

EUROPEAN ECONOMIC AREA MEMBER STATE PREPARATIONS FOR BREXIT

During 2019, European Economic Area (EEA) member states announced a series of domestic measures which were intended to mitigate the impact of a “no deal” Brexit on the financial services sector (the “**No Deal Measures**”). The UK formally withdrew from the European Union and the EEA on 31 January 2020. As the result of a withdrawal agreement approved in October 2019 and ratified in January 2020, UK firms were able to continue to provide financial services into the EEA until 31 December 2020 (the **Implementation End Date**) (with the result that the originally published transitional measures were not applied during the course of 2020). On 30 December 2020, the EU and UK signed the Trade and Cooperation Agreement (TCA). The UK ratified the TCA on 31 December 2020 and the EU are applying the agreement provisionally until the European Parliament has been able to ratify, currently expected by 28 February 2021. Under the terms of the TCA, the UK no longer benefits from Single Market access rights (passporting rights) meaning UK firms are now treated in the same manner as other third country firms with access rights being limited accordingly. This table outlines the current state of any applicable EEA transitional measures that are in place and sets out alternative domestic regimes which UK firms may consider using to provide financial services.

In the table below, “banking services” means the activities listed in Annex I to the recast Capital Requirements Directive IV, “investment services” means the activities listed in sections A and B of Annex I to the recast Markets in Financial Instruments Directive II and “payment services” means the activities listed in Annex I of the recast Payment Services Directive II. Where other areas of financial services legislation are covered by any measures, please note that we have not included them in this table. We note that this table is for information purposes only and has been compiled on the basis of publicly available information. It does not constitute, nor is it intended to constitute, legal advice from Allen & Overy LLP. Legal advice should be sought before a UK firm seeks to rely on any of the regimes outlined below.

This document is up to date as of 19 January 2021. We will no longer be making further updates to this document.

Jurisdiction	Status of "No Deal Measures"?	Further details on "No Deal Measures"?	Transitional relief after the Implementation End Date?	Other domestic regimes which may be used?	
				Physical presence?	Cross-border regimes (excluding reverse solicitation)?
Austria	N/A	N/A	N/A	<p>In respect of banking and payment services, there is no specific Austrian third country licensing regime.</p> <p>In respect of MiFID II investment services, UK firms may consider benefitting from the third country firm licensing regime. This regime requires the firm to establish a physical presence in Austria and requires that an application be made to the Austrian regulator. Investment firms may then provide investment services to retail or opt-up professional clients in Austria (see s21 Austrian Securities Supervision Act/"WAG 2018", which implements Article 39 of MiFID II).</p> <p>In general, it should be possible that binding obligations entered into prior to the implementation end date can be performed also thereafter. However, this only applies if there is no possibility to terminate the respective agreements. This should be assessed on a case-by-case basis.</p> <p>Investment firms, credit institutions and payment service providers have the possibility to rely on reverse solicitation, provided that that the client has approached the investment firm on its own unsolicited initiative and has requested the specific service or product. This is a case-to-case decision and a grey area. The Austrian regulator, FMA, would likely follow the approach by ESMA which is outlined in their Q&A on MiFID II and MiFIR investor protection and intermediaries topics.</p>	-

