

The logo for Hogan Lovells, consisting of the name in a serif font inside a light green square.

Hogan
Lovells

CRD 6: Third Country Branches

**Financial Services Webinar
27 June 2024**

Speaking to you today

From our financial services regulatory team



Carlos Carbajo
Associate, Madrid



Jeffrey Greenbaum
Partner, Rome



Sébastien Gros
Partner, Paris



Sinéad Meany
Regulatory Lawyer,
London, Dublin



Eoin O Connor
Partner, Dublin



Richard Reimer
Partner, Frankfurt



Pierre Reuter
Partner, Luxembourg

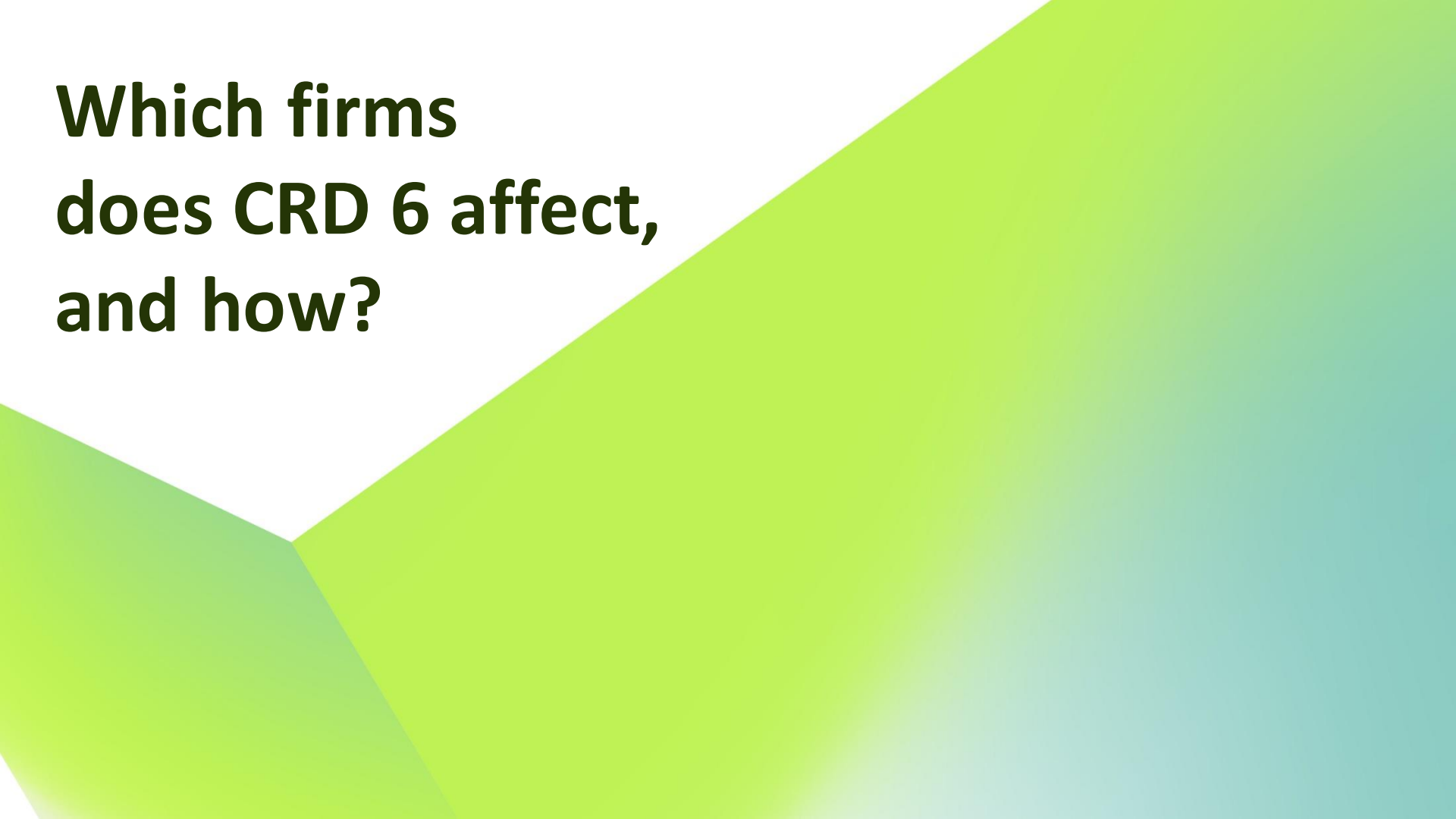


Jochen Seitz
Partner, Frankfurt

Agenda

- ▶ New requirement to become authorised as a third country branch
- ▶ Exemptions
- ▶ New minimum requirements
- ▶ Impact on existing third country branches
- ▶ Impact on existing subsidiaries
- ▶ Supervisory and Systemic issues
- ▶ Practical steps and what we can do to help

**Which firms
does CRD 6 affect,
and how?**

The background features abstract geometric shapes in shades of green and blue. A large, bright green triangle is positioned in the upper right, while a lighter green shape is in the lower left. The remaining space is filled with a soft blue gradient.

