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Points to be aware of in the event of a no-deal Brexit

The Danish Financial Supervisory Authority (the Danish FSA) is drawing attention to several important points for Danish undertakings and customers of British financial undertakings in the event that the United Kingdom leaves the EU in a no-deal Brexit.

If the United Kingdom leaves the EU without a withdrawal agreement at the end of March 2019 (no-deal Brexit), this means that the United Kingdom will be a third country in regard to EU countries, including Denmark. The automatic right for financial undertakings in the UK to set up and do business in EU countries, as a result of the EU's single market, will thus lapse.

As the Danish FSA has previously observed, it is important that undertakings prepare for any no-deal Brexit.

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MINISTRY OF INDUSTRY, BUSINESS AND FINANCIAL AFFAIRS

Preparing for a no-deal Brexit in regard to activity in the UK

The Danish FSA has maintained an ongoing dialogue with many Danish financial undertakings regarding their preparations, including their handling of customers who may be affected by a no-deal Brexit. Feedback indicates that, in general, the undertakings are aware of the need to prepare for a possible no-deal Brexit.

Danish financial undertakings must provide due information to their customers as soon as they are sufficiently certain of the consequences for agreements regarding financial services entered into before and after a no-deal Brexit. The undertakings must similarly inform customers of the measures they have taken. At the end of 2018, the UK set up a temporary permissions regime, which allows financial undertakings in the remaining EU countries to maintain their activities in the UK while applying for the requisite permission in the UK. For further information regarding deadlines and process, please contact [the supervisory authority in the UK](#). The UK has also set up a temporary contracts regime for financial undertakings in the remaining EU countries who do not wish to make use of the temporary permissions regime. The contracts regime will further ensure contractual continuity between financial undertakings in the EU and customers in the UK after a no-deal Brexit. This regime enables undertakings to wind down their activities in the UK in an orderly fashion.

Danish financial undertakings must also be aware of whether the activities in the UK require permission from the Danish FSA.

The European Securities and Markets Authority (ESMA) and the national competent authorities have agreed memoranda of understanding with the British authorities concerning matters such as [exchange of information and supervisory cooperation](#), and on [the recognition of central counterparties \(CCPs\) and central securities depositories \(CSDs\)](#) in the event of a no-deal Brexit. The Danish FSA encourages you to follow any measures on the part of the European supervisory authorities ([ESMA](#), [EBA](#) and [EIOPA](#)) via their websites.

Special points to be aware of in regard to the activity of British financial undertakings in Denmark

Based on the general assessment of Brexit preparedness, the Danish FSA has identified the following points to be aware of on the part of the Danish undertakings and customers of British financial undertakings respectively:

Undertakings

Danish undertakings, including non-financial undertakings, must be aware of whether they have activities involving British financial undertakings which will no longer be legal after a no-deal Brexit, and which will therefore require new permissions or other measures.

British financial undertakings will not be able to offer financial services to Danish undertakings without new permissions. It is therefore important for Danish undertakings to clarify with the British financial undertakings they cooperate with as to whether the British financial undertakings have the requisite permissions to continue their financial services in Denmark in the event of a no-deal Brexit.

Among other things, undertakings should be aware of whether they have outsourced activities to British financial undertakings which require special measures after a no-deal Brexit. For example, this may be the case if discretionary portfolio management is outsourced to financial undertakings domiciled in the UK, which in this case will be a third country.

If British financial undertakings wish to continue offering financial services in Denmark after a no-deal Brexit, this can generally be done in two ways: the British undertaking can either apply for permission to set up a financial undertaking in Denmark, or it can apply for permission to set up in a country within the EU other than Denmark, and then invoke the right to set up a subsidiary in Denmark or offer cross-border services in Denmark (what is known as the European passport).

For some financial service providers there is also a third option. This applies in particular to undertakings offering investment services and activities. Such undertakings have the option of applying for permission to continue providing

cross-border activities directly from the UK under the Danish third country rules in section 33 of the Danish Financial Business Act.

These third country rules offer foreign investment companies and credit institutions the opportunity to apply for permission to carry out cross-border investment services and activities in Denmark for approved counterparties or professional customers. Permission under these rules does not allow an undertaking to carry out activities in EU countries other than Denmark.

It is not possible to obtain permission to carry out cross-border investment services and activities for retail customers or customers who may upon request be treated as professional customers.

In order to obtain permission for cross-border investment services and activities for approved counterparties and professional customers, several conditions must be met.

- The Danish FSA must be able to exchange information with the supervisory authorities in the third country.
- The third country must have adequate regulation in the area of finance, including adequate supervision of the third-country undertakings.
- The applying investment service and activity must be included in the third-country undertaking's permission.
- The third-country undertaking's supervisory authorities must not have adverse information regarding the third-country undertaking that are relevant to the permission.

In light of the uncertainty surrounding Brexit, it may well be possible for the Danish FSA only to provide temporary permissions for cross-border investment services and activities for approved counterparties and professional customers. The permissions are expected to run for 12 months from the date of a no-deal Brexit. The Danish rules regarding conduct of business apply to undertakings with a permission of this type.

Customers

The Danish FSA encourages customers to keep themselves informed of announcements published by financial undertakings regarding the consequences of a no-deal Brexit for customers, and the Danish FSA also publishes information about Brexit on its website.

The Danish FSA also encourages Danish customers who have entered into agreements regarding financial services directly with British financial undertakings to seek out information about the consequences of the agreements.

Danish insurance policyholders who are customers of an insurance undertaking headquartered in the UK, for example, must be aware that their insurance terms and conditions could change in the event of a no-deal Brexit.

The Danish FSA intends to issue an executive order to ensure that Danish customers' existing policies with British insurance companies can continue until they expire, although no later than the end of 2020. Insurance undertakings can thus continue to service existing policies, but may not extend them or take out new policies. Danish policyholders should therefore take the necessary steps to ensure that they still have the correct insurance coverage, including finding a different insurance undertaking and taking out new policies when the existing ones expire.

With this executive order, the Danish rules regarding conduct of business within the area of activity will continue to apply to the work of the British companies in Denmark.

In the event of a no-deal Brexit, the executive order will be published with effect from 30 March 2019.

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