CRD VI: Swiss banks navigate regulatory shifts

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Key takeaways

- **As of 11 January 2027, Swiss banks providing deposit-taking, lending, and guarantee services to EU-based clients will generally be required to establish an authorized branch in the respective EU Member State.**
- **Exemptions such as reverse solicitation or specific MiFID II investment services will continue to allow cross-border activities, but only under strict conditions.**
- **Swiss banks must assess their EU cross-border operations at an early stage and determine whether to scale back activities, structurally segment business lines, or establish an authorized branch or subsidiary within the EU.**

Introduction

In June 2024, the revised Capital Requirements Directive (CRD VI) was published in the Official Journal of the European Union. The new provisions governing third-country branches will enter into force on 11 January 2027. CRD VI establishes a harmonized framework for the cross-border provision of banking services from third countries and introduces new requirements for branches of non-EU banks. This will result in fundamental changes to the delivery of cross-border banking services into the EU by Swiss banks.

Increasing regulatory requirements, technological developments, and changing market conditions are compelling financial institutions to review their business models and strategic focus. Third-country branches must satisfy regulatory minimum standards in order to continue operating within the EU.

Swiss banks must therefore evaluate how to structure their EU cross-border operations going forward. Options range from establishing a third-country branch or EU subsidiary to consolidating activities within existing EU subsidiaries, or completely re-aligning their

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cross-border business.

Mounting regulatory pressure

Regulatory requirements for Swiss banks have steadily expanded in recent years, particularly in the areas of governance, risk management, operational resilience, anti-money laundering, and technology risk.

The supervisory focus centers on financial system resilience. Beyond maintaining adequate capital and liquidity resources, banks must ensure that critical business operations remain functional during severe operational disruptions. This particularly requires robust management of cyber risks, a resilient IT infrastructure, and comprehensive risk oversight of third-party dependencies and outsourced service arrangements.

Anti-money laundering and general compliance obligations also continue to increase. Client identification, beneficial ownership verification, ongoing transaction and relationship monitoring, and the associated documentation and governance duties entail significant personnel and technical resources.

Furthermore, these new framework conditions impose high fixed costs that accrue partly irrespective of institution size. Small and mid-sized banks in particular must evaluate whether their operational structures and business models maintain sufficient long-term scalability.

To date, the cross-border provision of banking services from third countries has not been fully harmonized at the EU level. As a result, Member States applied varying branch and licensing requirements.

Swiss banks were previously able to extend credit to borrowers in many EU Member States without a local license; however, certain individual Member States, such as Germany, already imposed licensing requirements. CRD VI fundamentally changes this structure: Swiss banks providing covered banking services within the EU will generally be required to establish a branch and obtain authorization in each affected Member State.

Below, we examine the new branch requirement, its impact on Swiss financial institutions, and potential strategic courses of action.

Scope of application

The new branch requirement applies to third-country entities that would qualify as credit institutions if they were domiciled in an EU Member State. This requires that the entity accepts deposits or other repayable funds from the public while simultaneously granting credits for its own account. Covered activities comprise deposit-taking, lending, and the issuance of guarantees and commitments to clients domiciled or residing in the EU.

The definition of a credit institution under the Capital Requirements Regulation (CRR) is narrower than the definition of a bank under Swiss law. An institution that exclusively engages in lending does not qualify as a credit institution under the CRR and therefore generally falls outside the scope of the branch requirement.

Swiss banks are thereby subject to the new regime primarily if they qualify as credit institutions under the CRR and provide covered banking services within the EU.

Exemptions

There are several exemptions from the branch requirement. Transactions initiated strictly at the exclusive initiative of the client generally do not trigger the requirement (reverse solicitation). For example, if an EU-based borrower approaches a Swiss bank on their own initiative, the bank may extend credit under certain conditions without establishing a branch. However, this exemption must be interpreted narrowly and cannot serve as a framework for systematic client solicitation.

Furthermore, specific banking transactions fall outside the scope of CRD VI to the extent they simultaneously constitute investment services or activities pursuant to Annex I of MiFID II. Related ancillary services may likewise benefit from this exemption.

Additionally, certain intragroup services and interbank transactions are exempt from the branch requirement.

