

18 November 2020

Circular to the Industry on Brexit Readiness

1. Background

The United Kingdom ('UK') withdrew from the European Union ('EU') on 31 January 2020 on the basis of the agreement concluded between the EU and the UK on 17 October 2019. This withdrawal agreement included a transition period until 31 December 2020 (where the UK remained part of the EU's single market and customs union¹) to allow entities and firms to continue building on their preparatory work and facilitate an orderly withdrawal.

The transition period will end on 31 December 2020 meaning that EU law will stop applying in the UK from 1 January 2021.

This circular provides an update to Maltese licence holders (insurance, investments and credit and financial institutions) and UK entities offering financial services in Malta, on the Malta Financial Services Authority ('MFSA')'s expectations now that the transition period will come to an end.

2. General Readiness

The MFSA would like to remind its licence holders of the importance of finalising and implementing their contingency plans in accordance with the plans communicated to it before the end of the transition period. In their preparations, licence holders should duly comply with all applicable EU legislation with particular attention to prudential, conduct and AML/CFT requirements. Firms are also reminded to ensure clients are adequately and promptly informed of their preparations, including any changes that would be affecting them.

The transition period provided more time for businesses to be able to adapt to the post-Brexit scenario and the Authority therefore expects these plans to be complete or nearing finalisation. These plans should take into account that the expiry of the transition period will end the possibility for the UK-based entities to offer financial services to EU customers on a cross-border basis through the pan-European passport and vice-versa.

Under the equivalence frameworks foreseen in some areas of EU law, the European Commission is empowered to recognize that the regulatory and supervisory regime of the UK is equivalent to that of the corresponding EU regime and thereby allowing such UK firms to provide their services to EU clients or providing prudential or reporting relief for EU firms.

¹ without being represented in the EU institutions

As the Commission continues to carry out its assessments, licence holders should prepare for all possible scenarios including that in which there are no equivalence decisions² by the Commission being taken before the end of the transition period.

Furthermore, equivalence decisions can be unilaterally withdrawn at any time, particularly if UK's regulatory and supervisory framework in the area of financial services diverge from those of the EU and thus, no longer fulfill the conditions for equivalence.

3. UK Licensed Entities Providing Services in Malta

From 1 January 2021, the provision of financial services from the UK in Malta by way of freedom of services and/or freedom of establishment will no longer be possible. Consequently, UK entities currently offering financial services to Maltese customers should ensure they have obtained the necessary authorisation from an EU competent authority and have effectively established themselves before the end of the transition period. Adequate information should also be provided to their local customers regarding the availability of services after the end of the transition period, clearly providing alternative arrangements and contact details in case of enquiries.

The supervision functions have noted that a small number of new passporting notifications continue to be received for UK entities that wish to service Maltese clients. The MFSA would like to draw the attention of these UK entities that following the end of the transition period on 31 December 2020, they will require authorisation in Malta or in an EU Member State to continue servicing local clients and may not continue to operate via freedom of services or freedom of establishment. These entities are encouraged to contact the MFSA and provide full details of their plans going forward at the earliest.

UK Investment Firms and Investment Funds

Following the formal adaptation of the withdrawal agreement, any communication previously issued by the Authority with respect to a temporary permission regime (TPR) in the area of investment firms and investment funds within the context of a no-deal Brexit, is no longer applicable. The purpose of the TPR was to ensure financial stability, business continuity as well as the protection of Maltese investors/clients in the event that the UK left the EU without a withdrawal agreement. The withdrawal agreement and the transition period has allowed adequate time for preparation and finalization of the relevant contingency plans, and therefore UK Entities passporting into Malta should anticipate the end of the transition period by implementing one of the options outlined to them by the Authority. The MFSA's circular of [11 July 2019](#) gives more background.

UK UCITS and AIFs Marketed in Malta

From 1 January 2021, UK UCITS and UK AIFs will become non-EU AIFs and therefore they will not be able to continue benefitting from the passporting rights under Chapter XI of the UCITS Directive and Article 32 of the AIFMD respectively.

² By exception, the Commission has to date only identified one area which may present financial stability risks, namely the central clearing counterparties of derivatives. In this area, the Commission has adopted a [time-limited equivalence decision](#) for the UK which shall apply from 1 January 2021 and expire on 30 June 2022. In addition, it is expected that one for CSDs will also be granted, as was done in 2018 (and amended in 2019).

