

LMA roundtable on the impact of Article 21c of CRD VI on secondary loan trading (27 January 2026) with A&O Shearman and Clifford Chanceⁱ

The following is not legal advice and is only intended as a starting place for general consideration of Article 21c at the EU-level, based on the CRD VI directive itself. The final analysis will be jurisdiction specific—and hinge on a given Member State’s view of what constitutes “lending” (which is not defined or harmonized by CRD VI) and how it ultimately implements Article 21c into local law (including the scope and availability of exemptions).

Novation or Assignment

Non-EU credit institution (<u>vis underlying EU borrower</u>):	
• buys a fully drawn term loan	Arguably out of scope as not new “lending”, as no further extension of credit to EU borrower.
• buys a <u>not</u> -fully drawn loan or RCF	Likely in scope , as provision of commitments and/or lending to EU borrower.
Non-EU credit institution (<u>vis EU lender/seller</u>):	
• buys a fully drawn term loan	Likely out of scope , as no lending obligations re. EU lender/seller.
• buys a <u>not</u> -fully drawn loan or RCF	Likely out of scope , as no lending obligations re. EU lender/seller.

Sub-Participation

Non-EU credit institution participant (<u>vis underlying EU borrower</u>):	
• enters into an LMA funded sub-participation	Likely out of scope , as no assumption of lending obligations in re. EU borrower.
• enters into an LMA <u>un</u> -funded (risk) participation	Likely out of scope , as no assumption of lending obligations in re. EU borrower.
• enters into an LSTA participation	Potentially in scope , if jurisdiction treats as conferring lending obligations in re. EU borrower.*
Non-EU credit institution participant (<u>vis EU lender/grantor</u>): ^{†‡}	
• enters into an LMA funded sub-participation	Potentially in scope , as lending to EU lender/grantor.
• enters into an LMA <u>un</u> -funded (risk) participation	Potentially in scope , as provision of guarantee/commitment to EU lender/grantor.
• enters into an LSTA participation	Potentially in scope , if jurisdiction treats EU lender/grantor as retaining lending obligations.
*In which case, likely same analysis as for novation or assignment. †Regardless of whether the underlying borrower is EU or not. ‡Note, if the EU lender/grantor is a credit institution, consider inter-bank exemption.	

Additional complications for the ultimate analysis include:

- Existing Member State restrictions on lending (e.g., bank monopolies) are not harmonized by CRD VI and will continue to apply in addition to Article 21c.
- Amendments and lifecycle events may bring contracts or parties in scope retroactively—e.g., if they are treated as new lending after the cutoff date for the “phase-out” regime for contracts entered into before 11 July 2026 or because they elevate a loan participant to lender of record.
- Provision of voting rights to a loan participant may increase the risk that a given Member State treats a sub-participation as “looking through” to the underlying EU borrower.
- Multi-borrower structures—including the practical difficulty identifying pre-trade whether a secondary loan has an EU co-borrower.
- It may be challenging to use a designated affiliate mechanism to deal with EU co-borrowers—e.g., due to negative capital implications and booking model challenges.

Other notes:

- The sale or grant of a loan would not be expected to raise Article 21c considerations for the original lender—but the seller or grantor should consider contractual enforceability if the buyer or participant could itself be violating Article 21c (and so engaging in unlicensed lending into the EU).
- There may be variation among member states re. the interpretation of non-EU “credit institution” (e.g., if it is limited to lenders authorized in their home countries).

Exemptions

- The “phase-out” provision and reverse solicitation exemption are separate concepts and arguably cannot be combined (e.g., it likely is not possible to rely on the phase-out provision for a commitment letter entered into pre-11 July 2026 and the reverse solicitation exemption for a follow-on loan agreement).
- However, if a commitment letter is validly entered into via reverse solicitation, it may be possible to justify the follow-on loan agreement as a “closely connected” product protected under the same exemption.
- The “phase-out” provision only protects a contract as it existed pre-11 July 2026—subsequent amendments (in particular that increase exposure, extend tenor, or alter material deal terms) may be treated as new lending under Article 21c.

¹ Attendees by institution: A&O Shearman, Arthur Cox, Bank of America, Barclays, BNP Paribas, BNY, Brown Rudnick, Clifford Chance, Commonwealth Bank, Crowell, Goldman Sachs, HSBC, ING Bank, JP Morgan, Lloyds Bank, LMA, Macfarlanes, McCann Fitzgerald, Morgan Stanley, MUFG Securities, National Australia Bank, Natixis, NatWest, Paul Hastings, Simmons and Simmons, SMBC, Santander, Societe Generale, Standard Bank, Standard Chartered, and Westpac.