Finally, contracts between EU clients and third-country entities executed prior to 11 July 2026, generally remain valid until their termination (grandfathering clause). However, material contractual amendments or extensions may result in these contracts becoming subject to the new regime.

Strategic options for banks

If Swiss banks intend to continue offering banking services covered by CRD VI within the EU going forward, they must proactively implement the necessary structural and regulatory arrangements. Depending on their business model and the strategic importance of the EU market, several options may be considered.

Strategic refocusing of cross-border operations

A bank may choose to specifically restrict its EU client business to arrangements that do not trigger the branch requirement. This allows the bank to maintain a presence in the EU market without establishing a new regulated entity or infrastructure in the EU.

This requires a clear demarcation of business relationships and sales activities. For instance, a bank relying on reverse solicitation is strictly prohibited from actively soliciting clients. Sales processes and client acquisition strategies must be aligned and documented accordingly.

This strategic approach is particularly suited for institutions whose EU business accounts for only a minor portion of their overall operations. The more actively a bank intends to develop the EU market or expand its client base, the less viable an exemption-based structure becomes.

Structural segmentation of lending operations

Rather than restricting banking activities, specific business lines can be organizationally and legally unbundled from the bank. For lending operations, a viable option is establishing a standalone Swiss company that exclusively offers financing services and does not accept deposits or other repayable funds from the public.

The critical factor is not a mere transfer of existing activities, but the implementation of an independent business model that does not qualify as a credit institution under EU law. Under certain conditions, lending operations with EU-based clients can thereby be continued outside the third-country branch requirement. It should be noted, however, that individual Member States may impose national licensing requirements on commercial lending activities independent of deposit-taking.

However, such a structure requires a strict segregation of business activities and funding flows. Furthermore, institutions must ensure that the company itself is not independently subject to licensing or supervisory requirements. Consequently, alongside the laws of the relevant EU Member States, the regulatory, anti-money laundering, and corporate law implications in Switzerland must also be thoroughly evaluated.

Targeted presence in selected EU markets

If a Swiss bank focuses on specific EU Member States, establishing a local branch may be appropriate. This allows the bank to remain active in a strategically important market under an authorized structure without establishing a legally independent bank in the EU.

The branch remains an integral part of the Swiss institution, but becomes subject to the supervisory requirements of the respective Member State governing third-country branches. These requirements include, in particular, minimum allocated capital, liquidity standards, and rules regarding local organization, governance, and operational substance. Moreover, the branch cannot exercise EU passporting rights; its authorization is strictly limited to the respective Member State.

The commercial viability of this model depends on the bank’s geographic orientation. Establishing a local branch may be proportionate where a bank focuses on a small number of core markets. However, if a bank intends to serve numerous EU markets on an ongoing basis, this model becomes increasingly inefficient due to the redundant local structures and separate licensing procedures required in each jurisdiction.

Establishing a standalone EU banking platform

For banks that regard the EU market as a core strategic market and seek long-term growth there, establishing a standalone subsidiary with an EU banking license represents a viable option.

Unlike a branch, this model creates an independent bank fully supervised within the EU. Such an entity can consolidate European operations and exercise the EU passport for cross-border activities within the single market (passporting). Consequently, clients across the entire EU can

be served from a single regulated location.

However, this broader market access is offset by significantly higher setup and operating costs. Beyond initial capitalization, governance, organizational, and risk management requirements, institutions must particularly consider the build-out of personnel and technical resources, as well as the ongoing compliance costs of a standalone regulated entity.

This structure is therefore primarily suitable for institutions aiming to establish a substantial and permanent presence across multiple EU markets. Where EU business remains merely sporadic, the required expenditure can hardly be justified.

Next steps

On 11 January 2027, the third-country branch requirement will take effect across all EU Member States. By that date, Swiss banks must either obtain the required authorizations or restructure their operations into a model permitted under the new regulatory framework.

Affected Swiss financial institutions should immediately evaluate whether they qualify as third-country banks in relevant EU Member States and fall within the scope of the new regime.

Visit our digital Swiss financial market regulation platform to access up-to-date, practical guidance tailored to your institution.

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Legal and tax disclaimer

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