Key CRD6 milestones: branches

Timeline and timing messages

Publication in Official Journal

CRD 6 comes into force 20 days after publication

19 June 2024

18 months after CRD 6 comes into force

EU member states must have transposed the Directive into national law

EBA to publish draft standards on booking arrangements, reporting and supervisory colleges

10 January 2026

30 months after CRD 6 comes into force

All other provisions of CRD 6 come into effect

Including requirement to be authorised

EBA to publish guidelines on governance

10 January 2027

June 2024 onwards

Firms to assess impact and prepare for authorisations

10 July 2026

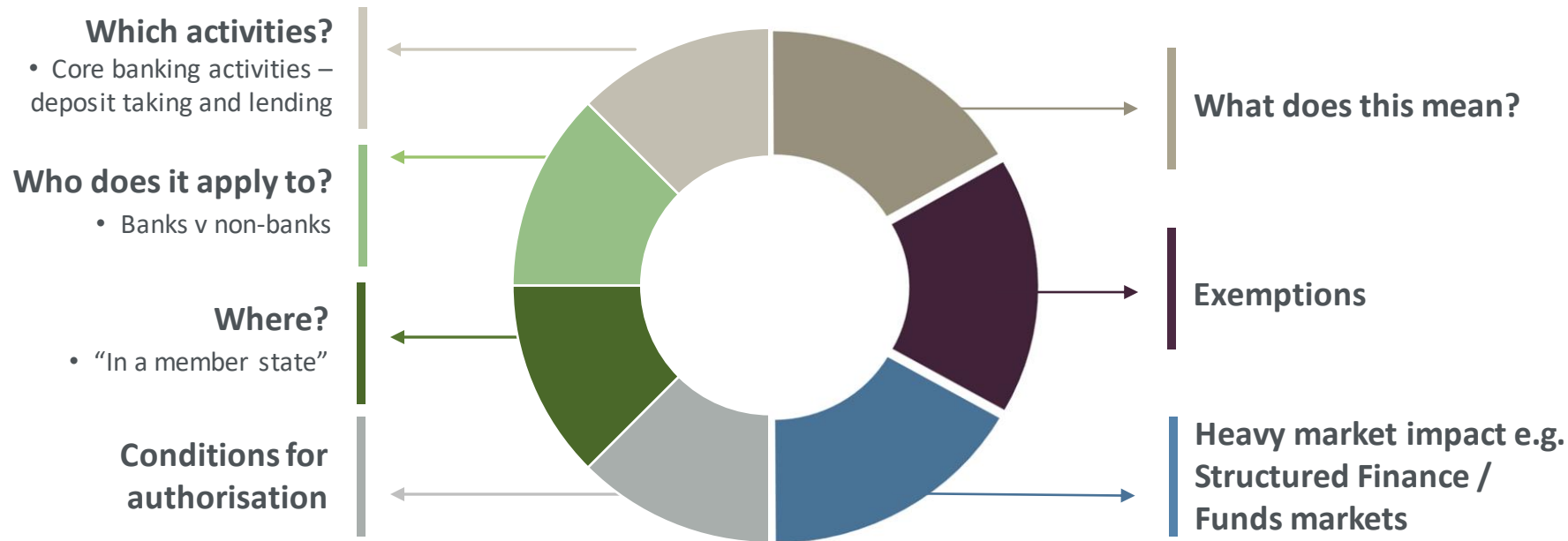
24 months after CRD 6 comes into force

Exception for pre-existing contracts expires

EBA to have published guidelines regarding minimum requirements for authorisation and the procedure for obtaining authorisation

Need for authorisation and its implications

New rule: EU member states must require undertakings established in a third country to establish a branch in their territory and apply for authorisation from the NCAs to commence or continue carrying on certain "core banking activities" in the relevant member state.



Can firms avoid the requirement to authorise?

Current national exemptions may expire

- Member states can currently set their own exemptions
- If the local approach conflicts with the new CRD6 minimum requirements, however, the member state will have to follow the new CRD6 rule instead.
- Exemptions that third country banks currently rely on to do business in the EU may cease to exist.

