

New communication from the CSSF to UK managers in the context of a hard Brexit



Mr. Jeremie Schaeffer
Partner



Mr. Diana Toth
Principal

jeremie.schaeffer@atoz.lu diana.toth@atoz.lu

On 11 October 2019, the Luxembourg supervisory authority, the CSSF, issued a new press release in relation to the mandatory notification process in the context of Brexit to the attention of all UK managers of alternative investment funds ("AIFs") established in Luxembourg.

This communication follows the releases 19/41 and 19/43 on the opening of an e-desk portal for the purpose of the mandatory notification.

The CSSF reiterates its warning whereby, if the UK leaves the EU without an agreement on 31 October 2019 (a "hard Brexit"), UK managers which have not submitted a notification through the dedicated portal, will not be entitled to continue their activities under the benefit of the transitional period provided for under the laws of 8 April 2019 on Brexit (the "Brexit Laws"), and will therefore be considered as "third-country managers" as from 1 November 2019, and lose the benefit of the EU passport.

These UK managers will be required to seek, before 31 October 2019, the approval of the investors of the AIFs they manage in order to remain as a third-country manager following a hard Brexit. This possibility is, however, limited only to those AIFs whose direct or indirect investors are professional investors and/or well-informed investors under certain specific sectorial or local laws.

Pursuant to the communication, the CSSF "reserves the right to publish a list of those UK managers" which have not submitted a notification through the dedicated Brexit portal, or have not provided a copy of the documents required by the CSSF to demonstrate that the managers have received the approval of the investors of the AIFs they manage in order to remain as a third-country manager.

This blame and shame approach is meant to put additional pressure on those UK managers

which have not taken the necessary steps further to the previous CSSF communications.

It should be noted that UK managers that have already submitted a notification through the Brexit portal may also opt for continuation as a third-country manager, and therefore give up their right to benefit from the transitional period, in which case they shall seek the approval of the investors of the AIFs they manage, under the form and subject to the limits described above.