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Impact on Non-EU Banks

Branch requirements for non-EU banks – CRD VI and the Dutch Implementation Act

In this newsletter, we discuss the new branch requirements under the sixth Capital Requirements Directive (CRD VI) and the Dutch Implementation Act, and its implication for non-EU banks lending into the Netherlands.



Key takeaways for non-EU banks lending into the EU

- Non-EU institutions that lend into the EU may become required to open a branch office in each relevant Member State.
- Only non-EU banks will be required to open a branch when lending into the EU.
 - A non-EU institution qualifies as a non-EU bank if it would meet the definition of a bank were it to have its corporate seat in the relevant Member State.
- In the Netherlands, the branch office will require a license from the Dutch Central Bank and will fall under its prudential supervision.
- Non-EU banks that wish to continue to offer loans to Dutch borrowers as of 2027 may consider to:
 - Use a non-bank for these lending activities, i.e. an entity that does not also take deposits or other repayable funds from the public;
 - Open a Dutch branch office and apply for a license; or
 - Open an EU subsidiary and apply for an EU banking license, which can be passported throughout the EU.
- Activities based on reverse solicitation and MiFID activities are out of scope.

1 Branch requirement for non-EU banks

CRD VI introduces a new, harmonized regime for the establishment and supervision of branch offices of banks with their head office outside the EU/EEA that perform core banking activities within the EU/EEA. In order to take effect, CRD VI requires implementation by each Member State in its national laws.

On 30 April 2025, the Dutch Implementation Act for CRD VI was published for [consultation](#). We note that the legislation implementing CRD VI into Belgian and Luxembourg law is not yet available.

Under current Dutch law, non-EU banks are permitted to grant loans to Dutch borrowers without a banking license or without the establishment of a local branch office. If the borrowers are non-consumers, granting such loans is generally out of scope of regulation.

Under the new regime:

- ✓ Non-EU institutions that perform core banking activities into the EU may become required to open a branch office in each relevant Member State.
- ✓ Core banking activities are deposit-taking, lending and the issuing of guarantees.
- ✓ Only non-EU banks will be required to open a branch when lending into the EU.
 - A non-EU institution qualifies as a non-EU bank if it would meet the definition of a bank were it to have its corporate seat in the relevant Member State.
- ✓ There are certain exceptions to the branch requirement:
 - Activities based on the exception known as “reverse solicitation” are out of scope. The branch requirement should not apply where a borrower approaches a non-EU bank at its own exclusive initiative for the provision of any service or activity.
 - MiFID activities, such as portfolio management and investment transactions, and accommodating ancillary services including related deposit taking, are also out of scope.
- ✓ Any non-EU institution engaged in deposit-taking is subject to the branch requirement under CRD VI. Under existing Dutch law, deposit-taking activities are already subject to a licensing requirement.
- ✓ If the Dutch Implementation Act is implemented as proposed, the branch offices of non-EU banks engaging in core banking activities in the Netherlands, will need a license from the Dutch Central Bank and will fall under its prudential supervision.
- ✓ Branch offices of non-EU banks will be categorized as either “Class 1” or “Class 2” based on the risks they pose to financial stability and market integrity in the EU and its Member States. This classification determines the applicable prudential requirements and supervisory expectations.
- ✓ Authorized branch offices of non-EU banks will be subject to ongoing regulatory obligations, including prudential requirements, reporting duties and governance standards.
- ✓ CRD VI grants the option to apply full banking supervision to branch offices of non-EU banks when such branch offices poses significant financial stability risks or engages in activities requiring stronger prudential oversight. The Netherlands does not intend to use this option. According to the Dutch Minister, such regime would be too burdensome and the CRD VI regime already includes important capital requirements.

2 What this means for non-EU banks

For non-EU banks, this is not merely a regulatory refinement but a fundamental shift in how cross-border activity into the EU will be approached and supervised. While many institutions have historically operated without a license, non-EU banks with clients or business activities in the EU may now become subject to national authorization requirements, local governance standards and direct oversight within the host Member State.

The message for non-EU banks is clear: continued access to EU clients will increasingly depend on having a regulated presence within the EU. CRD VI gives rise not only to new legal obligations but also to important strategic considerations for non-EU banks. These may affect internal structure, client engagement and long-term positioning in the European market.

3 Possible next steps following implementation of CRD VI in the Netherlands

If CRD VI is implemented as proposed, non-EU banks that wish to continue to offer loans to Dutch borrowers may consider to:

Use a non-bank for its lending activities into the Netherlands. An institution that only performs lending activities, but that does not also take deposits or other repayable funds, should not be caught by the branch requirement for non-EU banks. Such institution, that only grants loans, is not considered to perform core banking activities. In other words, if a non-EU bank were to incorporate a non-banking subsidiary, this subsidiary should not be subject to the branch and license requirements.

Open an EU subsidiary and apply for an EU banking license. This option would involve bringing the EU core banking activities fully within the EU. The upside of this option would be that a EU subsidiary would be able to passport its license into all EU Member States, meaning that clients throughout the EU can be served from one location in the EU and no separate branch offices in each Member State will need to be opened.

Open a Dutch branch office and apply for a license. This would be in line with the new CRD VI regime and would involve a less far-reaching license and regulatory regime than the full banking license option. A downside, however, would be that this would require a separate branch office in each EU Member State in which the non-EU bank performs core banking services. A Dutch branch office of a non-EU bank cannot passport its branch authorization to another EU Member State.

Only perform out of scope activities: reverse solicitation and MiFID activities. A non-EU bank that only acts on the basis of reverse solicitation, meaning that it exclusively grants loans to borrowers in the EU that approached the institution on their own initiative, is out of scope. The same goes for non-EU banks that only perform MiFID activities, such as portfolio management and investment transactions, and accommodating ancillary services including related deposit taking.

It goes without saying that each of these options has pros and cons and also has important impacts on the corporate structure, governance and also tax implications. We would be pleased to advise you on the most desirable approach.

4 Timing

It is intended that the Dutch Implementation Act shall enter into force as of 11 January 2026. The branch requirement for non-EU banks shall apply as of 11 January 2027. Loans granted before 11 July 2026 can be grandfathered and are therefore exempt. Any loans or other core banking activities originated or performed thereafter would bring the non-EU bank in scope of these requirements. The Dutch consultation is open until 28 May 2025.

Questions?

If you have any questions, please contact our Financial Law team.

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