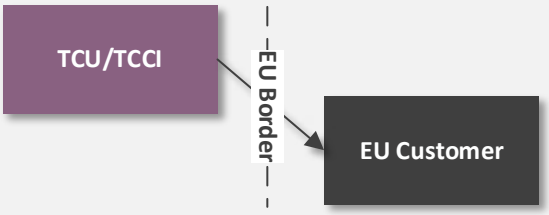
NEWSFLASH
EBA Report on 3rd country banking services

RegCounsel Financial Services

Background

On 23 July 2025, the European Banking Authority ("**EBA**") published a report on the provision of core banking services by third country undertakings ("**TCU**") to European financial sector entities ("**EU FSE**"). The report was published in view of the prohibition on the cross-border provision of such core banking services by TCUs as included in a new art. 21c under the sixth Capital Requirements Directive ("**CRD VI**").

Specifically, the report explores whether TCU service provision to EU FSE should – like services provided to credit institutions – be exempted from the requirement to establish a third-country branch ("**TCB**") pursuant to art. 21c CRD VI. Though the EBA appears to conclude that services provided to (most) EU FSE should not be exempted, the report does contain some useful indicators as to the scope of exempted and covered core banking services.



What is prohibited?

Under the fourth Capital Requirements Directive ("**CRD IV**"), ambiguity existed surrounding cross-border banking service provision in the EU. CRD VI seeks to resolve this ambiguity and prohibits all cross-border **core banking service** provision, unless it is exempted.

What are the core banking services?

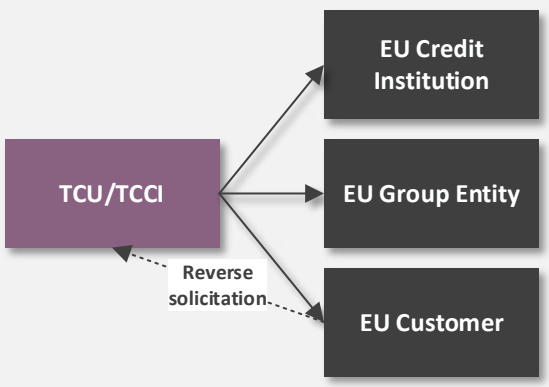
I. Taking deposits and other repayable funds.
II. Lending, including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
III. Guarantees and commitments.

Note: To the dissatisfaction of the EBA, the exact interpretation of these services is subject to national interpretation. Moreover, the prohibition of art. 21c CRD VI only extends to TCUs providing any combination of service III and either I or II; or third country credit institutions ("**TCCI**") providing any of the above services.

What is exempted under CRD VI?

- ✓ The provision of core services to EU credit institutions.
- ✓ The provision of core services to EU group entities.
- ✓ The provision of core services based on reverse solicitation.

Note: The provision of (**MiFID II**) investment services is also exempted, as are any related ancillary services such as deposit taking and/or granting loans connected to those investment services. These are regulated under the MiFID II TCB regime.



Impact of the CRD VI prohibition on EU FSEs

Investment firms – Most investment firms have deposits at TCUs to some extent. EBA assumes that, in lieu of better data, such deposits comprise the provision of core banking services by TCUs to investment firms. However, where those deposits would be *ancillary to investment services*, they would not be prohibited under the **MiFID II carve-out**.

Money market funds – Under the Money Market Funds Regulation, money market funds ("**MMF**") may hold deposits with certain – roughly – prudentially equivalent TCCIs. Where MMFs hold such third-country deposits, they will be benefactors of the core banking service "deposit taking" and, hence, the TCU or TCCI providing such service must establish an EU TCB.

AIFs (and UCITS) – Like MMFs, AIFs are permitted to have cash exposures towards TCUs. Where AIFs hold such exposures, the EBA notes that it can be assumed that this will amount to the benefitting of deposit taking services provided by TCUs. Moreover, the EBA notes that some AIFs benefit from lending services provided by TCUs, which is covered by the CRD VI prohibition if the TCUs are TCCIs.

MiFID II Carve-out

Based on informal discussions with the European Commission, the EBA notes that the MiFID II carve-out appears to apply only when custody, safekeeping, deposit-taking and lending services are *ancillary* to MiFID investment services. If custody services are provided on a *standalone* basis under MiFID/MiFIR, the carveout likely does **not** apply to deposit-taking and granting of loans.

Where a local EU custodian delegates the safeguarding of the assets of an AIF (or other EU FSE) to a **sub-custodian**, this could comprise the providing of deposit taking services, and hence principally fall under the prohibition of CRD VI. The EBA notes that this may have to be clarified in **Q&As**.

PSPs (and EMIs) – Non-bank payment service providers ("**PSP**") may be the beneficiary of core banking services (deposits and loans) in the process of USD payments clearing. These PSPs might have to accept an additional intermediary in the clearing chain to accommodate the CRD VI prohibition. The EBA suggests that PSPs in this instance may consider using *reverse solicitation*.

Insurance companies – The EBA notes that certain TCCIs mentioned the importance of providing loans and guarantees to EU insurance undertakings, as well as insurance undertakings' reliance on TCUs for international **treasury** and **liquidity management** operations. These services are probably covered by the CRD VI prohibition.

Jan Jans — **Tel:** +31 6 83 50 49 27
Partner — **E-mail:** jan.jans@recofise.eu

Jan Jans is a Dutch qualified lawyer specialized in financial regulatory law. He has a strong focus on the regulatory framework covering investment firms, banks, insurance companies, payment service providers, crypto-asset service providers and investment funds. Prior to joining Regulatory Counsel | Financial Services as Partner in 2022, Jan worked as a financial regulatory lawyer at Linklaters and other (international) law firms in the Netherlands. He successfully defended his PhD thesis on the level playing field between banks and non-banks in the European market for electronic payments in 2023.

Jan-Jouke van der Meer — **Tel:** +31 6 13 50 73 91
Managing Associate — **E-mail:** janjouke.vandermeer@recofise.eu

Jan-Jouke van der Meer is a Dutch qualified lawyer specialized in financial regulatory law. He advises clients on the full range of Dutch and EU financial regulatory laws, licensing issues, corporate governance (including integrity and suitability assessments), compliance and integrity-related issues (including AML and sanctions) and dealing with financial regulators. Prior to joining Regulatory Counsel | Financial Services, Jan-Jouke worked as a financial regulatory lawyer at Linklaters.

Maarten Mol-Huging — **Tel:** +31 6 29 90 96 29
Junior Associate — **E-mail:** maarten.mol-huging@recofise.eu

Maarten Mol-Huging is a Dutch qualified lawyer specialized in financial regulatory law. He advises on financial regulatory issues with regards to banks, investment firms, insurers, payment service providers and FinTech (e.g., digital asset services providers), with a particular focus on prudential aspects. Maarten graduated with distinction from the prudential regulation-oriented EBI Master in Banking Regulation in 2024. Before, he graduated cum laude at the VU Amsterdam in International Business Law in 2022.