<p>Belgium</p>	<p>Article 20 of the Law of 3 April 2019 concerning the withdrawal of the United Kingdom from the European Union (the Law of 3 April 2019) provides a framework for further No Deal Measures to be taken by the Belgian government.</p> <p>At this stage, no specific No Deal Measures have been taken by the Belgian government with respect to banking, investment or payment services.</p>	<p>The specific features of the No Deal Measures (if any) will be determined by Royal Decree.</p> <p>Concerning existing business (pre-Brexit)</p> <p>Article 20 of the Law of 3 April 2019 grants special powers to the Belgian government to take certain measures in order to ensure the on-going validity and the provision of services agreed under existing contractual relationships with financial service providers who, due to Brexit, have lost their licence, their registration or any other form of authorisation that is needed to provide the relevant services or conduct the relevant activities in Belgium. This is referred to as the “run-off regime” as it relates to existing business only and not to new business post-Brexit.</p> <p>Such measures can include (without limitation) granting a special authorisation to such financial services providers to allow them to provide services or to conduct activities in Belgium or a declaration of equivalence of a specific third-country regime with that applicable to EEA financial services providers. The preparatory works to the Law of 3 April 2019 further suggest that the Belgian government could use this authorisation to determine which events in the context of the execution of a contract (eg “life cycle events”), would be considered as the provision of a new service triggering the application of licensing, authorisation or other registration requirements.</p> <p>Concerning new business (post-Brexit)</p> <p>Article 20 of the Law of 3 April 2019 also authorises the Belgian government to grant temporary permissions to financial service providers to carry out their business in Belgium pending receipt of their final license or authorization. The regime can apply for maximum 12 months and it will in principle not be possible to provide services to consumers under this regime. This remains subject to final adoption of the required implementing Royal Decree.</p> <p>For the avoidance of doubt, we note that at this stage, no specific No Deal</p>	<p>N/A – Belgian Government has not yet adopted any No Deal Measures with respect to banking, investment or payment services.</p>	<p>For banking services, UK firms should submit a local branch application to the National Bank of Belgium.</p> <p>For payment services, UK firms should submit a local branch application to the National Bank of Belgium.</p>	<p>For investment services, UK firms can (subject to certain conditions, such as the equivalence and reciprocity condition) rely on a Belgian law exemption which permits third country investment firms to provide certain investment services to per se professional clients, eligible counterparties and persons established in Belgium with UK nationality or the nationality of a State in which this investment firm has established a branch.</p> <p>This regime relates to both existing and new business with both existing and new clients, subject to compliance with the applicable conditions. UK firms that want to make use of this regime must make a notification to the Belgian Financial Services and Markets Authority prior to carrying out such business in Belgium.</p>
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		Measures have been taken by the Belgian government with respect to banking, investment or payment services.			

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Bulgaria	N/A	N/A	N/A	<p>In respect of banking services, Bulgaria has a licensing regime for branches of third country firms. In order to benefit from this regime, firms will need to make an application to the Bulgarian National Bank.</p> <p>In respect of investment services, Bulgaria has a licensing regime for branches of third country credit institutions. In order to benefit from this regime, such branches will need to make an application to the Bulgarian Financial Supervision Commission.</p> <p>There is no domestic regime specific to the provision of payment services unless these are conducted through a credit institution (in which case firms should make an application as a credit institution to the Bulgarian National Bank as described above).</p>	-
Croatia	N/A	N/A	N/A	<p>UK firms may wish to consider conducting their activities in Croatia through the domestic regime for third country firms.</p> <p>The regime for investment services requires an application to be made to the Croatian Financial Services Supervisory Agency and (in certain cases) the Croatian National Bank. Such an application requires a physical presence by the applicant firm in Croatia unless the activity can benefit from a relevant exemption.</p>	-
Cyprus	On 22 December 2020, the Cyprus Securities and Exchange Commission announced a temporary permission regime (TPR) for UK firms providing investment services to professional clients and eligible counterparties.	The Cyprus Securities and Exchange Commission has established a TPR which does not require a physical presence in Cyprus for UK firms when providing investment services (including when performing investment activities) solely to professional clients and eligible counterparties, based in Cyprus.	UK firms who wish to make use of the TPR must submit the relevant notification form by 31 December 2020 at TPR@cysec.gov.cy .	UK firms may wish to consider conducting their activities in Cyprus through its domestic regime for third country firms (the Cypriot FS Regimes). The Cypriot FS Regimes apply to (but are not limited to) banking, investment services and payment services. These regimes may be adopted by UK firms as third country firms on either a branch or subsidiary basis. They require an application to be made to the Central Bank of Cyprus (for credit institutions and payment services firms) and the Cyprus Securities and Exchange Commission (for investment firms). Such an application requires a degree of physical presence in Cyprus.	-
Czech Republic	The “No Deal Measures” introduced by the Czech law fell away on 31 January 2020.	N/A	N/A	UK firms may wish to consider conducting their activities in the Czech Republic through its domestic regime for third country firms. This applies to banking, investment and payment services and requires an application to be made to the Czech National Bank. Such an application requires a physical presence by the applicant firm in the Czech Republic.	As a general rule, firms from outside the EU are required to have a physical presence – a subsidiary or branch – and licence from the Czech National Bank. Pure cross-border regimes are generally not possible (except for firms on the ESMA register – pursuant to section 48 of Regulation (EU) 600/2014).

