POSITION PAPER ON THE NATIONAL TRANSPOSITION OF ARTICLE 21C CRD VI

1. OVERVIEW

This paper is intended to assist Member States in relation to their implementation of the Branch Requirement under CRD VI. The Trade Associations, and their Members, are concerned to ensure that implementation efforts adhere faithfully to the intention behind the Branch Requirement and do not depart from the key elements of CRD VI. To do otherwise risks unintended consequences, including potentially negative impacts on EU competitiveness and the market for financial services in the EU, for the benefit of EU customers. To this end, the paper seeks to highlight (i) what we believe is the best approach to align national transposition laws with the policy intents behind the EU text, and (ii) areas where transposition proposals to date pertaining to the Branch Requirement have differed from the Level 1 text or where interpretations taken by Member States have departed from the policy intention, thereby giving rise to concerns for the industry.

This paper is not exhaustive of the current issues of concern still under industry review in relation to the Branch Requirement under CRD VI. By way of example, the industry remains concerned about the potential scope of the Branch Requirement, including but not limited to its application to core banking services (especially deposit taking) which are ancillary to other non-core banking services such as payment services or cash clearing. Since such issues do not result from transposition errors but rather a lack of clarity in the Level 1 text of CRD VI, we do not consider these for the purposes of this paper. We nevertheless consider it important to emphasise this point given that a number of products impacted by the lack of clarity in the Level 1 text (for example, payments and cash management services, such as cash clearing) are essential for EU firms to operate smoothly across markets and to manage currency risk effectively.

The industry has now been raising awareness for several years that the Branch Requirement will actively undermine EU competitiveness. Recent failure of the EBA to extend the exemptions to the Branch Requirement (see "Background" below) has further compromised this and driven fragmentation. This paper seeks to mitigate the adverse impact by aiming to reduce incorrect or inconsistent transposition of the Branch Requirement across EU Member States.

2. BACKGROUND

2.1 In June 2024, the European Commission published Directive 2024/1619 (**CRD VI**) enacting revisions to the Capital Requirements Directive (2013/36, **CRD**). From 11 January 2027, CRD VI introduces a requirement for EU Member States to prohibit the provision of certain banking services in an EU Member State by a third country "institution" (in broad terms, a bank or a large investment firm) other than from a locally licensed branch (the **Branch Requirement**), unless a prescribed exemption applies. The restriction is specified as a new Article 21c of CRD.

2.2 As a Directive, CRD VI must be transposed into the national law of each EU Member State.[1] Member States must do so by 10 January 2026, though under CRD VI the Branch Requirement is to apply only from 11 January 2027.

2.3 To date, a number of EU Member States have published consultations on, or draft legislation

[1] CRD VI is a "*text with EEA relevance*", meaning all jurisdictions in the European Economic Area will be required to implement the provisions of CRD VI under the EEA agreement. References to "EU Member States" (or similar) in this paper should be interpreted as including reference to EEA jurisdictions not within the European Union.

transposing, CRD VI.[2] Certain of those proposals differ from the Level 1 text of CRD VI in several significant areas relating to the Branch Requirement. While we accept that translation into different languages can result in interpretations which differ from the minimum standards set by CRD VI, given the significant implications of this new regime to the market for financial services in Europe, we ask Member States to take particular care to adhere faithfully to the intention behind the Branch Requirement as included in CRD VI.

2.4 This paper aims to identify certain errors and inconsistencies in current draft or published national transpositions of the Branch Requirement and set out what we consider to be the correct and practically feasible interpretation of the prescribed exemptions in line with policy intention. More specifically, the Trade Associations recommend that Member States align in their respective transpositions of EU law based on the existing industry legal interpretation that:

(a) entities providing core banking services that are ancillary to MiFID services or exercising follow-on rights in respect of reverse-solicited services (as explained below) should not be required to establish a branch as per Article 21c for those services;

(b) EU recipients of core banking services will benefit from grandfathering provisions to protect their acquired rights within existing contracts entered into before 11 July 2026 once Article 21c comes into force; and

(c) Article 21c will apply from 11 January 2027 (and not any earlier) across all Member States.

