

European Union: Post-Brexit access regimes in key EEA member states

In brief

Despite the conclusion of the EU-UK Trade and Cooperation Agreement, there continues to be a lack of clarity about the UK's future relationship with the EU for financial services and, as such, Brexit remains a focus area for regulators as they work to mitigate the effects of the UK's withdrawal from the EU.

Equivalence assessments are ongoing and, while the UK has concluded a number of equivalence decisions relating to EEA financial services, at the time of writing the European Commission has yet to grant equivalence beyond temporary decisions relating to central clearing and securities depositories. In the absence of equivalence decisions allowing financial services firms to continue to service contracts and clients, transitional measures have been established in some jurisdictions.

In the UK, to help EEA firms adapt to the post-Brexit UK regulatory regime, HM Treasury has established the Temporary Transitional Power, which gives UK financial regulators the power to make transitional provisions in relation to financial services legislation for a temporary period. For EEA firms conducting business in the UK, temporary permissions regimes have been established to help firms and investment funds continue their UK business with minimal disruption post-Brexit; the regimes took effect when the Brexit transition period ended on 31 December 2020. For more information on the UK's transitional regimes, see our client alert [here](#).

No comparable measures have been established at the EU or EEA level. In individual EEA member states, the picture is more varied, and where measures exist, the focus is mostly on contractual continuity and run-off. In some cases, individual member states also have national third country access regimes in place that can be used by UK firms. It may also be possible to rely on reverse solicitation to provide services without authorisation in certain member states, although a recent statement from the European Securities and Markets Authority reminds firms that reverse solicitation is to be interpreted cautiously. This note sets out a brief guide to these Brexit-related transitional and other national measures in a number of key EEA member states, including temporary permissions regimes and contractual continuity arrangements, that have been enacted firms (or not) for UK financial services. Jurisdictions covered include:

- **Austria**
- **Belgium**
- **Denmark**
- **Finland**
- **France**
- **Germany**
- **Ireland**
- **Italy**
- **Luxembourg**
- **Netherlands**
- **Norway**
- **Poland**
- **Spain**
- **Sweden**

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Austria

Currently, there are no transitional regimes or grandfathering provisions in place in Austria that would allow financial services firms to continue their business operations under a UK authorisation. There is also no provision for contractual continuity; as a result, existing business relationships must be terminated by financial services firms post-Brexit under the current Austrian legal framework. It may be possible in certain circumstances to rely on reverse solicitation to provide regulated services to clients in Austria without the need to seek authorisation or licensing from the Austrian Financial Market Authority (FMA).

Belgium

The Brexit Act authorises the Belgian government to adopt contingency measures in the financial services and insurance industry to ensure the continuity of contracts and legacy books as from 1 January 2021.

No execution measures have been adopted yet under the Brexit Act to introduce contingency measures for other financial services sectors in Belgium. By means of a recent legislative amendment, the Brexit Act authorises the Belgian government to adopt measures to temporarily allow activities and services to be provided by UK financial services providers as of 1 January 2021, including the conclusion of new contracts, without having obtained the required licenses or authorisations, provided that the activities or services are not intended for consumers. However, no execution measures have yet been adopted in this respect. There are, however, certain third country access regimes in Belgium which we describe briefly below.

Investment firms

UK investment firms may provide investment services in Belgium on a cross-border basis under a "light-touch" notification regime, available to all third country investment firms seeking to provide investment services into Belgium on a cross-border basis. To benefit from this regime, a notification must be made to the Financial Services and Markets Authority (FSMA); no prior authorisation is required. Certain conditions must be complied with, including that only qualifying professional investors may be targeted in Belgium, and that Belgian investment firms must be afforded a similar opportunity to access the UK market ("condition of mutuality"). As a practical matter, Belgian investment firms are able to access professional investors in the UK market by virtue of a combination of the UK's temporary permissions regime and/or the UK's overseas person exclusion.

It may be possible in certain circumstances to rely on reverse solicitation to provide regulated services to clients in Belgium without the need to seek authorisation or licensing from the FSMA. Note that the reverse solicitation regime in Belgium is generally interpreted restrictively.