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Denmark	<p>UK firms were encouraged to rely on the existing Danish third country licensing regime. This envisaged the granting of a temporary licence to UK firms in the event of a "no deal" Brexit. This temporary license has now fallen away since a "no deal" Brexit did not occur.</p> <p>On 20 August 2020, the Danish FSA published a press release on its website on the position of UK credit institutions and investment companies wanting to provide investment services and ancillary services to eligible counterparties and <i>per se</i> professional clients in Denmark on a cross-border basis post the transitional period expiring on 31 December 2020. Accordingly, it will be possible to apply for a new third country license (provisional/temporary) by 15 October 2020 at the latest with the application forms being available on the Danish FSA's website on 14 September 2020. Where firms apply post 15 October 2020, there is no guarantee that the licence will be granted prior to 1 January 2021.</p> <p>The Danish FSA has confirmed that credit institutions, investment firms, UCITS management companies and AIFMs with top-up permissions can apply for the third country licence in regards to their MiFID investment services and ancillary services. Where a third country licence is granted, it be valid for up to 18 months from 1 January 2021, i.e. it will expire on 30 June 2022. The third country licence is conditional on certain factors.</p>	N/A	N/A	<p>The existing third country regime will apply to UK firms from 31 December 2020.</p> <p>Credit institutions and investment firms as well as UCITS management companies and AIFMs with a top-up permission providing investment services or carrying out investment activities can apply for a third country licence in regards to these services.</p> <p>The third country firm regime applies to firms with branches and those providing services on a cross-border basis to <i>per se</i> professional clients and eligible counterparties in Denmark. The licence will cover both existing and new clients.</p> <p>In order to obtain the third country licence, firms will need to submit an application to the Danish regulator.</p>	The third country licensing regime would enable UK firms to provide investment services and carry out investment activities on a cross-border basis into Denmark.
Estonia	N/A	N/A	N/A	-	-