2.5 There are also further exemptions set out under Article 21c for interbank and intragroup services provided by in-scope institutions in a Member State. However, these are not considered further in this paper since to date these have not been subject to divergent transposition across Member States.

2.6 We note that this paper does not consider the recent consultation draft transposing CRD VI into German law. While that consultation also contains several issues of concern to the industry, many of these differ from the transposition issues considered in this paper and in any event will be responded to directly via consultation response by the industry. Specific consideration of those issues is unlikely to be helpful for other Member States transposing CRD VI into national law.

3. CONSEQUENCES OF INCORRECT TRANSPOSITION OF EXEMPTIONS

3.1 It is the express aim of the Branch Requirement to harmonise the regulation of cross-border banking services into the EU. The Treaty on the Functioning of the European Union (**TFEU**) provides that a directive shall be binding, as to the result to be achieved, upon each Member State.[3] Although Member States have discretion as to the form and method of implementation, they should seek to transpose the policy objectives of the Directive faithfully. In the case of the Branch Requirement, the result to be achieved is a move towards harmonisation of the regulation of cross-border banking services; as such, any deviations from the EU text or 'gold-plating' should be avoided.

3.2 The exemptions and carve-outs within the Branch Requirement provide for an embedded degree of flexibility in its application. These exemptions are crucial for the efficient operation of financial markets, for competition among the market so as to benefit EU consumers and corporates, and broader

[2] For ease of reference, at the back of this paper we have provided a list of member states who have, to date, published draft or final national transposing legislation of CRD VI with links to the relevant (local language) web pages.

[3] Article 288 of the TFEU.

financial stability. It is intended for third-country institutions lawfully to be able to continue to provide banking services in an EU Member State where they fall within scope of these exemptions. This flexibility has been scoped in line with the intended policy objectives of the Directive and is crucially important for certain markets.

3.3 A national transposition of the Branch Requirement that omits or unduly narrows these exemptions and carve-outs is not aligned with the intended scope of the Branch Requirement and would introduce uncertainty and unnecessary risk to the stability of the local banking market to the detriment of local recipients of banking services. Failure to correctly transpose the Branch Requirement could impact the liquidity and competitiveness of lending markets in the relevant Member State, create uncertainty which could be disruptive for the markets in that Member State, lead to increases costs for local service recipients and prevent them from accessing services and reaping the benefits of the Directive. These consequences could negatively affect the growth and competitiveness of markets in that Member State.

3.4 Similarly, ambiguities in the wording of the scope of the Branch Requirement may be susceptible to being interpreted in a form that would result in more expansive restrictions on the provision of banking services in an EU Member State than was the original intention of the requirement (e.g. the MiFID exemption – see Section 4). In these cases, to ensure the flexibility intended by the requirement is retained, Member States should ensure that their national transpositions clarify these points of ambiguity. Failure to clarify these ambiguities would risk negatively impacting the ability of EU service recipients to access banking services provide by third-country institutions while there may be limited substitute, if any.

3.5 In particular, possible consequences include:

(a) the interruption of certain banking services received by clients in the EU, and fewer financing options over all for European recipients of banking services, where those are provided by third-country institutions and where it is unclear whether or how the new requirements apply;

(b) higher costs for European service recipients, resulting from increased compliance burden for third-country institutions providing banking services into the local market;

(c) reduced access to capital and liquidity for local market participants, and a loss of competitiveness of that market as against other Member States, where third-country institutions have decided to no longer provide services into the local market

(d) fragmentation of global capital and liquidity pools, which increases financial stability risks;

(e) the possibility of European recipients of third-country core banking services moving out of jurisdictions with reduced flexibility.

