LMA Loan Market Association | 30 YEARS SHAPING MARKETS. THEN AND NOW. | A&O SHEARMAN

Article 21c of CRD VI:

Practical guidance on cross-border corporate lending

May 2026

Executive summary

From 11 January 2027, Article 21c of CRD VI will fundamentally reshape cross-border lending into the EU. Although the implementation timeline is rapidly closing – given that contracts entered into after 11 July 2026 cannot benefit from grandfathering – significant uncertainty remains.

The Directive does not define key concepts, including how third-party involvement interacts with the reverse solicitation exemption or how lifecycle events affect grandfathered contracts. In addition, most Member States have yet to implement Article 21c into national law, raising the prospect of divergent approaches across the EU.

Against this backdrop, this paper examines the impact of Article 21c on everyday loan market activities – including co-borrowing, sponsored transactions, syndicated lending, secondary market activity, and lifecycle events – and considers how the market may reasonably respond in practice, in the absence of EU-level or Member State guidance.

Background

Article 21c of CRD VI (**Article 21c**) will generally prohibit non-EU banks (and certain large non-EU investment firms) from lending[1] to EU borrowers, unless one of the following exemptions applies: (i) intragroup; (ii) interbank; (iii) ancillary to MiFID (i.e., investment) services; or (iv) reverse solicitation. CRD VI is a directive, so requires national legislation to give it effect (a process known as "transposition"). Article 21c is not being transposed wholly consistently across Member States, resulting in some significant differences in how it will apply across the EU.[2]

Article 21c takes effect on **11 January 2027** and contracts entered into after **11 July 2026** cannot benefit from grandfathering.

Article 21c does not apply to the activities of a non-EU bank's locally authorised subsidiary or branch established in an EU Member State.[3]

> **Although the implementation timeline is rapidly closing – given that contracts entered into after 11 July 2026 cannot benefit from grandfathering – significant uncertainty remains.**

Position today

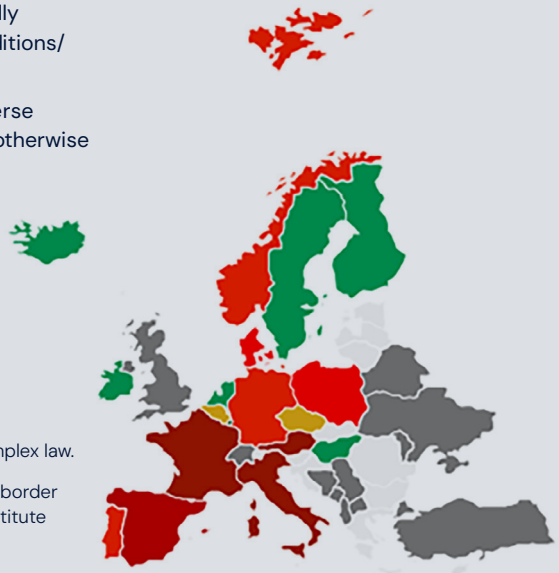
Currently, there are no harmonised EU rules on lending by non-EU entities to EU borrowers (i.e., on "cross-border" lending). Some Member States have "permissive" regimes, where lending to local corporate borrowers by non-EU lenders on a cross-border basis does not require any local licence or registration. Importantly, the permissive Member States includes Luxembourg and Ireland, which are the epicentres of financial intermediation in Europe. Conversely, other Member States have banking monopoly rules (e.g., France and Italy) which effectively prohibit cross-border lending by non-EU lenders. Many Member States have a regime somewhere in between, with local law exemptions or waivers that may apply in certain circumstances or to certain categories of lender (e.g., Germany).

The heat map to the right sets out a rough summary of the existing state of cross-border access to corporate borrowers in the main EU jurisdictions for non-EU bank lending.

Market Impact: Current access to EEA markets: Corporate lending

Key:

- Can access clients generally
- Can access clients generally provided that certain conditions/ exemptions are met
- Can access clients on reverse enquiry but not generally otherwise
- Cannot access clients
- Unknown



Note: This map is summary of complex law.

It does not take account of cross-border services licenses. It does not constitute legal advice.