New exemptions under CRD 6

- Intragroup transactions
- Transactions with other credit institutions
- “Accommodating ancillary services” for MiFID investment services
- Reverse solicitation
- “Existing” contracts – entered into up to and including 10 July 2026

Existing Third Country Branches

The background features abstract geometric shapes in shades of green and blue. A large, bright green shape is on the left, transitioning into a lighter green and then a blue gradient on the right. The overall design is clean and modern.

Third Country Banks with existing EU branches

Consequences and requirements

- New EU wide minimum requirements
- Member States can gold plate (impose higher standards) beyond the minimum requirements
- So existing third country banks which have branches in the EU:
 - Could face higher requirements than today
 - Could face higher requirements in some member states than in others
- Third country branches will not be allowed to provide services into other member states
- Need for existing third country branches to reapply for authorisation?

Minimum requirements:

- Capital endowment
- Liquidity
- Internal governance
- Booking requirements – i.e. a need to maintain records of all business booked
- Third country undertaking being authorised in home country
- Access to information for the EU national competent authorities

Categories of third country branch

Class 1: “Risky” branches

Class 1 applies where any of the following conditions are met:

- total value of assets booked or originated by the TCB in the member state is equal to or higher than €5 billion;
- the TCB’s authorised activities including taking deposits from retail customers (provided that the amount of such deposits (i) is equal to or higher than 5% of the total liabilities of the TCB; or (ii) exceeds €50 million).
- The TCB is not a “Qualifying TCB”.

Class 2: Small and non-complex

A third country branch that does meet the conditions for Class 1 is categorised as Class 2.

Qualifying TCB

A “Qualifying TCB” is one where:

- the head undertaking of the TCB is established in a country that applies prudential standards and supervisory oversight at least equivalent to CRD 6;
- the supervisory authorities of the TCB’s head undertaking are subject to confidentiality requirements at least equivalent to CRD 6;
- the third country where the head undertaking is established is not listed as a high-risk third country that has strategic deficiencies in its AML/CTF regime.

The Commission will determine when these conditions are met in relation to a third country.

Class 1 TCBs are subject to:

- higher capital endowment requirements (2.5% of the TCB’s average liabilities for the previous 3 years / 10m EUR min);
- higher liquidity requirements;
- more onerous internal governance and risk controls; and
- more onerous reporting requirements (e.g. twice yearly).

Class 2 TCBs are subject to:

- lower capital endowment requirements (0.5% of the TCB’s average liabilities for the previous 3 years / 5mEUR min);
- lower liquidity requirements;
- less onerous internal governance and risk controls; and
- less onerous reporting requirements (e.g. annual only).

Qualifying TCBs can obtain additional benefits – e.g. a waiver from the liquidity and reporting requirements.

Requires Commission equivalence determination

Supervisory oversight

The background features abstract geometric shapes in shades of green and blue. A bright green shape is on the left, transitioning into a lighter green and then a blue gradient on the right. The overall design is clean and modern.

Supervisory and Systemic issues



New approach to supervisory oversight:

- more intensive and intrusive
- additional reporting, governance and prudential requirements
- monitoring booking arrangements



Identifying systemic risks

- EU wide supervisory colleges
- Aggregate ≥ 40 bn EU wide / ≥ 10 bn MS assets
- CRR 'systemic importance' definition



How can competent authority mitigate systemic risks?

- By requiring subsidiarisation
- Requiring structural changes
- Imposing additional capital, liquidity, reporting or disclosure requirements

Practical Steps

Countdown to 11 January 2027

- 1 Map your 'core banking service' activities in the EU
- 2 Determine whether exemptions apply
- 3 Ascertain whether national rules will impose additional requirements
- 4 Identify which business strategies will enable business to continue
- 5 Engage with national supervisors
- 6 Adopt new business strategy
- 7 Create and implement programme transformation plan
- 8 All new licences to be in place by 10 January 2027

What can we do to help?



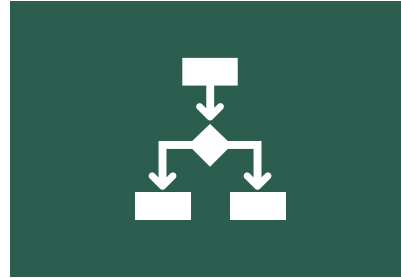
Advisory

Assess whether you are caught by the new authorization requirements, and if so whether you might be able to benefit from any of the new exemptions.



Advocacy

We help to ensure that national supervisors and EU decision makers understand real implications, including for the real economy.



Restructuring

Provide strategic advice on restructuring options to guide internal business decisions.



Licensing

Help you secure new authorizations where required across EU member states to allow you to continue to provide deposit taking lending, guarantees or commitments.



www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.