerned are deposit-taking, lending, including consumer and mortgage credit, and the provision of guarantees and commitments.¹ The rule replaces a patchwork of national regimes, some of which, such as the German regime, already required a licence, while others allowed cross-border lending without one.

While the member states had to transpose the directive by January 2026, Article 21c applies only from 11 January 2027. Contracts concluded before 11 July 2026 are protected by a grandfathering rule.² The rule contains exemptions. It does not apply to services provided at the exclusive initiative of the client, to services provided to credit institutions, to intragroup transactions or to ancillary services provided in connection with MiFID investment services.³ The exemption for reverse solicitation is drafted narrowly, with the European Banking Authority charged with guidance on its application.

For Swiss cross-border banking the rule is of the greatest practical significance. A bank in Basel that grants a Lombard loan to a client resident in Freiburg im Breisgau or Mulhouse, or that finances a property in Alsace for a client of long standing, will need a branch in the Union for new business of that kind, unless the client's request falls within the reverse solicitation exemption or the loan is ancillary to an investment service. Since lending is often the core of the private banking relationship, the rule touches the heart of the business model that Part E has described.⁴ The author's own cross-border practice suggests that banks, family offices and

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their advisers have underestimated how far the rule reaches into ordinary client relationships. The package of agreements does nothing to change this, because financial services lie outside its scope.

1 Notes

1. Art. 21c of Directive 2013/36/EU (CRD) as inserted by Directive (EU) 2024/1619 of 31 May 2024 (CRD VI), OJ L, 2024/1619, 19.6.2024; services listed in points 1, 2 and 6 of Annex I CRD. To be verified. ↩
2. Art. 2 of Directive (EU) 2024/1619 on transposition (by 10 January 2026) and application of Art. 21c (from 11 January 2027), and the grandfathering of contracts concluded before 11 July 2026 under Art. 21c para. 5. Dates to be verified. ↩
3. Exemptions in Art. 21c paras. 2 to 4 CRD (reverse solicitation, interbank services, intragroup services, services ancillary to MiFID investment services). To be verified. ↩
4. On the significance of Art. 21c CRD for Swiss private banks and Lombard lending to EU clients, see the publications of the Swiss Bankers Association, the Association of Swiss Private Banks and the practitioner literature on CRD VI third-country branches. To be verified. ↩

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