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Finland	UK firms are encouraged to rely on the existing Finnish third country licensing regime. By applying for the cross-border licence before the Implementation End Date, UK firms will receive temporary permission to continue to offer and provide investment services to both new and existing professional clients in Finland until their third country licence has been processed.	N/A	UK firms are encouraged to rely on the existing Finnish third country licensing regime. By applying for the cross-border licence before the Implementation End Date, UK firms will receive temporary permission to continue to offer and provide investment services to both new and existing professional clients in Finland until their third country licence has been processed. The regulator has indicated that it will start granting third country cross-border licences in early 2021 (see adjacent column for conditions attached to such a regime).	There is no cross-border licence available for banking business. An application to conduct banking services would typically require a physical presence in Finland by the applicant firm. UK firms can also set up a branch in Finland and apply for a third-country branch licence.	UK firms can apply for a licence to provide investment services on a cross-border basis to <i>per se</i> professional clients and eligible counterparties in Finland post-Brexit.
France	Framework law is in force. Further application would require further secondary legislation.	N/A	N/A	-	Under the French inter-dealer exemption, a third country firm would not be subject to the obligation to establish a branch in France if, without providing any other investment services into France, it enters into transactions for own account in financial instruments where: (i) the counterparty is a French credit institution, investment firm, or public institution or (ii) transactions are entered into on a regulated market, multilateral trading facility or organised trading facility. This exemption is only an exemption from the requirement to be appropriately licensed when carrying out dealing on own account.
Germany	No longer available. Previously, the exercise of transitional relief was contingent on whether and how the German regulator chose to exercise its powers under the German Brexit law.	N/A	N/A	-	-
Greece	Greek Brexit law would only have applied for a transitional period ending on 31.12.2020 in the event of a “no deal”. However, it does contain discretion for the Minister of Finance to extend the application of the transitional period provided for in the Greek Brexit Law.	N/A	No measure is currently in place and no information on the intentions of the Greek Government is publicly available. Please see column 2 (“Status of No Deal Measures”) in relation to the discretion of the Minister of Finance to extend the transitional period provided for in the Greek Brexit Law.	UK firms may wish to consider conducting their activities in Greece by using the third country firm licensing regime. This permits third country credit institutions and investment firms to provide banking and investment services (as appropriate) into Greece. An application is required to be made to the Greek regulator and applicant firms are required to have a physical presence in Greece.	-
Hungary	N/A	N/A	N/A	-	-
Iceland	N/A	N/A	N/A	UK firms may wish to consider conducting their activities in Iceland by using the third country firm licensing regime. This requires an application to the Icelandic Financial Supervisory Authority.	-
Ireland	Law adopted (but could only be triggered in the event of a “no deal” Brexit).	N/A	N/A	UK firms may consider using the Irish third country licensing regime as applicable to banks. However, this regime requires a physical presence in Ireland and a full bank licence application. It does not cover any cross-border business that UK firms may wish to conduct in Ireland.	There is an exemption for third country firms in relation to the cross-border provision of investment services to eligible counterparties and <i>per se</i> professional clients. This is subject to certain further conditions as a matter of Irish law.

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Italy	<p>‘Hard Brexit’ Law adopted (but guidance from Italian authorities indicated that it was no longer be applicable).</p> <p>On 1 January 2021, Article 22 of Law Decree No. 183 of 31 December 2020 entered into force providing a transitional regime post the Implementation End Date.</p>		<p>Article 22 provides that UK banks, UK MiFID firms and UK EMIs with a branch in Italy can continue to operate in Italy for six months provided they filed an application for authorisation by 31 December 2020.</p> <p>For MiFID services, this regime applies exclusively to the performance of services to professional clients and eligible counterparties.</p> <p>During the regime, only ordinary management of existing positions is allowed (i.e. no new clients/ no new contracts) with the exception of OTC derivatives for which the management of life cycle events is permitted even if it may imply amendments to existing positions or new contracts.</p>	UK electronic money institutions with a branch in Italy can apply for the third country firm licensing regime. Such firms may also apply for a license pre-Brexit. The relevant regulators would be the Bank of Italy.	UK firms can apply for the third country firm cross-border licensing regime available to banks and investment firms. Such firms may also apply for a license pre-Brexit. The relevant regulators would be the Bank of Italy (for banks) and CONSOB (for investment firms).
Latvia	N/A	N/A	N/A	-	-
Liechtenstein	The Liechtenstein Financial Market Authority (FMA) has published an Instruction 2020/9 relating to Article 35c of the Banking Ordinance (Article 35c BankV) which entered into force on 1 December 2020.	N/A	<p>Article 35c BankV was approved by the Liechtenstein government at the end of November 2020 to enable UK banks and investment firms to provide cross-border investment services, investment activities and ancillary services to eligible counterparties and/or professional clients in Liechtenstein from the end of the Brexit transition period until 31 December 2022.</p> <p>The Instruction provides an overview of the notification requirements under Article 35c BankV. Activities cannot be commenced or continued until the FMA has confirmed the completeness of the submitted notification.</p> <p>The rules will apply initially until 31 December 2022 or until the date of entry into force of an equivalent equivalence decision at the EEA level.</p>	-	-
Lithuania	N/A	N/A	N/A	-	-

