

Financial Services after Brexit: no equivalence (yet), but a transitional regime for Belgium



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After the Brexit, UK financial service providers no longer benefit from their previous passporting rights. The recent Trade and Cooperation Agreement between the EU and the UK does not provide for an equivalence decision for financial services. As a consequence, UK firms and service providers will from now on be subject to third-country regimes that may strongly vary between the Member States. The Belgian Legislator has introduced a transitional regime to safeguard continuity in services by UK financial institutions.

The Trade and Cooperation Agreement

On 1 January 2021, the United Kingdom left the EU's Single Market and Customs Union and all EU policies. As a result, the United Kingdom has lost the rights and benefits it has had as an EU-Member State and is no longer a party to the EU's directives, regulations and international agreements.

The EU and the United Kingdom spent the past year negotiating the terms of a new "Trade and Cooperation Agreement" (the "Agreement") to govern their future relations for when the UK would become a third country. On 24 December 2020, the final terms of this Agreement were reached. It goes without saying that this Agreement does not match the level of cooperation that existed before Brexit. Although it goes well beyond traditional free trade agreements, the Agreement remains rather limited on financial services.

Financial services post Brexit

As a consequence of Brexit, the free movement of financial services between the EU and the UK has ended. Thus, since 1 January 2021, UK financial firms and service providers no longer benefit from their previous passporting rights. Unless they can rely on future EU equivalence decisions, UK firms and service providers will from now on be subject to third-country regimes

that may strongly vary between the Member States.

It is interesting to note that the Agreement does not include any decisions on equivalence(s) for financial services. Most European legislation, such as the Prospectus Directive, EMIR and MiFID II, allow the European Commission to recognize the supervisory regime of a non-EU country that is equivalent to the EU supervisory regime. Such equivalence decisions allow supervisory authorities to deviate from the general third-country regime and apply less burdensome prudential procedures to financial service providers licensed in the third-country in question. It is to be expected that equivalence decisions will be agreed between the UK and the EU in the future.

The transitional regime in Belgium

Pending any future equivalence decisions, UK financial service providers active in Belgium are now subject to the Belgian third-country regime. In broad terms this means that such service providers should apply for a local license before they can continue their activities in Belgium. However, as is the case for many other EU countries, Belgium is working on a specific transitional regime for UK financial service providers.

The Belgian law of 3 April 2019 on the Law on the Withdrawal of the United Kingdom from the European Union (the “Brexit Law”) authorizes the government to take measures to safeguard the continuity and execution of contracts previously concluded by UK financial service providers. In the light of this Brexit Law, the government already put in place a transitional regime to safeguard legacy contracts concluded by UK insurance undertakings and insurance intermediaries. (More information on the Royal Decree can be found here.)

On 23 December 2020, a last-minute amendment was made to the Brexit Law. This amendment further allows the government to implement a transitional period of up to 12 months for financial service providers that, as a result of Brexit, have lost their EU passport and have not yet obtained the license or registration to provide their services in Belgium. These financial service providers may remain active in Belgium under the following 3 conditions:

- They are duly licensed or registered in the UK;
- They may provide their services in Belgium to non-consumers only; and
- They have submitted an application for the required license or registration with the competent Belgian regulator.

To date, the government has not yet implemented the above transitional regime.

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