

Bracing for Brexit: Luxembourg sets notification procedures for UK firms, UCIs and their managers in the event of a hard Brexit



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On 15 July 2019, the CSSF published two press releases (19/33 and 19/34) directed at (i) UK firms and (ii) UCITS management companies and AIFMs, clarifying actions to be taken by UK entities in anticipation of a hard Brexit.

Once again, the Luxembourg financial regulator demonstrates a clear intention to view the UK as a key partner. This statement follows the CSSF press release 19/18 regarding the publication of laws on 8 April 2019 relating to measures to be taken in relation to the financial sector in case of a withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (the Brexit Law) which had set a first framework ensuring the performance of activities in a post-Brexit context.

The CSSF confirms its initial position towards currently authorised UK entities by granting the benefit of a transitional regime, ensuring both the stability of financial markets and the protection of investors. However, UK firms (under CRD, MiFID II, PSD2 or EMD) (the UK Firms) which have not taken the necessary steps in anticipating a hard Brexit scenario might take the strain. Indeed, UK Firms who intend to conclude new contracts in the context of Brexit shall be excluded from the transitional period, opening the road to a 12-month uncertainty period.

CSSF Press Release 19/34

Post Brexit status: third-country entities

In the event of a hard Brexit, the CSSF underlines that UK authorised entities shall be considered as "third- country" entities, leading to the loss of passporting rights under relevant EU directives.

Continuity of activity: a 12-month transitional period to be observed on a case-by-case basis

To guarantee the continuity of existing contracts, the CSSF may, on a case-by-case basis, grant UK UCIs and/or their managers the possibility to continue their activities in Luxembourg for a limited period following the date of a hard Brexit (the Transitional Period).

The benefit of this Transitional Period shall be introduced by means of a 2-step notification procedure, consisting of the submission of a "Brexit notification" and the subsequent application(s) and/or notification(s).

2-step Brexit notification procedure: UK authorised entities and UK entities pending authorisation both concerned

Currently authorised UK entities (under UCITS and AIFM directive) and UK entities which have applied for authorisation with the CSSF shall both be required to submit a Brexit notification to the CSSF.

- 1st step to be undertaken prior to 15 September 2019:

all impacted entities will be required to notify the CSSF of their intention to continue providing services in Luxembourg following the Brexit date through an online dedicated notification portal to be opened by the CSSF in the following weeks.

- 2nd step to complete by 31 October 2019:

all UK entities shall be required to submit, either the corresponding application for authorisation, or the corresponding notification, depending on the nature of the activities which shall be undertaken after a hard Brexit and/or the steps undertaken to address the loss of passporting rights.

CSSF Press Release 19/33

UK Firms' regime: a two-tier system

The impact of a hard Brexit on UK Firms has become clearer. The Luxembourg regulator differentiates two regimes, whether UK Firms intend to conclude new contracts, or pursue existing contracts. UK Firms conducting existing activities shall be temporarily spared as they shall benefit from the Transitional Period. However, UK Firms who have not anticipated a "worse-case" Brexit scenario (by submitting applications for authorisation before the CSSF prior Brexit date) might face major setbacks.

UK Firms: a 12-month smooth transitional regime for existing activities

The CSSF ensures a smooth transition by granting a similar 12-month transitional regime to UK Firms' existing activities. This Transitional Period shall only apply to contracts entered into force

prior to Brexit as well as contracts concluded after Brexit with close links to existing contracts. UK Firms will be required to complete a notification procedure by 15 September 2019. This temporary measure reflects the CSSF's will to protect depositors, investors and consumers.

Uncertainty for UK Firms' future business relationships: a potential 12-month hazard

UK Firms which intend to continue their business and conclude new contracts in Luxembourg shall be required to apply for authorisation before the CSSF as soon as possible. This application process, which could take up to 12 months, might leave UK entities who had not taken precautionary measures, in a potential chaotic situation as they will be required to cease all activity as of the date of a hard Brexit. The CSSF shall assess each notification received and inform UK Firms individually as to whether they can benefit or not from the transitional regime.

Conclusion - Brace for impact

This statement has confirmed that UK financial services firms will benefit from short-term temporary measures. However, as the scenario of a hard Brexit becomes more likely, only a careful and level-headed handling of authorisation procedures may afford businesses some relief from a potentially catastrophic scenario.