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France

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ORDINANCE TRANSPOSING CRD VI DIRECTIVE IN FRANCE ENACTED: NAVIGATING IMPACT ON CROSS-BORDER LENDING BY THIRD-COUNTRY INSTITUTIONS

France has transposed CRD VI (Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 as regards supervisory powers, sanctions, third-country branches and environmental, social and governance risks). This was implemented by Ordinance No. 2026-255 of 8 April 2026, completed by decree (Decree No. 2026-309 of 24 April 2026, published on 25 April 2026) with some delay after the transposition deadline of 11 January 2026.

This briefing focuses on the access by non-EU institutions to cross-border lending and related activities in France, and the circumstances in which they may carry out banking transactions without being required to establish an authorised French branch.

CRD VI harmonises access to the EU market by non-EU undertakings (TCUs) carrying out core banking activities – taking deposits, lending, purchasing trade receivables and issuing guarantees – through a unified licensing regime. Prior to CRD VI, the EU regulatory framework lacked a single definition of regulated banking activities across member states, leading to market fragmentation and regulatory arbitrage.

As TCUs lending in France were already required to establish a subsidiary or third-country branch in France when undertaking credit activities there, the new regime does not create material additional constraints for such non-EU players. Importantly, it extends existing exemptions from the banking monopoly and enshrines reverse solicitation, so far denied in credit transactions.

FOREIGN ENTITIES SUBJECT TO THE FRENCH BRANCH REQUIREMENT UNLESS EXEMPT

The Ordinance does not revisit the list of entities required to open a branch in France. It confirms that the requirement applies when the banking transaction is in favour of a client established or resident in France.

The branch requirement applies to non-EU financial institutions that would qualify as credit institutions in the EU or meet the criteria of Art 4(1)(1)(b) of Regulation (EU) No 575/2013 (CRR) if established in the EU. It also applies to branches of investment firms providing dealing on own account, investment advice or underwriting services when their consolidated assets exceed € 30bn (this threshold does not apply for deposit taking). Third-country non-banking entities such as credit funds, securitisation vehicles, commodity dealers and insurance undertakings, which are out of scope of CRD VI, are not required to establish a branch to provide loans and guarantees.

The existing French prudential requirements applicable to TCUs are more stringent than CRD VI's minimal rules and have not been overhauled.

The Ordinance grants the French banking supervisor *Autorité de Contrôle Prudentiel et de Résolution* (ACPR) the power to require on a case-by-case basis that a TCU be converted into a subsidiary.

THIRD-COUNTRY INSTITUTIONS BENEFITTING FROM THE OECD DUAL BANKING SYSTEM

The Ordinance maintains the dual banking system (*bibancarisation*) regime available to credit institutions from third countries benefiting from the OECD Official Development Assistance Programme, allowing them to provide banking services to French residents directly from the third country, subject to ACPR authorisation and with the agreement of a French banking institution. Going forward, services must be performed on an *ancillary basis* to a deposit account opened in France with a French credit institution. The Decree introduces detailed annual reporting obligations under this regime, including a register of banking transactions, deposit account information, prudential compliance data, AML/CFT control results, and information on reverse solicitation transactions.

CORE BANKING SERVICES SUBJECT TO THE BRANCH REQUIREMENT WILL EXTEND TO PAYMENT SERVICES

The Ordinance refers to the already existing notion of "banking transactions" (*opérations de banque*) rather than listing the core activities enumerated by CRD VI.

Banking transactions in France are defined as:

- taking repayable funds from the public;
- credit transactions; and
- banking payment services.

