

Brexit : Delegation and UK temporary regimes

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On 25 January 2019, the CSSF published a Press Release 19/05 on the delegation of investment management/portfolio management and/or risk management activities to undertakings in the United Kingdom ("UK") and the temporary permissions regime in the UK.

Delegation of management activities to undertakings in the UK

In its press release, the CSSF confirms that it will endeavour to have the required cooperation between the Financial Conduct Authority ("FCA") and the CSSF in place on 29 March 2019 in the event of a "no-deal" Brexit. On this basis, the delegation of investment management/portfolio management and/or risk management to UK undertakings will continue to be possible without any disruption post-Brexit, provided that the UK undertaking continues to fulfil all applicable delegation requirements.

On 1 February 2019, ESMA issued a press release announcing that ESMA and EU securities regulators have agreed "no-deal Brexit Memoranda of Understanding ("MoUs")" with the FCA and reinforcing the CSSF's position.

In particular, ESMA announced that a multilateral MoU has been adopted between the EU securities regulators and the FCA covering supervisory cooperation, enforcement and information exchange between individual regulators and the FCA, which will allow them to share information relating to, amongst other things, market surveillance, investment services and asset management activities. This allows certain activities, such as fund manager outsourcing and delegation, to continue to be carried out by UK-based entities on behalf of counterparties based in the EEA.

The MoUs form part of the preparations should the UK leave the EU without a withdrawal agreement and will only take effect in the event of a no-deal Brexit scenario. The MoUs are similar to those already concluded on the exchange of information with many third-country supervisory authorities.

Operating and marketing in the UK by firms and investment funds established in Luxembourg

The CSSF indicates that a temporary permissions regime ("**TPR**") has been operating in the UK since 7 January 2019 for firms and investment funds passporting activities into the UK. Luxembourg firms and investment funds that have notified the FCA under the TPR will be authorised to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period after 29 March 2019 while seeking full FCA authorisation. The regime will also allow inbound marketing of EU funds in the UK that is currently available, to continue temporarily.

Firms and funds will need to notify the FCA that they wish to use the TPR by submitting the relevant notification before the close of business on 28 March 2019. Firms or funds that have not submitted a notification by that date will not be able to use the TPR.

A detailed explanation of the process to be followed is provided on the FCA's website:

<https://www.fca.org.uk/brexit/temporary-permissions-regime>.

Luxembourg firms and funds making use of the TPR must inform the CSSF of any notifications made under the TPR, as soon as they have submitted their notification, by sending an email notification to: opc@cssf.lu.

New Luxembourg Bill of Law (in case of no-deal Brexit)

On 31 January 2019, the Luxembourg Government submitted Bill 7401 to the Luxembourg Parliament regarding measures to be taken in relation to the Luxembourg financial sector, in the event that the UK leaves the EU without a withdrawal agreement (see our Newsletter December 2018) ("**no-deal Brexit**") and in light of the initiatives at EU level and in other Member States to prepare for such a scenario. Bill 7401, which is still in the process of adoption, aims at amending various Luxembourg laws, including the Law of 17 December 2010 on undertakings for collective investment, as amended (UCI Law) and the Law of 12 July 2013 on alternative investment fund managers, as amended (AIFM Law).

For more information on Bill 7401, see our article "Brexit: New Luxembourg Bill of Law" in this Newsletter.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

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