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Luxembourg	On 23 December 2020 and in the context of the Luxembourg regime regarding third country firms providing investment services, Regulation CSSF N° 20-09 was published. Please refer to column 6 for more details of the regime. This regulation amends Regulation CSSF N° 20-02 by including the UK in the list of third countries with regimes deemed equivalent to Luxembourg law regarding the provision of investment services.	N/A	N/A	UK firms may wish to consider the third country firm licensing regime. This would require firms to submit an application for an authorisation to the CSSF as soon as possible where they cannot otherwise benefit from an exemption. UK firms should be mindful that the granting of an authorisation can take up to 12 months following the reception of a complete application file and that UK firms that have not received the necessary authorisation are required to cease all business as of the Implementation End Date. It should be noted that an equivalence decision as regards the third country taken by the CSSF is prerequisite of the regime. On 23 December 2020, Regulation CSSF N° 20-09 was published which amends Regulation CSSF N° 20-02 to include the UK in the list of third countries with regimes deemed equivalent to Luxembourg law regarding the provision of investment services. A grand-ducal regulation amending the grand-ducal regulation of 21 December 2017 on the fees to be levied by the CSSF was also published on 23 December 2020. Pursuant to these amendments, third country firms applying for a licence under the Luxembourg third country firms regime have to pay a flat fee of EUR 2,500 for the assessment of their application by the CSSF and, afterwards, once the licence is obtained, a lump sum of EUR 2,000 each year.	UK firms may provide services on a cross-border basis in Luxembourg (only in relation to <i>per se</i> professional clients or eligible counterparties and under certain conditions).
Malta	Law adopted in 2019 (but the dates set out in that legislation have expired and currently no plans to amend these to provide for a temporary permission regime post year-end).	N/A	N/A	UK firms may consider using the Maltese third country licensing regime which permits the establishment of a branch in Malta to provide investment services.	N/A
Norway	Norwegian Brexit law adopted (Temporary Regime).	N/A	Temporary Regime: UK investment firms authorised to provide MiFID II investment services on a cross-border basis into Norway as of 31 December 2020 will be able to continue providing such cross border investment services to eligible counterparties and 'per se' professional clients in Norway until 31 December 2022.	A non-EEA firm may provide investment services to Norwegian clients by establishing a branch in Norway, cf. MiFID Article 39.	-
Poland	Polish Brexit law adopted (but expected to fall away on 31 December 2020).	N/A	N/A	UK firms may consider using the Polish third country licensing regime which would apply to UK credit institutions, investment firms and electronic money institutions. This would require a licence from the Polish Financial Supervision Authority and for the firm to establish a physical presence in Poland.	-

