

Law of 8 April 2019 on the measures to be taken in relation to the financial sector in the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and amending:

- 1° the Law of 5 April 1993 on the financial sector, as amended;
- 2° the Law of 10 November 2009 on payment services, as amended;
- 3° the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
- 4° the Law of 12 July 2013 on alternative investment fund managers, as amended;
- 5° the Law of 7 December 2015 on the insurance sector, as amended; and
- 6° the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

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Article 1.

A new Article 67 is inserted after Article 66 of the Law of 5 April 1993 on the financial sector, as amended, which reads as follows:

"Art. 67. Transitional provisions relating to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

(1) In the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without the conclusion of a withdrawal agreement based on Article 50(2) of the Treaty on European Union, the CSSF may take the measures referred to in paragraphs 2 and 3 in order to preserve the orderly functioning or the stability of the financial markets or to ensure the protection of depositors and investors.

(2) By way of derogation from Article 32, the CSSF may apply, for a maximum period of 21 months from the date of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the provisions of Article 30 to UK credit institutions exercising banking activities in Luxembourg by way of free provision of services, by way of establishment of a branch or through the use of a tied agent at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.

(3) By way of derogation from Article 32-1, the CSSF may apply, for a maximum period of 21 months from the date of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the provisions of Article 30 to UK financial sector firms which are authorised and subject to supervision and which provide services or exercise activities referred to in Article 32-1 in Luxembourg by way of free provision of services, by way of establishment of a branch or through the use of a tied agent at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.

(4) The measures taken by the CSSF in accordance with paragraphs 2 and 3 shall apply to contracts existing at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and to contracts concluded after the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union where these contracts have close links to contracts existing at the time of the withdrawal."

Article 2.

The Law of 10 November 2009 on payment services, as amended, is amended as follows:

1° In Article 2(4), a new third subparagraph is added which reads as follows:

“Title V shall not apply to third-country payment systems and securities settlement systems, without prejudice to Articles 112(3), Article 113(1), second subparagraph, and 113(3), fourth subparagraph, and Article 114. ”:

2° In Article 107, a new point (1a) is inserted which reads as follows:

“(1a) “third-country system” means a formal arrangement:

- between three or more participants, excluding the operator of that system, without counting a settlement agent, a central counterparty, a clearing house or an indirect participant, with common rules and standardised arrangements for the clearing, whether or not through a central counterparty, or execution of transfer orders between the participants;
- governed by the laws of a third country;
- provided the system is:
 - (a) subject to the supervision of a supervisory authority of a State whose central bank holds a participation in the capital of the Bank for International Settlements; and
 - (b) admitted on the official register of third-country payment systems and securities settlement systems of the Banque centrale du Luxembourg upon request by the operator of the system or a participant to said system established in Luxembourg;”;

3° In Article 108, a new third subparagraph is added which reads as follows:

“The present title shall not apply to third-country payment systems and securities settlement systems, without prejudice to Articles 112(3), the second subparagraph of Article 113(1), the fourth subparagraph of Article 113(3) and Article 114.”.

4° In Article 110, a new paragraph 3 is added which reads as follows:

“(3) The Banque centrale du Luxembourg admits third-country payment systems and securities settlement systems which comply with the requirements laid down in Article 107, point (1a). The Banque centrale du Luxembourg holds the official register of third-country payment systems and securities settlement systems referred to in Article 107, point (1a). The official register is available on the website of the Banque centrale du Luxembourg and is updated regularly. It is published in the Journal officiel du Grand-Duché de Luxembourg at least every year-end.”.

5° Article 112 is amended as follows:

- (a) In the title and in paragraphs 1 and 2, the words “or point (1a)” are added after the words “Article 107, point (1)”;
- (b) In paragraph 3, a new second subparagraph is added which reads as follows:

“Where securities, including rights in securities, are provided as collateral security to participants, system operators or to central banks of the Member States or the European

Central Bank as described in paragraph 2, and their right or that of any nominee, agent or third party acting on their behalf with respect to these securities is legally recorded on a register, account or centralised deposit system located in a third country whose system has been admitted by the Banque centrale du Luxembourg on the register held in accordance with Article 110(3), the determination of the rights of such entities as holders of collateral security in relation to those securities shall be governed by the law of that third country.”.