Position post-Article 21c

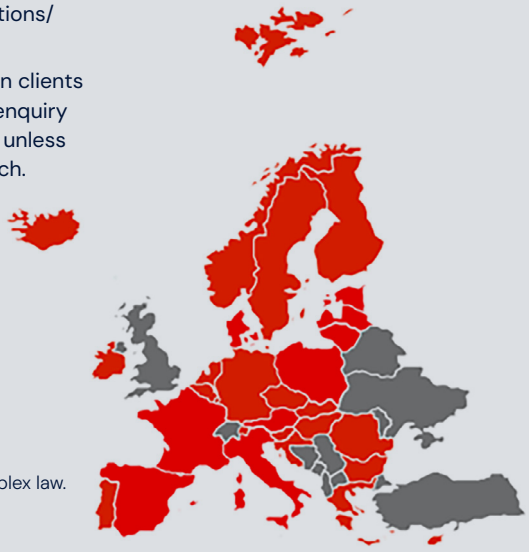
The impact of Article 21c will be greatest in those currently permissive jurisdictions, since the cross-border licensing requirements will be completely new and these markets understandably have much higher volumes of cross-border lending today. More restrictive Member States (like France and Italy) already apply stricter requirements than Article 21c, so the impact will be less material.

The heat map to the right sets out the anticipated state of cross-border access to corporate borrowers in those EU jurisdictions for non-EU bank lending once Article 21c has taken effect.

The future regulatory regime: Corporate lending

Key:

- Can access clients generally
- Can access clients generally provided that certain conditions/ exemptions are met
- Can access credit institution clients or other clients on reverse enquiry but not generally otherwise unless through an authorised branch.
- Unknown



Note: This map is summary of complex law. It does not constitute legal advice.

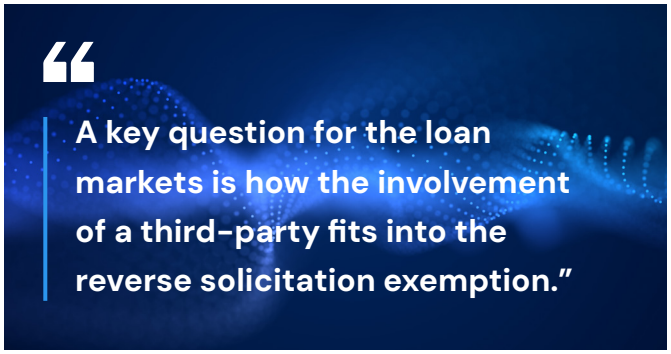
Challenges for the loan markets

Loan markets are inherently international. EU headquartered international businesses need access to funding – potentially across non-EU as well as EU currencies – at the lowest possible cost. Non-EU international groups with EU operations have incentives to meet their financing needs on a group-wide basis, resulting in loan facilities to non-EU and EU co-borrowers. Today's lending structures commonly involve EU and non EU borrowers, syndicates, and lenders. Article 21c disrupts these established models by encouraging the bifurcation of lending activity across entities and jurisdictions. In many cases, this may result in inefficient lending structures which duplicate commitments and capital impacts – raising costs for borrowers.[4]

Reverse solicitation exemption

The reverse solicitation exemption permits a non-EU bank to lend where an EU borrower approaches it "at its own exclusive initiative" and provides that there is no "own exclusive initiative" where the non-EU bank (or a member of its group or their agent) solicits the EU borrower. It also permits "closely related services" to be provided to an EU borrower in respect of products and services that have previously been reverse solicited.[5]

A key question for the loan markets is how the involvement of a third-party fits into the reverse solicitation exemption. Reverse solicitation requires the "own exclusive initiative of the client or counterparty". Can that "initiative" be exercised by an agent of the borrower, or an arranger or other intermediary (e.g., the EU borrower's non-EU parent or sponsor or the arranger of a lending syndicate)? A further complication is that the reverse solicitation exemption will not be available where the non-EU lender solicits an EU borrower "through" another person acting on the lender's (or its group's) behalf.



Scenarios

We set out below three common fact patterns that raise the issue of whether the existence of a third-party (a lead borrower, sponsor, or arranger) precludes reliance on reverse solicitation. In each case it is assumed that: (i) there is no marketing by the non-EU bank (or a member of its group or their agent) to the EU borrower; (ii) there is a pre-existing relationship with, and may be marketing to, the third-party; and (iii) the relevant Member State(s) have faithfully implemented Article 21c without additional requirements (i.e., no "gold plating").

