

CSSF issues press release on mandatory notification in the context of a no-deal Brexit

Insights - 21/10/2019

On Friday 11 October 2019, the Luxembourg Supervisory Authority of the Financial Sector (Commission de Surveillance du Secteur Financier, **CSSF**) published press release 19/48 (the **Press Release**) concerning the mandatory notification for alternative investment fund managers based in the United Kingdom (the **UK Managers**) of Luxembourg alternative investment funds (AIFs) in the context of the United Kingdom leaving the European Union without an agreement on 31 October 2019.

The Press Release follows up on CSSF's press releases 19/41 and 19/43 providing that, subject to the submission of a notification through the dedicated CSSF eDesk Portal, UK Managers would be authorised to continue performing their activities in Luxembourg for a period of twelve months starting as from 31 October 2019 (the **Transitional Period**). Failing to make such notification in time (i.e. before 15 September 2019), as from 1 November 2019, UK Managers would lose the benefit of their existing passporting rights under Directive 2011/61/EU (**AIFMD**) in Luxembourg.

The Press Release describes the process and documents to be filled with the CSSF prior to 31 October 2019 for UK Managers, which intend to exercise their activity as "third-country managers" in Luxembourg. This possibility is open only to UK Managers, which manage the AIFs whose direct or indirect investors are professional investors as defined under the AIFMD and/or well-informed investors as defined under the relevant product law (SICAR law*, SIF law**) or RAIF law***.

The Press Release foresees two case scenarios:

- UK Managers, which have not submitted a notification through the eDesk portal (the **eDesk Notification**)
- UK Managers, which have submitted an eDesk Notification

UK Managers, which have not submitted an eDesk Notification, will not benefit from the Transitional Period. If they wish to exercise their activity as third-country managers in Luxembourg after 31 October 2019, they will be required to:

- seek approval of the professional investors of the AIFs they manage. The approval shall be given following the conditions prescribed for the amendment of the articles or the limited partnership agreement. In the absence of such provisions, the approval shall be given following the conditions prescribed for the amendment of the articles or of the limited partnership agreement under the amended Luxembourg law of 10 August 1915 on commercial companies. Any document provided to the investors in this respect (i.e. resolutions, convening notices) shall inform them about the consequences of their vote
- provide the following documents to the CSSF (by email to brexitopc@cssf.lu):
 - a signed confirmation that all investors in the AIF they manage qualify as professional investors; and
 - a copy of the appropriate signed resolutions evidencing the approval of the investors, or, when circumstances justify a delay, an explanation of such circumstances together with a copy of the convening notice sent to the investors in connection thereto.

Failing to comply with the above requirements, the CSSF considers that such UK Managers will be operating in breach of applicable requirements as from 1 November 2019.

UK Managers, which have submitted an eDesk Notification, will benefit from the Transitional Period. They may however give up their right to benefit from the Transitional Period by rescinding the submitted eDesk Notification and exercise their activity as "third-country managers" in Luxembourg.

In this scenario, the requirements set out above for UK Managers, which have not submitted an eDesk Notification, will apply. The applicant will have to provide the CSSF in addition with a signed confirmation that the eDesk Notification previously submitted should be rescinded.

For further information please read the full Press Release available on the [CSSF website](#).

* Law of 15 June 2004 on investment companies in risk capital, as amended (**SICAR law**)

** Law of 13 February 2007 on specialised investment funds, as amended (**SIF law**)

*** Law of 23 July 2016 on reserved alternative investment funds, as amended (**RAIF law**)

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