

CSSF on mandatory notifications in a no-deal Brexit context



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Following the publication of Luxembourg laws of 8 April 2019^[1] (see our previous briefing here), the Luxembourg Financial Sector Supervisory Authority (CSSF) has issued two press releases aimed at undertakings for collective investment (UCIs) and/or their managers, and certain firms currently authorised in the United Kingdom (UK) which intend to continue their activities in Luxembourg following a withdrawal of the UK from the European Union (EU) without the conclusion of a withdrawal agreement (no-deal Brexit). UCIs and/or their managers established in the UK that are currently authorised entities under the UCITS Directive^[2] and/or the AIFM^[3] Directive respectively, as well as firms currently authorised in the UK under the provisions of MiFID II, CRD, PSD 2 or EMD^[4] will, from the date the UK leaves the EU, be considered as "third-country firms/entities". This means they shall no longer benefit from the relevant passporting regime and, as a result, will not be able provide their services in Luxembourg without authorisation by the CSSF.

UK firms (currently authorised under CRD, MiFID II, PSD 2 or EMD)

In the context of business continuation of such UK firms, the CSSF has highlighted a distinction between the conclusion of new contracts and the continuation of existing activities.

- UK firms that intend to continue their business and conclude new contracts in Luxembourg are required to be duly authorised by the CSSF and should submit an application for authorisation as soon as possible, keeping in mind that the authorisation process can take up to 12 months;
- UK firms and existing activities: the CSSF has announced a transitional period of 12 months following the withdrawal date during which UK firms providing financial services may continue their activities. This period will apply only to "contracts that have entered into force before Brexit (existing contracts) and contracts concluded after Brexit with close links

to existing contracts (closely-related contracts)". In order to benefit from the transitional regime, firms must notify the CSSF no later than 15 September 2019 of their intention to continue their business activities through the notification portal (to be introduced on the CSSF website shortly). The CSSF intends to assess each notification on a case by case basis – to that extent, firms will have to provide inter alia sufficiently detailed information on pre-no-deal Brexit passporting of services to Luxembourg. The CSSF will, post-assessment, inform firms as to whether or not they will be able to benefit from the transitional regime.

UCIs and management companies (authorised under UCITS Directive and/or AIFMD Directive)

UCIs and/or their managers that aim to continue to provide services in Luxembourg after a no-deal Brexit, must notify their intention to do so to the CSSF no later than 15 September 2019, through the notification portal. Entities currently authorised under the UCITS Directive and the AIFM Directive are required to submit separate notifications for both licenses, while those who have already applied for an authorisation nevertheless have to submit a Brexit notification.

Following this notification, these entities will have to submit to the CSSF, no later than 31 October 2019, a "corresponding application for authorisation, or, as the case may be, the corresponding notification or information on any action taken otherwise, depending on the nature of the activities they intend to pursue" after a no-deal Brexit and preparatory actions taken so far. Subsequently, the CSSF will examine such notifications on a case-by-case basis and may grant (within 10 business days from the submission) the aforementioned entities the possibility to benefit from the transitional regime, ie to continue their activities in Luxembourg following a no-deal Brexit. The CSSF has set the duration of the transitional regime to 12 months following such a no-deal withdrawal.

[1] Law of 8 April 2019 on the measures to be taken in relation to the financial sector in the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union; Law of 8 April 2019 on the measures to be taken in relation to the financial sector in the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and amending: the Law of 13 February 2007 relating to specialised investment funds, as amended; and the Law of 17 December 2010 relating to undertakings for collective investment

[2] Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)

[3] Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers

[4] Directive 2014/65/EU of 15 May 2014 on markets in financial instruments;

Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (recast);

Directive 2015/2366/EU of 25 November 2015 on payment services in the internal market; and

Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (recast).