Insurance

The Brexit Act has been partially executed by a Royal Decree of 22 December 2020 containing specific contingency measures for insurance undertakings and (re)insurance intermediaries and ancillary intermediaries. Broadly speaking, UK insurance undertakings and intermediaries can continue servicing existing insurance contracts without obtaining local licenses or authorisations, either until the insurance policies' natural expiry date (for insurance undertakings) or for a period not exceeding 18 months as of 1 January 2021 (ending on 30 June 2022), subject to satisfying certain conditions.

To rely on the transitional arrangement, UK insurance undertakings must notify the National Bank of Belgium (NBB) of their intention to do so and satisfy a number of conditions. UK insurance undertakings relying the regime will continue to be subject to all information requirements and conduct of business rules applicable to their activities in Belgium, in accordance with Belgian insurance laws. Note that the Belgian government has clarified that the mere loss of a license as a result of Brexit is not in itself a valid reason for unilaterally terminating or amending insurance contracts governed by Belgian insurance law.

For further information on Belgium's transitional measures relating to insurance, see our detailed note [here](#).

Denmark

Investment firms and credit institutions

UK credit institutions and investment firms must obtain a licence from the Danish Financial Supervisory Authority (DFSA) to provide cross-border investment services and activities in Denmark from 1 January 2021. For UK firms the license lasts for an 18-month period only, and a number of conditions apply. The licence is available only in relation to Danish eligible counterparty and per se professional clients. The application for a licence is relatively "light-touch" and requires the provision of information about the business and activities of the firm.

Firms that did not obtain approval for a license from the DFSA prior to 1 January 2021 will have to obtain the approval of the DFSA prior to continuing to provide existing services or providing new services to Danish clients.

For UK firms the approval is based on the supposition of an adequate regulation in the UK governing investment services and activities as well as an adequate supervision of financial undertakings conducting investment services and activities in the UK.

Insurance

UK based insurance undertakings are not permitted to continue business in Denmark from 1 January 2021. The DFSA has granted a temporary permission for undertakings already notified in Denmark to continue servicing existing insurance contracts until the end of

2021. Insurance undertakings can continue to service contracts in run-off, but are not permitted to extend existing contracts or enter into new ones.

Finland

Currently, there are no transitional regimes or grandfathering provisions in place in Finland that would allow financial services firms to continue their business operations under a UK authorisation. However, certain third country access regimes exist as described briefly below.

Investment services

Investment services and activities together with ancillary services can only be pursued in Finland with eligible counterparties and professional clients without establishing a branch in Finland by third country investment firms and credit institutions that have been granted authorisation by the Finnish FSA.

The Finnish FSA has adopted the view that the continued servicing of existing agreements with Finnish clients for investment services and activities will, in most cases, amount to the provision of investment services into Finland triggering the licensing requirements.

There is a third-country cross-border authorisation regime. UK investment firms and credit institutions authorised in the UK that held a pre-Brexit MiFID II passport into Finland benefit from less stringent application requirements under this regime. Where UK firms applied for third-country firm cross-border authorisation before the end of the Brexit transitional period (31 December 2020) the provision of services may continue uninterrupted while the Finnish FSA processes the license application. For firms that did not apply for their authorisation prior to that date, services cannot commence until authorisation is granted by the Finnish FSA.

Banking services

As of 1 January 2021 no new credit institution/banking services may be offered or marketed by a UK domiciled credit institution to new or existing clients in Finland. The offering of new credit institution/banking services requires the establishment of a local Finnish branch. All activities that may be perceived as marketing of credit institution services, including maintaining Finnish language websites, need to be discontinued.

However, the passive servicing of an existing client in Finland with which the credit institution has concluded an agreement for the provision of banking services (including, for example, taking of deposits, lending, provision of guarantees) may continue under the existing terms of the service.

France

France has adopted only a limited number of transitional measures as stated below.

Insurance

France has issued measures to manage run-off for insurance contracts. UK insurance companies are permitted to service existing insurance contracts, but no renewal is permitted. Certain information must be provided to policyholders.