The definition of the first two services encompasses all CRD VI core activities defined as lending including, inter alia consumer credit, credit agreements relating to immovable property, factoring (with or without recourse), commercial transactions (including forfeiting),

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guarantees and commitments and taking deposits and other repayable funds. Credit transactions in France refers to granting or promising loans (excluding subscription to bonds), issuing or promising the issuance of guarantees and in the context of factoring or receivables financing the purchase of outstanding debt which are assimilated (under French law meaning legally reclassified) by established case law as a credit transaction where the purchaser (financier) prepays the receivable to the seller. In each case, the credit transactions must be for value. However, payment banking services are a French addition to the CRD VI core banking services. They refer to payment services which can be offered by payment institutions, as well as the delivery or issuance of cheques which is reserved for credit institutions.

The reference to "banking transactions" in the Ordinance simply imports the existing body of French law and jurisprudence governing whether a transaction qualifies as a banking transaction, subject to the effect of the newly introduced exemptions. For example, a syndicated credit facility is generally considered to create a direct lending relationship between each syndicate lender and the borrower to the extent that each lender participates in funding drawdowns.

THE EXEMPTIONS

1. Reverse solicitation

The introduction of the reverse solicitation exemption represents a fundamental change for banking transactions, particularly lending, in France. Where a client triggers on its own initiative the provision of a service by an entity in another country, that entity does not need to be licensed in the country where the client is established or resident. While reverse solicitation is recognised by MiFID II for investment services, it was not previously an effective exemption for credit transactions falling under the French banking monopoly. The Ordinance defines its scope as follows:

- The client must have approached the TCU solely on their own initiative, directly or through an agent, for the contemplated banking transaction.
- All types of clients qualify – non-professionals, non-professionals who have requested to be treated as professionals, professionals and eligible counterparties.
- The exemption covers not only the solicited services but also those "necessary" or "closely linked" to the relevant banking transaction, including when delivered after closing.

However, reverse solicitation is strictly framed. A transaction is "notably" not deemed at the client's sole initiative where the TCU reaches out directly, through a person with close links (within the meaning of Art 4(1), point (38) of the CRR), or through any person acting on its behalf. The client's initiative does not grant the TCU the right to market other categories of products/services other than those originally solicited, unless via an authorised French branch.

Uncertainties remain, for example, the line between providing general product information and marketing, or whether solicitation outside the EU is prohibited. TCUs may find relevant guidance in ESMA's guidelines[2] on reverse solicitation under MiCA and MiFID, where only genuinely granular client-initiated requests qualify and solicitation is construed broadly on a technology-neutral basis. TCUs will be encouraged to closely monitor origination patterns and maintain robust evidence that the first approach was made by the client. Furthermore, the use of "notably" allows for other relevant factors to be taken into account in characterising a prior contact (that may constitute a first approach by the TCU).

2. The French counterparty is a credit institution or a financing company

While CRD VI provides an exemption for transactions between TCUs and EU credit institutions only, the Ordinance specifies that the exemption also benefits transactions with financing companies in France. They can provide credit and issue guarantees but are not allowed to take deposits from the public.

3. Intragroup transactions

The Ordinance provides an exemption where the French-based client is part of the same group as the third-country credit institution, with "close links" construed by reference to Art 4(1), point (38) of the CRR (20% or more of capital, control, or a permanent link of both or all of them to the same person through a control relationship).

4. MiFID II services and ancillary investment services

CRD VI provides that the branch requirement for TCUs does not apply to investment services and related ancillary services.

The Ordinance clarifies that the branch requirement and exemptions under the regime relating to banking services do not extend to the cross-border provision of investment services or ancillary services related to investment services – even where those services are similar in nature to banking activities (such as granting a loan for the purchase of a financial instrument).

TCUs must comply with the stand-alone MiFID regime applicable to investment services, and reverse solicitation exemption thereunder.

TERRITORIAL TRIGGER

The Ordinance uses the client's location ("established or resident in France") as the trigger for determining whether the branch requirement or an exemption applies in relation to banking transactions. This does not map onto the traditional analysis of banking transactions subject to the French banking monopoly, which focuses on three criteria:

(i) the place of execution of the transaction agreement;
(ii) the location of the characteristic performance of a transaction; and
(iii) the absence of prior solicitation of the client, in each case in France,

irrespective of whether the client is established or resident in France. For credit transactions, the characteristic performance nexus with France is the disbursement of borrowed funds in France. It is not

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fully clear whether the branch requirement applies in a scenario where the borrower is established or resident in France but the transaction falls outside the banking monopoly, because none of the key criteria take place in France.