4. COMPONENTS OF THE BRANCH REQUIREMENT

4.1 Article 21c(1) CRD VI provides that Member States shall require that undertakings established in a third country (i.e. outside the EU), as referred to in Article 47, must establish a branch "*in their territory…to commence or continue carrying out the activities referred to in Article 47(1) in the relevant Member State*" (the so-called Branch Requirement).[4] The Branch Requirement will apply

[4] For the avoidance of doubt, where a firm acts through an EU subsidiary, this would not be impacted by the Branch Requirement since it would not be a third country institution. Banking services provided by EU institutions within the EU (via passporting or otherwise) are not within scope of the Branch Requirement.

from 11 January 2027.[5]

4.2 Article 47(1) specifies those activities as:

(a) "*any of the activities referred to in points 2 and 6 of Annex I to [CRD] by an undertaking established in a third country that would qualify as a credit institution or that would fulfil the criteria set out in Article 4(1), point (1)(b), of [CRR] if it were established in the Union;*

(b) *the activity referred to in point 1 of Annex I to [CRD] by an undertaking established in a third country.*"

4.3 The activities referred to in points 1, 2 and 6 of Annex I to CRD are taking deposits, lending, and guarantees and commitments respectively. These are collectively referred to as **core banking activities** or **core banking services** in CRD VI.

4.4 The Branch Requirement does not apply where the local EU counterparty or client is any of the following:

(a) a retail client, eligible counterparty or a professional client as defined in Directive 2014/65 (**MiFID II**) "*where such client or counterparty approaches an undertaking established in a third country at its own exclusive initiative*" (**Reverse Solicitation**);

(b) a credit institution (the **Interbank Exemption**); or

(c) an undertaking in the same group as that of the service provider (the **Intragroup Exemption**).[6]

4.5 The Branch Requirement does not apply to "*services or activities listed in Annex I, Section A, to [MiFID II], including 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*" (the **MiFID Exemption**).[7]

4.6 Broadly, this means that an exemption is available for core banking activities which are reverse-solicited business, inter-bank business, intragroup business or are ancillary to MiFID services.

4.7 Additionally, the Branch Requirement will not apply to existing contracts that were entered into before 11 July 2026 "*in order to preserve clients' acquired rights under existing contracts*" (the **Grandfathering Provision**).[8]

5. COMMON TRANSPOSITION ISSUES

MiFID Exemption

5.1 The stated intention of the MiFID Exemption is to exempt MiFID services and activities, and all ancillary services the purpose of which is to provide services under MiFID. As written, CRD VI provides that the Branch Requirement shall not apply to 'services or activities listed in Annex I, Section A, to MiFID, including any accommodating ancillary services, such as related deposit taking

[5] Article 2(1) CRD VI.
[6] Article 21c(2) CRD VI.
[7] Article 21c(4) CRD VI.
[8] Article 21c(5) CRD VI.

or the granting of credit or loans the purpose of which is to provide services under that Directive'. Given the scope of the Branch Requirement (core banking services), it would not apply to services or activities listed in Annex I, Section A of MiFID in any event. This must instead be read to mean that core banking services connected with MiFID services are intended to be exempt. Some jurisdictions (Denmark and Finland) have failed to clarify that distinction in their proposals. We would advocate that all Member States ensure that they faithfully transpose the Branch Requirement in this regard, ensuring that core banking services connected with MiFID services are exempt.

5.2 The reference in both the Recitals and Article 21c(4) to services provided "under that Directive" clearly points to the exemption of core banking services ancillary to all MiFID activities. It is regrettable, therefore, that the ambiguous reference in the text to Section A, rather than Section A or B, of Annex I to MiFID, might cast doubt on the extent to which core banking activities accommodating ancillary MiFID services (i.e. Section B Annex I MiFID II services, including custody of financial instruments) would be within scope. To date, draft transposing legislation across Member States has not been consistent on this point.

5.3 Some jurisdictions seem to have transposed the ambiguities from the Level 1 text into their national transposition, by referencing only Section A MiFID services in their transposition (e.g. Poland).

5.4 In our view, to transpose the MiFID Exemption in a clear way which accords with the intention of the legislators, it is necessary to reference both Section A and B MiFID services in the text of national transpositions. This approach seems to have been adopted in certain member states (Netherlands and Sweden), where to clarify the uncertainty the draft national transpositions of the MiFID Exemption specifically refer to Annex I, Section A and B services (and core banking services ancillary thereto).

