

FINNIUS

Brexit – Dutch temporary exemption regarding UK investment firms

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In view of Brexit, the Dutch Ministry of Finance announced on 4 February 2019 a temporary exemption for UK investment firms providing investment services to professional investors or eligible counterparties only, or firms trading on own account in the Netherlands.

If no separate exemption would be provided, UK investment firms would, following a no-deal Brexit, no longer be able to use their European passport to either provide investment services or to perform investment activities in the Netherlands, when the UK leaves the EU on 29 March 2019. From that date, UK investment firms will in principle require a MiFID II license in a member state in order to provide these activities in the Netherlands. In the absence of such license, the uncertainty regarding financial services provided by UK investment firms to Dutch professional investors and eligible counterparties will, according to the Dutch Ministry of Finance, undoubtedly have negative consequences for both UK firms, as well as Dutch investors and trading venues.

In order to avoid these negative consequences, the Dutch Ministry of Finance has temporarily adjusted the Exemptions Regulation Financial Supervision Act (Vrijstellingsregeling Wft). As a consequence, UK investment firms providing investment services to Dutch professional investors or eligible counterparties and investment firms trading on own account with Dutch professional investors and eligible counterparties will temporarily be exempted from the obligation to have a MiFID II license. As a result, they can continue providing investment services and they can continue trading on own account after Brexit. Furthermore, most of the Dutch prudential and market conduct supervision will not apply to these firms, provided that they are under supervision by the FCA. The UK investment firm will have to notify the Netherlands Authority for Financial Markets. It is important to note that the exemption does not apply to investment firms operating a multilateral trading facility and to investment firms dealing with retail investors or opt up professional investors. These investment firms will still need a MiFID II license when the UK leaves the EU without a deal.

The adjustment only applies in case of a no-deal, and will in principle last until 1 January 2021. This measure by the Dutch Ministry of Finance ensures the continuity of financial services provided by UK investment firms to Dutch professional investors and eligible counterparties.