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BREXIT: New draft law aiming at mitigating Brexit effects and safeguarding the interests of the Luxembourg financial and insurance sectors

01 February 2019

Today, a draft law was released which aims at ensuring that even in case of a hard Brexit, UK entities of the financial and insurance sectors with Luxembourg activities will still be able to perform some activities in Luxembourg either by the establishment of a branch or under the freedom of providing services during a limited period of time of up to 21 months (the **Grandfathering Period**). Interestingly, this Grandfathering Period corresponds to the proposed transitory period set out in the Brexit withdrawal agreement that has been rejected recently by the UK parliament.

The overall objective of these grandfathering rules to be introduced in:

- the law of 5 April 1993 on the financial sector;
- the law of 10 November 2009 on payment services;
- the law of 17 December 2010 on UCIs;
- the law of 12 July 2013 on AIFMs;
- the law of 7 December 2015 on the insurance sector; and
- the law of 18 December 2015 on the failure of credit institutions and certain investment firms;

is to make sure that UK undertakings can carry on their Luxembourg activities during a transition period following Brexit, so as to maintain the stability of the Luxembourg financial market and protect Luxembourg customers.

The draft law grants the regulatory authorities of the financial and insurance sectors (*Commission de Surveillance du Secteur Financier*, the **CSSF**, and *Commissariat aux Assurances*, the **CAA**) the necessary powers to enable UK entities of the financial and insurance sector that have entered into contracts with Luxembourg counterparts before Brexit to perform these activities during the Grandfathering Period. The procedure to be followed (e.g. either through notification similar to the temporary permission regime put in place recently by the UK Financial Conduct Authority or through a light authorisation process) is to be implemented by the CSSF and the CAA.

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The grandfathering provisions set out in the draft law will only apply to existing contracts concluded by UK undertakings on or before 29 March 2019 but not to new agreements, unless these contracts are closely related to the ones entered into before Brexit.

As far as the investment fund sector is concerned, the Grandfathering Period will be beneficial for both UCITS funds and alternative investment funds (AIFs) with a view to (i) complete the overall objective of this law, as set out above and, in the same line, (ii) avoid legal forced liquidation procedures (relevant for Luxembourg UCITS):

- UK UCITS management companies that are managing Luxembourg UCITS funds before or on 29 March 2019 should be able to continue to act as such;
- likewise, UK AIFMs managing or providing services to Luxembourg AIFs will be able to continue servicing these AIFs post-Brexit.

These new provisions will only apply in case of a hard-Brexit. The law will apply as of 29 March 2019. In other words, should the UK and the EU finally manage to agree on the final terms of the UK's withdrawal from the EU, the provisions of the EU-UK agreement will prevail. The explanatory notes of the draft law mention that there are similar legal initiatives in Europe (e.g. in France and Germany). Since it is reported that a memorandum of understanding on supervisory cooperation between the ESMA and the UK FCA has been approved for financial services yesterday, there is a chance that parts of this draft law will not necessarily be relevant. It is nonetheless reassuring in the lead up to Brexit.

Can we help? Do you have further questions?



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