

Regulatory News Alert

Brexit: CSSF urges asset managers to act now in order to maintain access to Luxembourg market

9 December 2020

Context and objectives

On 7 December 2020, the Commission de Surveillance du Secteur Financier (CSSF) published [press release 20/26](#) to clarify the actions that impacted funds and/or managers will need to take prior to the end of the Brexit transitional period (31 December 2020).

Luxembourg funds currently managed by UK managers

- In order to maintain EU passporting rights, the governing body of each Luxembourg fund will **need to appoint an EU manager** (and inform the CSSF of this change)
- As a consequence of such appointment, former **notifications of cross-border management** of funds under the Directive 2009/65/EC ([UCITS Directive](#)) and/or the Directive 2011/61/EU ([AIFMD](#)) respectively will be terminated on 31 December 2020 and the new manager should **submit new notifications** in this regard
- Certain **Luxembourg alternative investment funds (AIFs)** can continue to be managed by the UK manager (subject to the approval of the professional investors of the AIFs). However, there will be no passporting rights under the AIFMD attached to such managers

Luxembourg IFMs that currently manage UK funds and/or operate in the UK through a branch

- If they wish to continue the provision of their services in the UK, such investment fund managers (IFMs) should apply for the **UK Temporary Permissions Regime (TPR)** and inform the CSSF of such application
- In cases where they manage UK UCITS, they would have to obtain an AIFM license from the CSSF

Cross-border fund distribution

- In relation to the cessation of passporting rights for cross-border distribution of funds into Luxembourg under a European passport, the manager should submit to the CSSF a notification to withdraw from cross-border distribution into Luxembourg (**de-notification**), whereas a new EU manager should submit a **new notification** if they intend to continue to market funds in Luxembourg

- To the extent that a fund for which a de-notification for marketing has been notified to the CSSF continues to **retain investors in Luxembourg** (without pursuing any active marketing going forward), said fund is required to be registered with the CSSF to ensure that the CSSF remains informed and receives the relevant reporting for as long as there are remaining investors in Luxembourg

Other Brexit related issues in relation to UCIs

- **Delegation of IFM functions**, such as investment management/portfolio management and/or risk management activities to **entities outside the EU**, continues to be permissible under certain conditions
- Any issues of non-compliance with applicable investment rules or policies triggered by the withdrawal of the UK from the European Union will be **considered as “active breaches”**
- The CSSF specifically draws attention to the provisions related to **UCITS master-feeder structures** (i.e. a UCITS feeder fund established in Luxembourg investing into a UCITS master fund established in the UK), given that UK UCITS will qualify as “other UCIs” in the sense of articles 41.1(e) and 46.1 of the [Law of 2010](#), the investments into which may not in aggregate exceed 30% of the assets of the Luxembourg UCITS
- Deposits with a credit institution having their registered office in the UK will **not be considered as an eligible investment by Money Market Funds** as of 1 January 2021
- For the use of **secondments of staff**, the CSSF reminds IFMs of the necessity to reorganize certain functions and more specifically the marketing function, if such function is staffed with secondees from the UK not always physically present (i.e. for reason of professional travels) at the premises of the Luxembourg IFM

What is in it for my institution?

The Brexit transition deadline is rapidly approaching. EU institutions and different NCAs have increased their activities by providing final clarifications for financial institutions in this context. Unless a last minute agreement alters the current situation, the 1 January 2021 is likely to confirm the end of passporting of services and products, which means that new business conducted between the two countries will be impacted. Access to funds from the UK in Luxembourg and vice-versa will impose the application of new regulatory requirements and notifications.

The CSSF recalls that from both sides EU and UK, funds and fund managers should urgently assess their current situation, and proceed to be compliant with any upcoming regulatory changes for several aspects such as cross-border marketing, internal organization, or secondments of staff before 31 December 2020, as well as anticipate regulatory changes for the future licensing or distribution of new funds.

The issues that should be taken into consideration are the replacement of UK IFM with an EU27 IFM, current distribution strategies, investment policy and restrictions, and any fund documents that need to be updated or approved by the CSSF or any others NCAs.



How can Deloitte help you?

Deloitte has developed a systematic approach: first, a Brexit health check to assess the potential impacts Brexit may have on your structure and organization. Then, based on both business development plans and legal realities, Deloitte can help you implement operational changes for a robust post-Brexit environment strategy.

Deloitte's advisory specialists and dedicated services will help you design and implement your business strategy in light of the future evolution of the regulatory framework and market trends.

Additionally, with its transaction regulatory reporting service, Deloitte offers a range of solutions for the forthcoming investment fund reporting requirements that are tailored to your business needs.

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