5.5 In light of the above, the industry believes that Member States could mitigate the issues identified by adopting a national transposition of the MiFID Exemption in substantively similar terms as follows:

"*[The Branch Requirement] shall not apply to any [core banking services] which are accommodating ancillary services to any services or activities listed in Annex I, Section A or B, to Directive 2014/65/EU, such as related deposit taking or the granting of credit or loans the purpose of which is to provide services under that Directive.*"

5.6 This uncertainty has received much industry attention, particularly in relation to custody. Custody services are foundational to the global operations of EU corporates and institutional investors, enabling them to settle cross-border transactions, and hold international assets efficiently. The de facto restriction of EU firms' direct access to key international players - such as custodians with direct access to local depositories - would create major frictions in their ability to execute global strategies, thereby putting them at a structural disadvantage compared to their non-EU counterparts.

5.7 Custody services are regulated under MiFID as safekeeping and administration of financial instruments (a MiFID Annex I, Section B activity) but necessarily involve the provision of a cash account (typically a deposit account) linked to the securities account in which financial instruments are held, and which are essential for the well-functioning of the EU's capital markets.

5.8 In practice, the receipt of cash associated with custodial services constitutes the acceptance of "operational" deposits to facilitate the buying and selling ("settlement") of securities, income flows (such as dividends and investment returns), payment of withholding taxes, and other asset-servicing related cashflows. These deposits are by their nature specifically for custody-related purposes and are therefore very different to the deposits received by a retail or investment bank in the course of its

deposit taking or other general banking activities. Similarly, lending by custodians is an intrinsic part of transaction settlement and, therefore, integral to the smooth functioning of capital markets. Custodians extend intraday and overnight credit to their clients to facilitate the settlement of securities transactions and provide short-term credit (overdraft) facilities. This is critical for ensuring settlement efficiency, particularly for EU investors' investments in overseas markets. If the MiFID Exemption is transposed ambiguously, and in our view incorrectly, custody services might therefore be viewed as falling within scope of the Branch Requirement where no Section A MiFID investment service is provided alongside the custody offering.

5.9 Ambiguous transposition of the MiFID Exemption also risks disruption of sub-custody networks, which often involve non-EU banks, are integral to global custody offerings where services are provided by sub-custodians indirectly via an EU head custodian or depositary. There are instances where a custodian, through their sub-custody network, will require their underlying EU client to enter into bilateral agreements with a non-EU sub-custodian to hold certain assets and currencies, for example in the Chinese markets. If the intent of the legislation was to prohibit these established and necessary relationships, it would mean that EU investors would be blocked from accessing certain global assets through their custodian, to the detriment of the EU's own capital markets.

5.10 In addition to the above issues, in certain instances (Netherlands), we have seen wording used during the Member State transposition process which could be interpreted more narrowly than was intended under CRD VI (e.g. services being necessary rather than accommodating or ancillary to MiFID services). If the MiFID exemption is transposed differently across Member States, this would create uncertainty for recipients of such services, and in the case of a narrower transposition, potentially restrict access to the MiFID services in question for customers in such jurisdictions.

Reverse Solicitation

5.11 Article 21c(2) CRD VI provides that where a client or counterparty approaches an undertaking established in a third country at its own exclusive initiative to provide core banking services, the Branch Requirement does not apply. Article 21c(3) expands this to clarify that the Branch Requirement shall not be triggered in respect of 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. We refer to this as the **Follow-on Right**.

5.12 The Follow-on Right is intended to allow for the natural progression of client relationships where additional, functionally linked services might be required after the initial request, without triggering the branch requirement or being considered active solicitation by the third-country firm. It aims to prevent a situation where every follow-up or related service would require a new, separate exclusive initiative from the EU client or counterparty —an approach which is likely to be administratively burdensome on EU customers and is unlikely to reflect the preferences of market participants. In practice, the Follow-on Right will be very important for institutions relying on it to lawfully fall within the Reverse Solicitation exemption. Without this, a local service recipient would be unable to receive the product, service or activity originally requested, where its provision is dependent (e.g. because of the nature of the product or service or due to market practice) on other products, services or activities.

