

No-Deal Brexit This Week? Some EU Transitional Regimes for MiFID Firms May Require Immediate Action

8 April 2019

[As we have reported before](#), a number of European Union countries have established temporary relief for UK-based firms providing investment services under the MiFID passport. Firms benefitting from this transitional relief will be able to ensure some degree of continuity for their operations after a hard Brexit (i.e., one with no transitional period), which – although unlikely—could come as early as this Friday (12 April). In some countries, urgent action is needed if a firm wants to rely on the local transitional regime.

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Unfortunately, there is no harmonised temporary regime in Europe, and any UK-based firm currently using a MiFID passport (which includes many private equity “adviser/arrangers”) should look at the different regimes in each EU member state where it currently provides investment services.

The good news is that, in most countries where a temporary regime is envisaged, the regime applies automatically, with no additional conditions other than for the firm to have passported investment services in the relevant jurisdiction before Brexit day. This is the case in **Germany, Luxembourg, Spain, Sweden** and **Norway**. Regulators will, however, issue further guidance after Brexit day and may introduce additional requirements (and such guidance is expected in **Germany, Luxembourg** and **Sweden**). Use of the regimes is normally limited to services provided to professional clients.

Some other countries are allowing UK MiFID firms to apply for permission under an existing regime for “third country” (i.e., non-EU) firms. This is the case in **Belgium**, where notification is a straightforward process and no approval is required. The Belgian regime is expected to be permanent. Similarly, in **Denmark**, the regulator has made available an existing third-country regime to UK MiFID firms. That regime is, however, temporary (lasting for 12 months from Brexit day), and a subsequent application for a permanent licence will be necessary. The Danish FSA must review the application, but approval is generally being given very quickly. The Danish regulator is maintaining a [list](#) of UK firms that have been granted the temporary license.

In **Italy, Finland** and the **Netherlands**, an application is also required for UK MiFID firms to be able to continue their operations after Brexit day. In Italy, the regulator

(CONSOB) issued a [press release](#) at the end of March stating that UK firms that decide to discontinue investment services in **Italy** must inform their clients and CONSOB of the steps taken to ensure the orderly termination of activity three days before Brexit. Alternatively, firms can apply to join a temporary regime but must apply **three days before Brexit**. In case of a hard Brexit on Friday, applications would need to be submitted on **Tuesday 9th April**.

Similarly, in **Finland**, provided that a UK investment firm submits a cross-border authorisation application as a third-country firm to the FIN-FSA before Brexit, that UK firm can continue to provide investment services (together with ancillary services) to professional clients and eligible counterparties in accordance with the terms of its EU passport in Finland until the FIN-FSA has processed the firm's authorisation application. In the **Netherlands**, a simple notification/registration has to be filled in, but again this must be done before Brexit.

Firms should note that making a notification in a given member state is likely to indicate that regulated investment activity is carried on there, and may give rise to an expectation on the part of the local regulator that an application for permanent authorisation (or a confirmation that the firm has ceased activities) will follow in due course. Moreover, firms should be aware that they will become subject to MiFID II rules as they are implemented and interpreted in the target EU member state; in certain EU member states there is very little or no guidance as to the application and scope of these rules in connection with, for example, private equity funds. Therefore, firms should consider carefully whether they wish to make an application in view of the scope of their activities in a given jurisdiction.

We can assist you with these notification requirements in coordination with local counsel. Please contact us if you would like further advice.



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