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CRD VI

Impact on Swiss banks from 11 January 2027

Par Tatiana Ayranova le 23 November 2026

Under what conditions will Swiss banks be able to continue serving their customers in the European Union (EU) from 11 January 2027 ? Directive (EU) 2024/1619 (CRD VI) restricts the cross-border provision of ‘basic’ banking services, subject to certain limited exceptions. The implications for the institutions concerned are wide-ranging and relate in particular to their business models and their management of cross-border risks.

From 11 January 2027, a Swiss bank will, in principle, no longer be able to accept deposits from customers established or located in the European Union (EU), nor grant them loans or guarantees, nor enter into commitments towards them, without having a branch in the Member State concerned. Article 21c of the Directive 2013/36/EU (CRD), introduced by the CRD VI Directive, requires Member States to oblige third-country firms providing ‘basic banking services’ to establish branches (*third-country branches*) within their territory. Only contracts concluded before 11 July 2026 will, subject to certain conditions, benefit from an exemption (paragraph 5).

For Swiss institutions, exemptions granted by certain national authorities (for example, the *Freistellung* issued by the German supervisory authority (BaFin)) will cease to have effect after 11 January 2027. No *de minimis* threshold is provided for. Harmonisation remains, however, relative : the effective scope of the regime will depend on national transposition provisions and the specific practices developed by the competent administrative authorities.

‘Basic banking services’ include, in particular, the taking of deposits, the granting of credit (including consumer credit and mortgage loans), as well as the provision of guarantees and the entering into of commitments (points 1, 2 and 6 of Annex I to the CRD). The taking of deposits falls within the scope of this regime regardless of the status of the third-country firm. Loans and guarantees, on the other hand, fall within the scope of these new rules only if they are provided by an undertaking that qualifies as a credit institution (CRR *credit institution*) or that would meet the criteria set out in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 (investment firms).

The place where the client is ‘established or located’ is also a decisive criterion for the application of the rules in question. Thus, a loan granted to the German or French branch of a Swiss company could fall under the CRD VI regime, as the client’s actual presence in the EU is likely to take precedence over the company’s legal entity.

With regard to the ‘*grandfathering*’ of existing contracts, the protection provided for in Article

21c(5) ceases, in principle, when a contractual amendment or a transaction carried out under an existing contract requires a new credit decision. This includes, in particular, credit increases, extensions, refinancing on different terms, or the entry of a new lender into an existing banking syndicate. By contrast, simple drawdowns made in accordance with the initial commitment should not call into question the benefit of such protection.

Article 21c(2) of the CRD provides for exceptions relating to reverse solicitation (point (a)), services provided to a credit institution (point (b)) or to an undertaking within the same group (point (c)), as well as investment services and activities falling within the scope of the Directive 2014/65/EU (MiFID II). The latter include ancillary services, such as the acceptance of related deposits or the granting of credit or loans for the purpose of providing services under MiFID II.

The first of these exceptions, which is the most frequently invoked, is also the most difficult to justify. To benefit from the reverse solicitation exception, the client must have contacted the third-country firm on their own initiative. Any solicitation originating from the firm in question, from an entity with close links to it, or from a person acting on its behalf precludes recourse to this exception. Furthermore, the scope of this exception is limited solely to the categories of products, activities or services requested by the client. Interpreted restrictively, it cannot, in our view, form the basis of a business model.

The exception relating to services provided to a credit institution (para. 2(b)) presupposes that a credit institution situated in the EU remains the sole lender and exercises sole decision-making power in credit matters.

The new regime requires Swiss banks to reassess the scope of services provided to their clients located in the EU, often forcing them to choose between using local partners and establishing their own presence in the Member State concerned. In this context, setting up a banking subsidiary in the EU that benefits from the European passport could represent a serious alternative to a local partnership. The implementation of these rules will, however, depend largely on the interpretation and practice of the competent national authorities. An analysis of the specific rules of each Member State concerned is therefore essential in all cases.

Finally, the conduct of these activities by Swiss banks must form part of a rigorous cross-border risk management framework (Art. 3(2)(a) and (c) of the Banking Act). This framework involves, in particular, analysing relationships with clients established or located in the EU, documenting the steps taken by clients, and monitoring contractual changes that may affect the applicable regime.

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