5.13 Some jurisdictions have implied a narrower interpretation of the Follow-on Right in their national transpositions (and explanatory notes), for example by suggesting that the Follow-on Right applies only to services necessary for the provision of the originally solicited service by the EU client. CRD VI explicitly provides that Reverse Solicitation applies to "closely related" services which need not be

necessary for the original service. The position provided for in the CRD VI text should be reflected in national transposition of the Follow-on Right without deviations or additional 'gold plating': any additional curtailment of the Reverse Solicitation Exemption resulting from a narrow interpretation of the Follow-on Right risks adverse consequences for clients in the local market (for example, the frictions associated with needing to find a new service provider as the customer's needs fluctuate over time, and the loss of the potential cross-collateralisation benefits which can be achieved when different services are received from a single provider).

5.14 In light of the above, the industry believes that Member States could mitigate the issues identified above by adopting a national transposition of the reverse solicitation exemption that explicitly references the Follow-on Right.

The Grandfathering Provision

5.15 Article 21c(5) seeks to protect the acquired rights of recipients of core banking services in the EU once the Branch Requirement comes into force, by allowing contracts to remain operating in accordance with their terms to the extent that their contracts were entered into before 11 July 2026. The inclusion of the Grandfathering Provision was intended to ensure minimal disruption of services currently received by EU customers from third country institutions. Any uncertainty regarding the continuity of contracts and structures that EU firms lawfully put in place prior to the entry into application of CRD VI Article 21c risks affecting the rights and legitimate expectations of both the third country institutions and their EU customers, creating market disruption, and ultimately impacting the EU's reputation as a stable and predictable place to do business.

5.16 In some jurisdictions the Grandfathering Provision has been omitted from implementation drafts. Again, the Grandfathering Provision is not purported to be discretionary; while operation of local law may achieve the same effect in practice, the Grandfathering Provision should be appropriately reflected in national transpositions to make this clear. Not doing so clearly risks negatively impacting the local market, to the extent that local borrowers, depositors or recipients of guarantees or commitments would inadvertently lose their acquired rights under existing contracts. Omitting the Grandfathering Provision is not only inconsistent with the Directive's text in Article 21c(5), it also undermines the regulatory intent expressed in Recital 6 that such measures must be in place to safeguard clients' rights.

5.17 In some jurisdictions (e.g. the Netherlands) it has been suggested that the Grandfathering Provision is not necessary since a licensing regime already exists for branches in the relevant jurisdiction. However, this misunderstands the rationale of the Grandfathering Provision: it does not relate to branch regulation as such, but rather preserves the status quo where local recipients of core banking services have already entered into contracts which could otherwise now become unlawful as a result of the Branch Requirement. This misunderstanding may result from the fact that there is a separate grandfathering concept for existing third country branches to avoid reauthorisation under CRD VI; however, this is not related to the Grandfathering Provision set out at Article 21c(5).

5.18 Additionally, in some jurisdictions (e.g. Denmark) the Grandfathering Provision was seemingly drafted as protecting the only 'legal effect' of the relevant contracts *viz*. enforceability, rather than the licensing position of the service provider (which would be necessary to rely on the provision). This drafting was corrected following responses to the consultation in Denmark.

5.19 In light of the above, the industry believes that member states could mitigate the issues identified above by adopting a national transposition of the Grandfathering Provision which effectively copies out the Level 1 text, i.e. in substantively similar terms as follows:

"*[The Branch Requirement] is without prejudice to existing contracts that were entered into before 11 July 2026.*"

Implementation date

5.20 CRD VI was published on 24 June 2024 and came into effect 21 days thereafter. Member States have until 10 January 2026 to transpose CRD VI into national law, with the Directive applying from 11 January 2026. However, by way of derogation, the provisions that set out the Branch Requirement do not apply until 11 January 2027 (i.e. one year later). Some jurisdictions (e.g. Czech Republic) have failed to include the additional year's relief in respect of the Branch Requirement. This risks significant disruption to the local market as third-country institutions are generally developing pan-EU implementation plans in the expectation that there will be a consistency of timing across the EU. Any material change to this timeline will likely result in significant operational challenges and potentially the need to (temporarily or permanently) cease providing services into the local market.