The Ordinance clarifies that a TCU branch may not provide banking services outside of France. It appears, subject to further interpretation, that whether the branch may carry out credit transactions on a cross-border basis for clients that are not established in France when the credit transaction falls outside the French banking monopoly, depends on the loan agreement contract being executed and the funds being disbursed outside of France, and that the client has not been solicited in France and the transaction is lawful where the client is established or resident.

As the branch requirement and reverse solicitation exemption do not apply to institutions that are not TCUs, the provision of banking services by credit funds or unregulated lending entities remains prohibited in France unless outside the territorial scope of the banking monopoly.

IMPLEMENTATION TIMELINE

Third-country branches currently authorised in France must submit information to the ACPR by 10 November 2026 demonstrating compliance with new requirements applicable from 11 January 2027. The Decree specifies that reporting obligations under the dual banking system enter into force on 11 January 2027, with the first annual report due by 31 March 2027. Provisions under the Ordinance relating to material acquisitions, significant transfers, and mergers and demergers apply to transactions presented to the competent governing body after 10 April 2026.

GRANDFATHERING

The Ordinance preserves rights acquired by French-based clients under contracts concluded before 11 July 2026 relating to banking transactions performed in France by a third-country credit institution. Unlike in certain jurisdictions, the Ordinance does not clarify the treatment of amendments and restatements after 11 July 2026 relating to pre-existing contracts. It is reasonable to consider that amendments by way of novation entered into after 11 July 2026 will not benefit from the grandfather clause, nor will amendments extending the facility amount or term where drawdown rights remain or amendments adding new lenders or tranches with respect to those facilities.

With the imminent cut-off date of grandfathering, loans portfolio reviews and new facilities structuring should be carefully undertaken ahead of the deadline, with a close look at lifecycle events and co-borrowing or syndication scenarios.

OPTIONS FOR CONTINUING OR NEW LENDING BUSINESS BY TCUs IN FRANCE

TCUs will generally need to reassess their cross-border lending model and take legal advice in each relevant local jurisdiction where the TCU or the French branch may transact cross-border lending.

As the LMA Practical Guide on Cross Border Corporate Lending of May 2026 shows, a number of uncertainties remain in relation to the impact of CRD VI transposition on cross-border lending arrangements.

Key options include:

- Relying on exemptions, whenever available, in particular the reverse solicitation exemption.
- Establishing a branch or a subsidiary in France.
- Using a branch in another EU jurisdiction in which transactions relating to core services transactions may be entered into with French based clients on a cross-border basis, provided the transaction also remains outside the scope of the French banking monopoly.
- Setting up a credit fund or securitisation vehicle in France, noting that the requirement for credit funds to be French law AIFs may be relaxed under the transposition of AIFM 2.
- Entering into a fronting arrangement with an authorised lender in France (credit institution, alternative investment fund or securitisation vehicle, or, subject to certain limitations, a *fiducie-gestion*).
- Relying on the secondary market purchase exemption.
- Entering into an out-of-scope sub-participation agreement with an authorised lender in France.

Each option requires careful analysis of applicable rules on loan origination, the funding mechanism, marketing, risk retention, leverage and governance. ■

1 The author wishes to thank Chuanyu Fan for her help in the preparation of this article.

2 Guidelines on situations in which a third-country firm is deemed to solicit clients established or situated in the EU and the supervision practices to detect and prevent circumvention of the reverse solicitation exemption under the Markets in Crypto Assets Regulation (MiCA), published by ESMA, 26/02/2025 ESMA35-1872330276-2030.

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