Across these scenarios, the common feature is that non-EU lender's participation follows a borrower-initiated process, implemented through market-standard intermediaries, rather than direct solicitation of the EU borrower by the non-EU bank.

Fact pattern	Issue
Co-borrowing:[6] US bank provides a loan facility to a US headquartered multinational and that US headquartered multinational later elects for its Irish subsidiary to accede to the facility and/or draw down funds.	Is the reverse solicitation exemption available notwithstanding the involvement of the US parent?
Sponsored transactions:[7] UK private equity firm or other financial sponsor sets up a fund or SPV in Luxembourg for structuring purposes (e.g., tax) and that UK sponsor then arranges for a UK bank to lend to the Luxembourg vehicle.	Is the reverse solicitation exemption available notwithstanding the involvement of the UK sponsor?
Syndicated lending:[8] French arranger forms a syndicate to lend to a Dutch borrower and that French arranger requests that a Canadian bank joins the syndicate (as a "passive" member, with no marketing relationship to the borrower).	Is the reverse solicitation exemption available notwithstanding the involvement of the French arranger?

Article 21c (and, in most cases, national Member State law) does not explicitly address these issues. In the absence of any EU guidance on point (and subject to any national law or guidance to the contrary) we anticipate that market participants may rely on reverse solicitation in these scenarios, provided the bank (or a member of its group or their agent) has not directed marketing towards the EU borrower. Reliance on reverse solicitation should be supported by local legal advice, together with appropriate policies, governance, and record-keeping to evidence (to the extent possible) compliance with the exemption.

Secondary markets

Article 21c does not distinguish between primary and secondary lending. It is silent on the treatment of sub-participations of loans and does not specify whether a purchaser (e.g., by novation or assignment) in the secondary market of a loan that is fully drawn would involve lending to the EU borrower.

Fact pattern	Issue
Sub-participation or participation: Brazilian bank enters an LMA loan participation with a Swedish lender/ grantor for a loan to an underlying Finnish borrower.	Has the Brazilian bank lent to the Swedish grantor, the Finnish borrower, or both?
Novation or assignment (*fully drawn*): Mexican bank enters a novation or assignment with a French lender/ seller to buy a fully drawn term loan to an underlying Czech borrower.	Has the Mexican bank lent to the French lender/ seller, the Czech borrower, or both?
Novation or assignment (***not** fully drawn or RCF*): Japanese bank enters a novation or assignment with a Dutch lender/seller to buy a *not fully drawn term loan* to an underlying German borrower.	Has the Japanese bank lent to the Dutch lender/ seller, the German borrower, or both?

As regards sub-participations and participations, despite the legal uncertainty, we anticipate that a common market approach will be to treat structures where the participant never becomes lender of record (like the LMA form) as lending to the *grantor* (or, where unfunded, as a guarantee or commitment to the grantor). Where the grantor is a credit institution, then the sub-participant will be able to rely on the inter-bank exemption. As between the sub-participant and the underlying EU borrower, no lending relationship is likely to occur.[9] This approach is consistent with existing market understanding that the economic and contractual relationship is between the participant and the grantor, rather than the underlying borrower.

As regards novations and assignments of *fully drawn* loans, while the purchaser would become lender of record, the purchaser would not be providing a commitment or extension of credit to the borrower. The asset is purely a receivable from the perspective of the lender. Most Member States treat a transfer of a fully drawn loan as not amounting to lending and we expect this view to be generally accepted.

The novation or assignment of a loan with remaining commitments to EU borrowers would be in scope of Article 21c, subject to the availability of exemptions (e.g., reverse solicitation).

Grandfathering

Contracts entered into before 11 July 2026 benefit from transitional relief (colloquially known as **“Grandfathering”**) and may continue after Article 21c takes effect. The purpose of grandfathering is to “preserve the acquired rights” of EU borrowers under existing contracts. It is not an exemption, but a phase-out mechanism and applies at the individual contract level, not to the broader client relationship.

Since grandfathering applies to “existing contracts”, it should apply to eligible contracts until their maturity, term, or the occurrence of a “break event” (i.e., a lifecycle event that would trigger a new contract between lender and borrower such that it is no longer an “existing contract” – for example, a subsequent amendment to the terms of the contract). However, future entitlements (even if contingent) owed to the EU borrower under the original terms of the contract should be protected (e.g., new drawdowns under a revolving credit facility).

