

New mandatory CSSF notifications in the context of Brexit: what you will need to do

On 15 July 2019, the Luxembourg financial sector regulator (CSSF) published two new Brexit-related press releases (19/33 and 19/34), in which new mandatory notifications for UK entities are detailed. You will find below a summary of these new requirements.

Mandatory CSSF notifications for 12-month transitory regime

The CSSF reminded firms that in case of a hard Brexit, UK firms authorised under the major EU passporting regimes will, subject to the considerations below, no longer be able to make use of their current passporting rights to access the Luxembourg market.

UK firms authorised under CRD¹, MiFID², PSD³, or EMD⁴

Firms passported into Luxembourg prior to hard Brexit may be able to continue to rely on their current passporting rights for a transitional period of 12 months following the date of hard Brexit. This transitional regime will be available with respect to contracts that have entered into force before Brexit and contracts concluded after Brexit with close links to existing contracts.

Any firms that wish to make use of this transitional regime are required to notify the CSSF thereof no later than 15 September 2019. A notification after such date may prevent firms from benefiting from the transitory regime.

UK Undertakings for collective investment (“UCIs”) and their managers

A second press release targets UCIs and/or their managers established in the UK that are currently authorised under the UCITS Directive or the AIFM Directive.

Such entities are required to notify the CSSF of their intention and way forward to continue to provide services in Luxembourg in case of a hard Brexit. **This notification will have to be made no later than 15 September 2019.**

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¹ Capital Requirements Directive
² Markets in Financial Instruments Directive
³ Payment Services Directive
⁴ E-Money Directive

A corresponding application for authorisation, and/or a notification regarding actions taken to address the loss of passporting rights then must be submitted to the CSSF as soon as possible, but no later than 31 October 2019.

According to the CSSF, it may, on a case-by-case basis, grant impacted UCIs and/or their managers, the possibility to continue their activities in Luxembourg for a 12-month period after hard Brexit. The decision to grant the benefit of a transitory regime will be notified within 10 business days of the submission of the required information to the CSSF.

A notification will also be required for entities that have already submitted an application for authorisation to the CSSF in the context of Brexit.

Management companies authorised under both UCITS and the AIFM Directives (so-called “super management companies”) will be required to proceed with two separate Brexit notifications (one for each licence).

Both transitory regimes would be available for 12 months following the date of hard Brexit and would only be available to such entities having made the above notifications within the relevant timeframes. According to the CSSF a dedicated notification portal will be opened on the CSSF website in the coming weeks, and further information on the notification procedures will be released in due course.

Given the above deadlines, firms should be prepared to act quickly upon the opening of the CSSF notification portal, to make the notifications in line with the relevant timeframes.

We will of course be happy to assist you with the required notifications, to make sure you can benefit from the transitory regime and avoid any disruption to your business

Upcoming CSSF communication regarding Brexit-related investment breaches

The CSSF have also announced that they would, in due time, publish information regarding Brexit-related investment breaches by Luxembourg UCIs, and potential transitory provisions in this respect.

We will of course monitor all Brexit-related developments and provide you with further information on the above transitory regimes as soon as it becomes available.

For any questions regarding the above or your Brexit planning more generally, please contact your usual Linklaters contact.

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