These funds will be permitted to be marketed into Malta under the National Private Placement Regime ('NPPR'), which is governed by the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations (Malta AIFM Third Country Regulations) and subject to the notification procedures in accordance with Article 42 of the AIFMD, should they opt to continue offering their units to Maltese investors.

The MFSA will start accepting applications for marketing under the NPPR as of the date of this circular. UK UCITS and UK AIFs are encouraged to prioritise these applications in order to avoid any last-minute delays and allowing for due processing time by the Authority. Details in relation to the notification procedure can be found in the [FAQ Document](#), issued on 17 May 2019, which remains applicable. Any queries in this regard should be addressed to aifmdnppr@mfsa.mt.

UK Insurance Undertakings and Insurance Intermediaries

Following the publication of the [Recommendations for the insurance sector in light of the United Kingdom withdrawing from the European Union](#) in February 2019, the MFSA has set out its expectations by means of a letter which has been circulated to UK/Gibraltar firms and UK/Gibraltar intermediaries conducting business of insurance in Malta by way of freedom of services and freedom of establishment. In the said letter, the MFSA clarified that such undertakings and intermediaries will no longer be allowed to conclude new insurance contracts or establish, renew, extend, increase or resume insurance cover under the existing insurance contracts in Malta, unless they are authorised for such insurance activities by the MFSA.

Where UK insurance undertakings do not seek authorisation from the MFSA, or do not obtain authorisation before the UK's withdrawal from the EU, such undertakings will be permitted to carry out an orderly run-off of the business which became unauthorised. The MFSA expects a UK/GI insurance undertaking which decides to carry out an orderly run-off to formally inform the MFSA in a timely manner.

UK/GI intermediaries and entities providing distribution activities in Malta, which intend to continue or commence distribution activities after the UK's withdrawal from the EU in Malta, are expected to be established and registered in line with the relevant provisions of the Insurance Distribution Act. Where UK/GI intermediaries and entities providing distribution activities in Malta do not obtain authorisation from the MFSA before the UK's withdrawal from the EU, such intermediaries are required to inform the MFSA without further delay, of a realistic contingency plan.

4. Maltese Licence Holders Providing Services in the UK

The termination of the EU-UK passporting regime, will mean that Maltese licence holders wishing to continue providing financial services in the UK should do so in line with the guidance provided by the relevant UK financial services regulator (FCA, PRA/BoE) including by applying to join the relevant UK TPR before 31 December 2020, unless they have already done so.

For more information on the UK TPR please refer to:

- [FCA webpage on the TPR](#)
- [PRA/BoE webpage on TPR](#)

Maltese licence holders that intend to make use of their passporting rights to the UK by submitting a new outbound passporting notification request to the MFSA, are urged to do so promptly but in any case, by not later than 10 December 2020 to allow for due processing. The notification should include details of the entity's intentions in the UK, in particular whether they will be seeking access to the UK TPR.

The industry's attention, particular of those entities currently passporting into the UK, is also being drawn to the UK FCA's [consultation](#) published on 23 September on general expectations for international firms that require FCA authorisation.

5. Financial Services Register

Maltese licence holders and UK entities are hereby informed that following the end of the transition period, the MFSA Financial Services Register will be updated to remove reference to the passporting activities of licensed entities in or out of the UK.

6. Additional Guidance

Public communication has been issued over the past years by the European institutions and authorities, namely the European Commission, the European Supervisory Authorities and the European Central Bank, providing guidance on specific areas that will be impacted by the UK's withdrawal from the Union.

The industry's attention is hereby being drawn towards the below latest round of communication calling on the various sectors to complete preparations for the end of the transition period:

[ESMA updates Brexit statements for the end of UK transition period](#)

[EIOPA calls on insurance sector to complete preparations for the end of the UK transition period](#)

[EBA reminds financial institutions of the need for readiness in view of the Brexit transition period](#)

Licence holders should continue following the public communication and guidance in the respective websites, taking it into account when finalising their post-Brexit plans. Reference should also be made to the circulars that the MFSA has issued in the past with respect to Brexit which can be found on the [dedicated page](#) on the MFSA website.

The changes resulting from the UK's exit from the single market at the end of the transition period may entail risks of disruption. The MFSA continues its engagement with the industry in order to mitigate the risks posed to the economy, consumers, the financial system and the regulatory environment. We are also working to ensure that financial service providers have plans in place to minimise the effect on consumers.

7. Contacts

Should you have any questions regarding the above, please contact the relevant sectoral supervisors on bu@mfsa.mt (Banking) ipsu@mfsa.mt (Insurance) or ausecurities@mfsa.mt (Securities and Markets).