Article 21c does not define “acquired rights” or “existing contracts” and is silent on what constitutes a “break event”. These have therefore caused much debate given there is no available law or guidance on which to base an assessment. As a matter of principle, it would seem appropriate to interpret the grandfathering provision consistent with its purpose – protecting the acquired rights of EU borrower. On this basis, when considering potential break events, market participants should assess whether the changes impact the rights of borrowers at the

outset of the contract, and whether the event introduces terms that were not in the contemplation of the parties at the outset of the contract.

For example, where an amendment (such as a correction or pure technical update) does not affect the legitimate expectations of the borrower as to the continued receipt of services under the contract at the point of grandfathering, this should not constitute a break event. If such scenarios were break events, this would risk failing to preserve a borrower's acquired rights under the existing contract (and so frustrate the express purpose of the provision).

Examples of break events are likely to include material amendments such as an extension to the term of the loan or increasing a credit limit. However, where any such event is contemplated as a mechanism within the original contract, and which may be exercised unilaterally by the EU borrower (i.e., making it an acquired right), that arguably should not prejudice reliance on grandfathering.[10]

An indicative list of lifecycle events is below. This illustrates how market participants might think about grandfathering break events (based on the principles outlined above), in the absence of any EU guidance on point.

Lifecycle Event	Loss of grandfathering?
Amendment and/or restatement (*economically material*)	**Yes**
Amendment and/or restatement (*correction; technical update; economically immaterial*)	No
Increasing the credit limit under a contract	**Yes**
Decrease of a credit limit permitted by the contract, or an annual credit review	No
Replacing / adding lenders	**Yes** for incoming lenders; no for existing
Assignment / novation (including partial)	**Yes**
Partial termination	No for remaining portion
Conversion of assets upon triggers contemplated in the contract	No
Exercising unilateral borrower's rights under a contract (e.g., an extension option) or a change of pricing terms	No
Extension of the availability period or the maturity date (including removal thereof) of the facility where the original documentation includes prescribed extension option exercisable subject to lenders' consent	**Yes**
Extension of the availability period or the maturity date (including removal thereof) of the facility where the original documentation includes prescribed extension option exercisable **not** subject to lenders' consent	No
The addition of new facilities or tranches to a credit facility	**Yes** for new facilities / tranches; no for existing
Adding new borrowers to an existing unadvised and uncommitted group overdraft facility where these borrowers accede to an existing liquidity management contract (at the request of the borrower)	**Yes** for new borrowers; no for existing
Adding new borrowers to an existing advised and uncommitted group overdraft facility where these borrowers accede to a contract (at the request of the borrowers)	
Replacing / adding borrowers	
Drawing down, repaying and re-drawing money on the basis of a revolving credit facility	No
Waivers of breaches or potential breaches of covenants or deliverables pursuant to information undertakings in an existing contract	No

Conclusion

Article 21c introduces material uncertainty with limited guidance and an imminent deadline. In the absence of EU-level or Member State guidance, the industry must take reasoned views and begin implementation now. We therefore expect market participants may approach the key questions for the loan markets as set out in this paper, subject to institution-specific risk appetite and jurisdiction-specific legal analysis.

Appendix

LMA Article 21c resources

- LMA Response to European Commission consultation on the competitiveness of the EU banking sector
- Minutes from the 27 January 2026 LMA roundtable on secondary loan trading
- Joint position paper on the transposition of Article 21c
- LMA webinar on Article 21c

Next steps

- *Members:* Stay up to date on Article 21c (and other developments) with the monthly LMA Regulatory Scanner
- *Members:* Get the latest on Member State transposition with the LMA Article 21c Tracker
- *LMA:* Consider any necessary Article 21c updates to LMA documents
- *LMA:* Host additional roundtables on Article 21c challenges for the loan markets

If you haven't done so already, sign up here to receive the monthly **LMA Regulatory Insights Newsletter** and **LMA Regulatory Scanner**.

Contact us:

Jesse Beardsworth

Interim Head of UK & EU Public Policy & Regulatory Affairs (Consultant)

E: jesse.beardsworth@lma.eu.com

Evelien Alblas

EU Regulatory and Public Affairs Manager (Consultant)

E: evelien.alblas@lma.eu.com

[1] Article 21c also applies to deposit taking, guarantees, and commitments. However, this paper focuses exclusively on lending.