Portugal	Decree-Law no. 106/2020 of 23 December 2020 (the TPR Law), sets out a Temporary Permission Regime (TPR) for UK entities that currently provide financial services in Portugal on the basis of the passporting regime and provides that certain activities may continue to be performed after the Implementation End Date.	N/A	<p>Banking, payment and e-money services</p> <p>During the TPR, UK banks, payments service providers and EMIs are entitled to service existing contracts concluded prior to the Implementation End Date, including providing ancillary or instrumental services provided none of the services or activities constitute new transactions or contracts.</p> <p>UK firms intending to benefit from the TPR must submit a notification in the form set out in Annex V of the TPR Law to the Bank of Portugal within 3 months of the Implementation End Date and they will be subject to Portuguese law regarding those services and activities in Portugal.</p> <p>Investment services</p> <p>During the TPR, UK credit institutions and investment firms can continue to provide services after the Implementation End Date, subject to the following:</p> <p>(a) Within 3 months of the Implementation End Date, the UK firm must submit a notification to the Portuguese Securities Market Commission (CMVM) (pursuant to Annex I of the TPR Law) informing the CMVM, <i>inter alia</i>, whether the firm intends to (i) terminate ongoing agreements; or (ii) request authorisation within Portugal.</p> <p>(b) Where the UK firm intends to seek authorisation, such authorisation request must be submitted to the relevant Portuguese authority within 6 months of the Implementation End Date.</p> <p>UK firms that do not submit a notification or an authorisation request, as set out above, may only continue to perform services/activities which are necessary to terminate ongoing agreements and all services/activities must be concluded by 31 December 2021.</p> <p>UK firms will be subject to Portuguese law in respect of their activities in Portugal and must communicate to the CMVM any termination or cancellation of their UK license.</p> <p>The Portuguese TPR will start to apply from 1 January 2021 if, on that date, no agreement is reached between the EU and the UK, or no equivalence decision is adopted, that regulates that matters covered by the Portuguese TPR. The Portuguese TPR will cease to apply from 31 December 2021 (subject to certain exceptions).</p>	<p>In respect of banking and payment services, there is a third country firm licensing regime which is subject to certain conditions and exemptions. Firms are required to have a physical presence in Portugal in order to benefit from this regime and an application is required to be made to the Bank of Portugal.</p> <p>In respect of investment services, there is a third country firm licensing regime which is subject to certain exceptions. In particular, certain activities may benefit from an exemption where they are incidental to a firm's principal business. Firms are required to have a physical presence in Portugal in order to benefit from this regime and an application is required to be made to the CMVM.</p>	-
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Romania	N/A	N/A	N/A	UK firms that wish to continue to provide banking, investment and payment services in Romania must obtain authorisation from the National Bank of Romania (in respect of banking and payment services) and the Financial Supervisory Authority (in respect of investment services).	-
Slovak Republic	N/A	N/A	N/A	Physical presence via branch of a UK firm is required for conducting financial services in Slovakia through the domestic regime for third country providers.	-
Spain	Spanish Brexit law adopted (but has been suspended and is expected to fall away on 31 December 2020).	N/A	N/A	<p>UK firms may wish to consider conducting their activities in Spain under the applicable third country licensing regime.</p> <p>Applications must be made to the Bank of Spain (in respect of banking and payment services) and the Comisión Nacional del Mercado de Valores (in respect of investment services).</p> <p>Both the Bank of Spain and the CNMV appear keen to carry out the due authorisation processes for English entities with favourable views.</p>	<p>The third country licensing regime can be applied for either for physical presence or to operate on a cross-border basis.</p> <p>In order to provide investment services to retail clients or opt-up professional clients, a branch will have to be established in Spain.</p>
Sweden	For UK firms with existing professional clients in Sweden, there is an interim regime.	N/A	The interim regime means that a UK firm that had a contractual relationship with professional client on 29 March 2019 may continue to provide services covered by its UK authorisation to those professional clients until the end of 2021. This regime applies as a matter of law and does not require a firm to make any filing, application or registration in Sweden to benefit from it.	<p>Yes, unless the interim regime applies.</p> <p>In respect of UK firms, a Swedish investment business (MiFID) authorisation would be required if (1) the service would be regarded as constituting regulated investment business and (2) it would be held to be provided "in Sweden" for regulatory purposes. Such an authorisation could only then be obtained in respect of a branch in Sweden. The branch would have to satisfy all the requirements of a Swedish investment firm (unless, after agreement with the UK regulators, the Swedish Financial Supervisory Authority grants exemptions).</p>	UK firms can provide investment services on a cross-border basis.
The Netherlands	Final rules were published but could only be triggered in the event of a “no deal” Brexit. As a result, the regime is not available post 31 December 2020.	N/A	N/A	UK firms can now take advantage of the regular existing licensing regime for third country firms. There is however a distinction between the target market. If retail clients are targeted a presence in the Netherlands is required. If only professionals are targeted, no presence in the Netherlands is required and services can be provided on a cross border basis.	As per previous column, if only professional clients are targeted, no presence in the Netherlands is required and services can be provided on a cross border basis.