Private equity funds, share savings plans and stock savings plans

France has also issued transitional measures concerning private equity funds, share savings plans (PEA) and stock savings plans intended to finance small and medium-sized enterprises and medium-sized enterprises (PEA PME-ETI). The measures permit investments in UK securities for a transitional period running for 9 months (ending on 30 September 2021). For FCPR fund vehicles, the transition period runs for 12 months (ending on 31 December 2021).

Germany

General financial services

Brexit will not invalidate existing agreements. However, regulated UK firms who lose access to the German market as a result of the end of their passport will be required to cease operating in Germany and will thus have to terminate existing agreements (in line with the provisions of these agreements) and liquidate their existing business in Germany. What this exactly means needs to be determined on a case-by-case basis. Most likely, fully disbursed loans can be continued, while this is less clear for loans that have not been fully disbursed or guarantees issued on behalf of German companies, even if these were issued to non-German beneficiaries. Any term deposits with a fixed period can probably be continued, but cannot be renewed or extended. Any types of agreement involving recurring services (e.g. brokerage, investment advice or portfolio management as well as payment services) will likely have to be liquidated promptly upon the end of the transition period or transferred to an entity duly licensed to perform the business in Germany on the basis of a license or an EU passport.

Germany's exemption regime for third country firms is unlikely to be available to UK firms seeking continued access to the institutional market in Germany. In addition, Germany takes a stricter approach than some other EEA states as regards agents of payment services firms and e-money issuers. It will not be possible for a UK firm to continue offering payment services into Germany based on an agency arrangement with an EU-licensed institution unless the UK firm opens a subsidiary in Germany, or, arguably, at least a branch office.

Insurance and IORPs

On 30 December 2020, the German Federal Financial Supervisory Authority (BaFin) issued a general order regarding insurance contracts and the activity of corporate pension insurers (IORPs). Under the order, UK insurers and IORPs must terminate existing insurance agreements and company pension agreements as soon as legally possible and liquidate the terminated insurance contracts and commitments promptly.

A continuation of existing agreements is permitted only where termination is not legally permissible under contract law.

IORPs must not undertake any new pension commitments. If existing commitments are funded by contributions, such commitments must be changed so that no further funding contributions are accepted.

All undertakings are ordered to submit Brexit contingency plans and certain other information to BaFin by 27 February 2021, which must be updated as and when the contingency plans are updated.

Ireland

With the exception of contractual run-off for insurance, there are no transitional regimes or grandfathering provisions in place in Ireland that would allow financial services firms to continue their business operations under a UK authorisation. However, certain third country access regimes exist as described briefly below.

Investment services

The only specific exemption or exclusion available to third country firms is the "safe harbour" exemption set out in MiFID II. Under this exemption, MiFID investment services can be provided to eligible counterparties and per se professional clients by a third country entity on a cross-border basis without triggering a licence requirement, provided the firm complies with certain conditions. It may also be possible in certain circumstances to rely on reverse solicitation to provide regulated services to clients in Ireland without the need to seek a licence from the Central Bank.

Insurance

The Central Bank and the Department of Finance have established a Temporary Run-Off Regime (TRR) for UK and Gibraltar registered insurers and insurance intermediaries. UK insurers and insurance intermediaries who satisfy the conditions of the TRR are permitted to administer their existing portfolio, up to a maximum period of 15 years from 31 December 2020. Ongoing reporting requirements also apply.

Insurers are required to notify the Central Bank of the application of the TRR to their firm no later than three months after 31 December 2020.

Italy

UK financial services firms must obtain a licence in order to be able to provide regulated services in Italy (e.g., banking, investment or insurance services) as of 1 January 2021. Certain contractual continuity regimes have been put in place.

Banks, e-money institutions and investment firms

The "Thousand Extensions Decree" provides for measures concerning the operation of banking and financial intermediaries and insurance undertakings with their registered office in the UK after the expiry of the transition period. The Thousand Extensions Decree regulates the operation of UK financial services firms while obtaining an Italian licence as well as the end of activity of UK financial services firms which did not or could not apply for an Italian licence or which have their application rejected.