6. FINAL REMARKS

6.1 We are circulating this position paper on behalf of our respective memberships with the aim of encouraging a faithful and consistent transposition of the Branch Requirement across the EU, for the mutual benefit of international banking service providers and their EU customer base. If any questions or concerns arise as a result of this paper, we would be delighted to discuss its contents. Please feel free to reach out to any of the contacts listed below.

9 September 2025.

ABOUT US

The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

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The LMA represents the interests of the loan markets across Europe, the Middle East and Africa (EMEA). Today, with over 850 members in 69 jurisdictions, we represent an ever-growing diversity of participants in international capital markets, including institutional investors, private and public sector issuers, banks, non-banks, technology solution platforms and market infrastructure providers. Through member representation on the LMA's various working groups, we actively engage with our members to ensure their voices are heard. Their input and guidance help shape the future of the loan markets, and these groups drive the delivery of positive outcomes. For more information, please visit our website: www.lma.eu.com

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BAFT is the leading global industry association for international transaction banking. It helps bridge solutions across financial institutions, service providers and the regulatory community that promote sound financial practices enabling innovation, efficiency and commercial growth. BAFT membership includes banks which range in asset size from G-SIBs to Regional Banks with less than $20 billion in assets, as well as a broad range of other financial institutions throughout the global community.

The Japanese Bankers Association (JBA) is the leading trade association for banks, bank holding companies and bankers associations in Japan. Its membership includes all domestic banks and the majority of foreign bank branches operating in Japan.

LINKS TO EXISTING NATIONAL TRANSPOSITIONS OF CRD VI

The following Member States have published draft legislative proposals and/or consultations, each of which is available at the following hyperlinks:

- Czech Republic: Sb_2025_280_PZZ.pdf (*Note: the legislation has now been adopted*).
- Denmark: https://www.ft.dk/ripdf/samling/20241/lovforslag/l193/20241_l193_som_fremsat.pdf (*Note: the legislation has now been passed*).
- Latvia: Grozījumi Kredītiestāžu likumā
- Poland: https://legislacja.rcl.gov.pl/docs//2/12399111/13137687/13137688/dokument723250.docm
- Sweden: https://www.regeringen.se/contentassets/99835e082f77487aa4d9489752c63dfe/eus-bankpaket.pdf
- Republic of Cyprus: ΝΟΜΟΣ-περι-Εργ.-Πιστ.-Ιδρ._ΤΡΟΠΟΠΟΙΗΣΗ_2025-ΤΕΛΙΚΟ2.pdf
- Estonia: https://eelnoud.valitsus.ee/main/mount/docList/63c28d45-9118-4ce5-853a-0fc882cd7012#190HG464
- Finland:https://api.hankeikkuna.fi/asiakirjat/4fa4c247-25ae-475e-a784-70d6a25eab00/77bfc2f1-de45-4002-a07b-f9677541e7ae/LAUSUNTOPYYNTO_20250526080921.PDF Luottolaitosdirektiivin muutosdirektiivin (CRD 6) täytäntöönpano : Työryhmän mietintö
- Germany: https://eelnoud.valitsus.ee/main/mount/docList/63c28d45-9118-4ce5-853a-0fc882cd7012#190HG464
- Liechtenstein: BERICHT UND ANTRAG
- Lithuania: BANKŲ ĮSTATYMO NR. IX-2085 2, 9, 16, 19, 25, 52, 57, 58, 59, 60, 61, 62, 63, 67, 69, 72, 73, 74 S...
- Malta: Consultation Document on the National Transposition and Implementation of the Banking Package.pdf
- Netherlands: Overheid.nl | Consultatie Implementatiewet kapitaalvereisten 2026
- Norway: Høring – forslag til gjennomføring av direktiv (EU) 2024/1619 (CRD 6) i norsk rett - regjeringen.no
- Ireland: Public consultation on the implementation of the Capital Requirements Directive VI (*Note: this consultation does not include draft transposing legislation*).