[2] CRD VI will ultimately be implemented throughout the European Economic Area (i.e., the EU and Iceland, Liechtenstein, and Norway).

[3] Article 21c is sometimes referred to as the "branch requirement", as it ostensibly requires non-EU banks to establish a local branch to lend to EU clients. However, to some extent this is a misnomer. Most international non-EU headquartered banking groups already have bank subsidiaries onshore in the EU. For those groups, it will typically be preferable to migrate business to the EU bank subsidiary instead, since these may passport their services freely across Member States. Under CRD VI, branches do not have this right, meaning that a branch would be required in every EU jurisdiction in which the non-EU bank continues business. The EU authorities are unlikely to be supportive of multiple EU branches, in any case.

[4] For loans to non-EU and EU co-borrowers, providing all commitments and lending obligations to EU borrowers from an EU subsidiary would make the loan facility Article 21c-compliant. However, where EU borrowers are not separately tranched this will likely involve the duplication of commitments (and with them, capital requirements) between the non-EU bank and its EU subsidiary. As a result, if there is no tranched limit up to which the EU borrowers may draw, both the non-EU bank and its EU subsidiary would need to hold capital against their respective commitments for the entire facility amount – resulting in the unattractive alternatives of entering duplicative commitments (which is likely to render the facility uneconomic in capital terms) or tranching out the loan (which may well be commercially unattractive to major clients).

[5] The exemption is drafted unclearly in CRD VI – it uses similar terms to previous iterations of this exemption under EU law and has not been adapted to account for the way banking services are provided. It also introduces new concepts such as "closely related services" without any guidance on the scope of those terms. Further, as reverse solicitation is an existing concept in EU law, Member State local law and regulators already have guidance on its interpretation relating to other regimes – such guidance and existing practice varies materially across the EU. Institutions therefore need to diligence how the exemption will be applied locally; this cannot be done globally. Such efforts are further complicated by Member States: (i) failing to provide additional guidance in national transpositions of CRD VI; (ii) implementing the requirements differently in terms which do not track the CRD VI text; and (iii) failing to implement within the deadline (most Member States are yet to finalise their local legislation).

[6] By "co-borrowing", we mean a scenario where a facility is provided to a multinational group; the principal relationship will be with a parent or treasury entity, which has the right to elect members of its group who may draw down on funds or later accede to the facility (some of which may be located in the EU).

[7] A significant amount of financing in EU markets is provided by way of acquisition or leveraged finance, where a private equity firm – typically acting from the UK or US – originates the loan. The sponsoring itself does not fall within scope of CRD VI, since this does not involve any lending to the sponsor. However, where a non-EU bank participates in a sponsored transaction pursuant to its relationship with a non-EU sponsor, there will be an EU nexus where an EU borrower is included in the transaction. It is worth noting that many sponsor-led transactions today are structured to have Luxembourg borrowing vehicles. There are ongoing efforts in Luxembourg to preserve its existing approach to the territoriality of banking activities, which if retained, may seek to significantly reduce the impact of CRD VI for non-EU lenders to Luxembourg borrowers. In such case, one further option may be to structure transactions to only include EU borrowers in Luxembourg to the extent that is possible, removing the need to rely on reverse solicitation. Specific Luxembourg advice should be taken.

[8] It is common for lenders to provide credit in a syndicated loan following a request from an arranger forming a syndicate (i.e., acting as a "passive" syndicate member, with no marketing relationship to the borrower. We would expect market practice to develop to mitigate associated risks, for example including drafting in mandate letters for arrangers which expressly instructs the arranger to seek funding from non-EU lenders on the borrower's behalf.

[9] However, some jurisdictions may "look through" the arrangements and characterise the sub-participation as amounting to lending to the borrower in certain circumstances. In most cases it would not make commercial sense to migrate the loan to an EU subsidiary upon the presence of a single EU co-borrower: the key relationship is likely to be outside the EU (e.g., with the parent) and there may be no intention to target EU borrowers (but for the borrower's desire for its group members to have access to funding).

[10] That said, given the expectation that grandfathering should be interpreted narrowly, exercising changes pursuant to broad provisions specifying that the parties may agree certain amendments from time to time may not be consistent with continued reliance on grandfathering.