TRENDING TOPIC

#1 — APR. 19

BREXIT

Brexit and financial services

Despite all the current instability and uncertainty associated with delivering Brexit, one thing is certain. **Brexit will have a significant impact on the financial services market in the European Union**. This is because it is the first time a Member State has left the European Union and because of the UK's relative weight in this sector.

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As a result, to ensure a smoother transition, some EU countries[1] have adopted transitional measures. These measures establish a post-Brexit period in which entities based in the UK will continue to be able to engage in some (or all) of their activities in that jurisdiction, using the of European passporting mechanisms for this purpose.

"Portugal has not adopted any transitional measure in the field of financial services."

At the end of this period, entities based in the United Kingdom will have to comply with the requirements of national legislation to be able to continue to engage in regulated activities in the jurisdictions in question.

Portugal has not followed the example of these countries and, to date, it has not adopted any transitional measure in the field of financial services. Taking into consideration the current uncertainty surrounding Brexit, the adoption of transitional measures by the Portuguese authorities would bring a degree of certainty to these entities and their customers and investors in Portugal. This would mitigate the risk of disruption in the provision of financial services.

European legislation in the banking and financial services sectors is harmonised, and this includes the current UK legislation. Therefore, besides adopting transitional measures, we believe it would also be justifiable to adopt specific post-Brexit authorisation rules allowing UK entities to benefit from specific, simplified rules to obtain a local licence, in particular as regards the establishment of branches in Portugal.

In the absence of transitional measures or specific rules, it is clear that, after Brexit, entities based in the UK will be considered third-country entities for all legal purposes. This means that if they wish to engage in regulated activities in Portugal, they will have to set up a (third-country) branch or a subsidiary in Portugal. In both these cases, they cannot begin operations until they have authorisation from the Portuguese regulatory authorities.

Nevertheless, we believe the situation described above does not prevent UK-based entities from continuing to provide financial services in Portugal, in the context of existing contractual relationships. In short, we do not think Brexit, per se, will require the closure of bank accounts, the movement of existing deposits, the early maturity of financing operations or the closure of financial asset accounts.

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1 These countries include Finland, Italy and Luxembourg.

However, the establishment of new legal relationships in the field of banking and financial services, or the marketing of new categories of financial products and services to existing customers by UK-based entities will be severely restricted after Brexit takes effect.

In fact, under the Portuguese General Rules on Credit Institutions and Financial Companies, these new types of legal relationships can be established solely at the initiative of customers residing in Portugal. In other words, the initiative by the customer must not be preceded by any solicitation or advertising by the UK-based entities in Portugal

With the exception of these particular situations, to market financial services and regulated products to new customers, or to market new categories of regulated financial products and services to existing customers, it is necessary to have a banking licence or financial intermediation in Portugal, in compliance with the authorisation procedures provided for in national legislation.

"To market regulated financial services and products, it is necessary to have a banking licence or financial intermediation in Portugal."

Alternatively, UK-based entities can set up subsidiaries in other EU countries as long as they follow the authorisation procedures with the local regulators. After they have set up subsidiaries, they can provide financial and banking services in other EU countries under the European system of freedom to provide services or the right of establishment.

This option is already being used by the majority of the entities affected by Brexit and the practice will certainly continue. Therefore, the adoption of specific transitional measures in Portugal in the context of Brexit could allow some UK-based entities to choose Portugal as a base to provide services in other EU Member States. ■