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BRIEFING

# Polish Banking Law: Transposition of CRD VI - Branch Requirement and Removal of Grandfathering Protection

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Poland's Parliament has adopted legislation implementing Directive 2013/36/EU as amended by Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 (CRD VI). The Act was published in the Journal of Laws on 14 September 2026.

The Act of 31 July 2026 amending the Banking Law and certain other statutes (the Act) introduces, among other changes, a new branch requirement for third-country banks and third-country non-bank entities that wish to carry out lending and deposit-taking activities in Poland.

Whilst the Act is broadly consistent with the requirements of CRD VI, a critical grandfathering provision protecting clients' acquired rights under pre-existing contracts was removed during parliamentary proceedings without sufficient justification.

## The Branch Requirement

New Article 41a of the Banking Law provides that third-country banks and third-country non-bank entities may carry out lending, deposit-taking and related activities on the territory of Poland exclusively through a branch, subject to limited exemptions. The exemptions include reverse solicitation (where the client approaches the institution on its own exclusive initiative), inter-bank transactions, intra-group transactions, and certain activities ancillary to investment services.

Article 41a enters into force on 11 January 2027, affording institutions an adjustment period following the Act's adoption.

## The Grandfathering Provision

CRD VI, in **Article 21c(5)**, provides an express grandfathering protection in the following terms:

*"In order to preserve clients' acquired rights under existing contracts, the requirement laid down in paragraph 1 shall be without prejudice to existing contracts that were entered into before 11 July 2026."*

This provision was specifically designed to protect clients – including borrowers who had taken loans from third-country banks and other institutions – from the disruptive consequences of the new branch requirement being applied retrospectively to their existing contractual relationships.

The Act, as originally drafted, included a corresponding domestic provision (Article 48) which would have given effect to this protection in Polish law. However, Article 48 was removed by the parliamentary subcommittee during its proceedings on 13 July 2026. The recordings of the subcommittee proceedings suggest that neither the members of Parliament, nor the parliamentary services, nor the Ministry of Finance sufficiently reflected on the purpose of the provision or on why the date of 11 July 2026 was correct, even though the subcommittee's meeting took place on 13 July 2026. The removal, therefore, appears to have been inadvertent rather than the result of a considered policy choice.

The Act contains no transitional or grandfathering provisions protecting clients under contracts entered into before 11 July 2026.

## Consequences for Third-Country Banks and Non-Banks

### Contracts Entered Into Before 11 July 2026

Institutions currently servicing Polish clients under agreements entered into before 11 July 2026 — including loan agreements or deposit arrangements – face the following position:

- Under Polish domestic law, there is no statutory protection for these contracts. From 11 January 2027, Article 41a will apply in terms, and there is no explicit carve-out for pre-existing arrangements.
- Under EU law, Article 21c(5) of CRD VI should, in principle, protect these contracts. The provision is mandatory in its terms, identifies its beneficiaries with precision, and is not subject to any condition or further implementing measure. There is a credible argument that it produces a direct effect and may be invoked before Polish courts and the Polish Financial Supervision Authority (**KNF**), notwithstanding its omission from domestic law. However, whether and how Polish courts and the KNF will accept direct reliance on the Directive will need to be carefully analysed in light of Poland's failure to implement this specific protection. This analysis is fact-specific and will depend on the nature of the institution, the contractual arrangements in question, and the supervisory approach adopted by the KNF.

### Risk of Loan Termination and Disruption to Borrowers

The most immediate and commercially significant risk arising from the removal of the grandfathering protection concerns existing relationships with Polish clients. The existing loan and credit arrangements between third-country institutions and Polish borrowers are a good example.

If a third-country bank or non-bank entity is required to operate through a Polish branch from 11 January 2027 but does not establish one, it may conclude that it cannot lawfully continue to service the existing loan. In such circumstances, the institution may seek to terminate or accelerate the loan, potentially relying on:

- an illegality clause (which typically entitles a lender to demand prepayment where performance of its obligations becomes unlawful in any relevant jurisdiction); or

- other contractual provisions addressing a material change in applicable law or regulatory requirements.

The lenders should also consider the legal basis for entering into an agreement with a Polish client. If such services were provided outside Poland, then, arguably, under the territoriality principle, CRD VI would not change that situation. However, the focus of CRD VI might be on the client's location, rather than on the place where the characteristic performance is rendered. Therefore, CRD VI might affect the test currently used to determine where the service is provided.

The consequence for borrowers might be unwelcome: they could face unexpected demands for early repayment and would need to seek alternative sources of funding at short notice, potentially in less favourable market conditions. The grandfathering provision in Article 21c(5) CRD VI was specifically designed to prevent precisely this outcome. Its removal from the Polish implementing Act – apparently without appreciation of its purpose – has created a significant lacuna in the protection of Polish borrowers.

Similar considerations apply to other services covered by Article 23c of CRD VI, including deposit arrangements and guarantees.

## Legal Avenues

The following legal avenues are available and should be considered by affected institutions and their clients:

| Avenue | Description |
|---|---|
| **Territoriality principle** | Institutions should review their position in the legal environment pre-dating the introduction of CRD VI to confirm where their services were provided. |
| **Direct effect of Article 21c(5) CRD VI** | Institutions and clients may seek to rely directly on Article 21c(5) before Polish courts and the KNF. Direct reliance on an unimplemented Directive provision requires careful analysis and is inherently uncertain. |
| **EU conforming interpretation** | Polish courts are obliged to interpret Article 41a of the Banking Law, to the greatest extent possible, in conformity with CRD VI – including its grandfathering requirement. |
| **Engagement with the KNF** | Institutions are encouraged to engage proactively with the KNF to understand its supervisory approach to pre-existing contracts and the application of Article 41a from 11 January 2027. |

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