



NEWSLETTER – TRANSPORT

CRD VI: IMPLICATIONS FOR NON-EEA FINANCIERS PROVIDING SHIP FINANCE TO GERMAN OWNERS

Directive (EU) 2024/1619 (CRD VI) introduces a new regulatory framework for non-EEA (European Economic Area) credit institutions providing core banking services to customers in the European Union (EU). In Germany, this framework has been implemented through the new Sections 53c et seq. of the German Banking Act (Kreditwesengesetz – KWG). The new requirements are expected to apply from 11 January 2027.

LENDING

Under the CRD VI third-country branch regime, third-country credit institutions providing, or intending to provide, core banking services, in particular lending, to customers in an EU Member State will generally be required to establish an authorised third-country branch in the relevant Member State.

FINANCE LEASING

In the ship finance sector, finance leasing structures are likewise widely used alongside traditional loan financing. Under CRD VI, a third-country undertaking engaged solely in finance leasing will generally fall outside the specific CRD VI third-country branch regime. This may include, for example, Chinese leasing, JOLCO and sale-and-leaseback structures,

depending on their contractual terms and regulatory classification.

However, in Germany, such arrangements must be assessed separately under the German KWG. Where a transaction qualifies as finance leasing within the meaning of Section 1(1a), sentence 2, no. 10 KWG, the provision of such services in Germany on a commercial basis generally requires authorisation by the German Federal Financial Supervisory Authority (BaFin) pursuant to Section 32 KWG.

PRACTICAL STRUCTURING OPTIONS

Both CRD VI and the German KWG provide for exemptions and structuring alternatives which may facilitate cross-border financing, depending on the circumstances of the individual case.

Reverse Solicitation: One of the most important exemptions in practice is reverse solicitation. This may apply where the customer approaches the financier exclusively on its own initiative, and there has been no prior active solicitation of the customer by the financier, a group company, an intermediary, or any other person acting on its behalf.

However, reverse solicitation is interpreted narrowly. Financiers should therefore ensure that they can demonstrate that the customer initiated the business relationship entirely on its own initiative.

EU Credit Institution Subsidiary: For lending transactions, an authorised EU credit institution subsidiary of the relevant third-country credit institution may be used as an alternative structuring option to establishing a third-country branch. The distinction between a third-country branch and an authorised EU credit institution subsidiary is important. A third-country branch may generally operate only within the relevant Member State and does not benefit from EU passporting rights. By contrast, an authorised EU credit institution subsidiary may generally benefit from the EU passporting rights and provide services throughout the European Union on a cross-border basis. However, the regulatory requirements applicable to an authorised EU credit institution subsidiary are generally more extensive than those applicable to a third-country branch.

Fronting Bank Structure: For lending transactions, a fronting bank structure is a viable structuring alternative, whereby

the non-EEA financier cooperates with an EU-authorised credit institution that acts as the fronting bank vis-à-vis the customer. However, for non-EEA financiers, fronting structures are not always commercially attractive, as they typically must share margins and fees with the fronting bank.

EU Loan-Originating Funds: Where a non-EEA financier wishes to provide loans without establishing an authorised third-country branch or structuring its activities through an authorised EU credit institution subsidiary, it may also consider using or establishing an EU loan-originating fund. This could include, by way of example, a Luxembourg loan-originating fund managed by an authorised EU alternative investment fund manager (AIFM), as the lending vehicle. Depending on the structure of the fund and its regulatory classification, an EU loan-originating fund can provide an attractive alternative regulatory framework compared with operating through a third-country branch or an authorised EU credit institution subsidiary. However, the suitability of such a structure should always be assessed in light of the relevant business model and the proposed financing transaction.

How NoordenJones can assist

NoordenJones advises banks, financial institutions, borrowers, lessors, lessees, arrangers and credit funds on the legal and regulatory aspects of cross-border financing structures.

Our services include, in particular:

- Advising on the establishment of authorised third-country branches in the relevant Member States;
- Advising on structuring through authorised EU credit institution subsidiaries;
- Advising on EU loan-originating fund structures;
- Advising on reverse solicitation structures;
- Advising on fronting bank structures; and
- Reviewing existing and proposed financing structures, including grandfathering and amendment considerations.

ABOUT NOORDENJONES

NoordenJones is an internationally connected commercial law firm based in Hamburg, advising on German and English law. The firm focuses on Transport, Insurance & Reinsurance, Energy & Infrastructure, and Private Wealth. Across these sectors, NoordenJones provides the full spectrum of legal services, including Banking & Finance, Corporate & M&A, Commercial, Construction, Dispute Resolution, Regulatory, Restructuring & Insolvency, and Trade & Commodities. Working as one integrated team, NoordenJones is committed to delivering commercially focused, high-quality advice to its clients.

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