Under the transitional measures, banks, e-money institutions (operating via branch in Italy) and investment firms with their registered office in the UK (together Eligible UK Intermediaries) which applied for an Italian licence or to set up an Italian regulated entity may continue their operations in Italy, limiting to the servicing of existing contracts, during a grace period which runs until the end of the authorisation procedure and no later than 30 June 2021.

During the grace period, Eligible UK Intermediaries are subject to certain regulatory requirements and must inform their clients of the consequences of Brexit:

Eligible UK Intermediaries which have been refused authorisation must cease their operations in Italy by three months after refusal. Eligible UK Intermediaries which have not applied to the Italian authorities for authorisation and the entities which are forced to cease their operations (payment institutions, e-money institutions operating cross-border and asset managers with their registered office in the UK) must have ceased their operation by the end of the transition period on 31 December 2020.

It may be possible in certain circumstances to rely on reverse solicitation to provide regulated services to clients in Italy without the need to seek authorisation or licensing from the regulator.

Insurance

UK insurance undertakings cannot operate in Italy as of 1 January 2021. However, it is possible for UK insurance undertakings to continue the operations limiting to the servicing of existing contracts and coverages in place at the end of the Brexit transition period until their expiry, without the possibility of renewal.

UK insurance undertakings wishing to continue servicing existing contracts with Italian clients and the coverages in place at the expiry of the Brexit transition period must (a) inform the counterparties, insured persons and other beneficiaries of the existing insurance policies of the regime applicable to those policies (also through a communication on the institutional website of the undertaking) by 15 January 2021, and (b) submit to the Italian Institute for the Supervision of Insurance (IVASS) a plan reporting the measures for the swift and proper execution of the contracts and coverages in place as at such a date, including the payment of claims, by 31 March 2021. This plan may provide for an early termination of the insurance contracts in place with Italian clients. Annual reporting requirements also apply.

Luxembourg

There are currently no transitional regimes or grandfathering provisions in place in Luxembourg that would allow financial services firms to continue their business operations under a UK authorisation. There were proposals to introduce a grandfathering period for a maximum period of 21 months from the EU withdrawal date but these have not been implemented.

Investment firms

There is an existing third country investment firm regime which permits firms from certain designated third countries to apply for a license as a third country investment firm to provide services cross-border into Luxembourg to per se professional and eligible counterparty clients. Following Brexit, the Commission de Surveillance du Secteur Financier (CSSF) officially included the UK in the list of jurisdictions which are deemed equivalent for the purpose of the MiFIR third country national regime. This means UK firms can make an application to the CSSF to benefit from the regime.

It may also be possible in certain circumstances to rely on reverse solicitation to provide regulated services to clients in Luxembourg without the need to seek a licence from the CSSF; note that the CSSF takes a strict approach to reverse solicitation, and firms should be cautious.

Netherlands

With the exception of life insurance products, there are currently no transitional regimes or grandfathering provisions in place in the Netherlands that would allow financial services firms to continue their business operations under a UK authorisation.

Insurance

The Dutch Central Bank has confirmed that passive servicing by UK insurers will be allowed in relation to life insurance products only, as long as no amendments are made to these existing products/services that are provided to policyholders. Non-life insurers may benefit from a notification procedure, but this is not yet clear and will be temporary in any event.

Credit institutions and investment firms

UK retail banks may not continue to provide current or savings accounts to retail customers in the Netherlands from 1 January 2021. Investment firms may, in exceptional circumstances, provide services in reliance on reverse solicitation when assessed on a case-by-case basis; however, reverse solicitation will not enable UK firms to continue to provide investment services which were provided prior to the end of the transition period via a cross-border passport.

Norway

Investment firms and credit institutions

Norway has implemented a temporary regulation on contractual continuity for UK firms offering their services in Norway. The regime permits a UK investment firm or credit institution to continue providing their services to eligible counterparties and per se professional clients under MiFID in Norway, provided the UK firm had passported their services into Norway on 30 December 2020. This is not limited to existing clients; UK firms satisfying the requirements of the regime can undertake new business until the end of the regime. The regulation expires on 1 January 2023.

It may also be possible in certain circumstances to rely on reverse solicitation to provide regulated services to clients in Norway without the need to seek authorisation from the Finanstilsynet. However, reverse solicitation does not entitle the firm to market new categories of investment products or investment services to the client concerned without authorisation.

Poland

Currently, there are no transitional regimes or grandfathering provisions in place in Finland that would allow financial services firms to continue their business operations under a UK authorisation. There is also no provision for contractual continuity.

However, it is unclear how contracts which have been entered into before the end of Brexit transition period will be treated by the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*, KNF) and the Polish courts. Any contract which has been entered into before the end of transition period should be analysed on a case-by-case basis in line with the provisions of the contemplated contract and the new regulatory environment that is applicable to its provisions. For example, contracts which are still legally effective, and where the outstanding rights and obligations are bound to be performed soon, should be reinterpreted in line with the new status of a UK firm as a non-EEA "third country" party. This likely means that the UK firm may either apply for authorisation or terminate its legally binding contracts with its Polish clients (or alternatively assign its rights and duties to a party who is authorised to perform those contracts).

Note, importantly, that in case of outsourcing agreements signed before Brexit where a Polish financial institution outsources functions to a UK firm, there is a need for the Polish firm to seek permission from the KNF for the ongoing outsourcing arrangement.

It may be possible in certain circumstances to rely on reverse solicitation to provide regulated services to clients in Poland without the need to seek authorisation from the KNF. However, reverse solicitation does not entitle the firm to market new categories of investment products or investment services to the client concerned without authorisation.

Spain

Spain has established a transitional regime for contractual continuity relating to financial services provided by UK firms. The general principle is that contracts for financial services provided in Spain by UK financial institutions will remain in force under the terms of the relevant contracts without amendment or renewal, provided that the UK financial institutions comply with relevant requirements and that the contract entered into force prior to 1 January 2021.

With effect as of 1 January 2021, to render financial services UK financial institutions will be subject to the regime laid down in sectoral legislation for third countries, and a new regulatory authorisation in Spain must be obtained to renew or amend contracts signed before 1 January 2021 or to enter into new contracts. Spanish regulatory authorisation is also required when "contract management activities" require authorisation. There is no clear definition on what should be considered "contract management activities"; therefore, it would be subject to interpretation by the Spanish supervisors. It seems that the rationale behind this is to include services that require "active" management, as opposed to services where the provider can take a "passive approach". It is expected that the authorities will clarify this issue in due course via publication of public guidelines in this regard.

The authorisation or registration with Spanish authorities initially granted to UK financial institutions will provisionally remain in force until 30 June 2021 so they may carry out activities necessary to terminate contracts signed before 1 January 2021, or to assign those contracts to institutions that are authorised to provide the relevant financial services in Spain.

For insurance companies, the transitional period may be extended until 31 December 2022 with the aim of providing an orderly termination of insurance policy portfolios, subject to obtaining express authorisation to extend the period from the Directorate General of Insurance and Pension Funds (DGSFP), based on a contingency plan submitted to the DGSFP by the relevant insurance company.

For further information on Spain's transitional measures, see our detailed note [here](#).

Sweden

There are currently no transitional regimes or grandfathering provisions in place in Sweden that would allow financial services firms to continue their business operations under a UK authorisation.

The Swedish government recently decided that firms from third countries that conduct securities business may continue to do so in relation to professional clients. This applies until end of 2021 and only if the firm had a contractual agreement with these clients on 29 March 2019.

Although no explicit provision or guidance from the Swedish Financial Supervisory Authority (SFSA) has been provided permitting UK financial services firms to maintain and service existing relations that were established pre-Brexit, it is likely that, for existing contractual relations, the contract can continue to be serviced without attracting further licensing requirements (although this depends on the circumstances of each particular case and the nature of the regulated activity). However, this view has not been expressly confirmed with the SFSA and further advice should be taken.

It may be possible in certain circumstances to rely on reverse solicitation to provide regulated services to clients in Sweden without the need to seek a licence from the SFSA.