6° Article 113 is amended as follows:

- (a) In the title, the words “or point (1a)” are added after the words “Article 107, point (1)”;
- (b) In paragraph 1, second subparagraph, the words “or a third-country system within the meaning of Article 107, point (1a)” are inserted between the words “of another Member State” and the words “, the rights and obligations”;
- (c) In paragraph 2, first subparagraph, the words “of Chapters 1 and 2 of Part IV of the Law of 5 April 1993 on the financial sector, as amended, or of the provisions referred to in Article 61(18) of said law” are replaced by the words “of Part II, Titles II and III, of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended”;
- (d) In paragraph 3, second and third subparagraphs, the words “in Part IV of the Law of 5 April 1993 on the financial sector, as amended” are replaced by “in Part II of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended”;
- (e) In paragraph 3, a new fourth subparagraph is added which reads as follows:
“Where a Luxembourg participant to a third-country system is concerned, the Banque centrale du Luxembourg shall ensure to notify without delay the operator of said system of the request or decision to open insolvency proceedings in relation to a Luxembourg participant.”.

7° In the title of Article 114, the words “or point (1a)” are added after the words “Article 107, point (1)”;

8° In Article 116, a new paragraph 9 is added which reads as follows:

“(9) In the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without the conclusion of a withdrawal agreement based on Article 50(2) of the Treaty on European Union, the CSSF may take the measures referred to in the second and third subparagraphs in order to preserve the orderly functioning or the stability of the financial markets or to ensure the protection of payment service users or electronic money holders.

By way of derogation from Article 22, the CSSF may apply, for a maximum period of 21 months from the date of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the provisions of Article 21 to UK payment institutions providing payment services in Luxembourg by way of free provision of services, by way of establishment of a branch or through the use of a tied agent at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.

By way of derogation from Article 24-16, the CSSF may apply, for a maximum period of 21 months from the date of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the provisions of Article 24-15 to UK electronic money institutions carrying out, at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the business of issuing electronic money

or providing payment services in Luxembourg by way of free provision of services or by way of establishment of a branch, or through the use of a tied agent or an intermediary in accordance with this law.

The measures taken by the CSSF in accordance with the second and third subparagraphs shall apply to contracts existing at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and to contracts concluded after the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union where these contracts have close links to contracts existing at the time of the withdrawal.”.

Article 3.

A new Article 186-5 is inserted after Article 186-4 of the Law of 17 December 2010 relating to undertakings for collective investment, as amended, which reads as follows:

“Article 186-5.

In the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without the conclusion of a withdrawal agreement based on Article 50(2) of the Treaty on European Union, the CSSF may take the measures referred to in the second subparagraph in order to preserve the orderly functioning or the stability of the financial markets or to ensure the protection of unit- or shareholders or investors.

The CSSF may continue to apply, for a maximum period of 21 months from the date of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the provisions of Article 119 to management companies of UCITS authorised pursuant to Directive 2009/65/EC by the UK authorities and appointed as management companies of UCITS established in Luxembourg, which carry out, at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, the activities referred to in Article 101(2) or (3) in Luxembourg by way of free provision of services or by way of establishment of a branch.

The second subparagraph shall apply to contracts existing at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and to contracts concluded after the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union where these contracts have close links to contracts existing at the time of the withdrawal.”.

Article 4.

A new Article 58-1 is inserted after Article 58 of the Law of 12 July 2013 on alternative investment funds, as amended, which reads as follows:

“Article 58-1. Transitional provisions relating to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

In the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without the conclusion of a withdrawal agreement based on Article 50(2) of the Treaty on European Union, the CSSF may take the measures referred to in the second subparagraph in order to preserve the orderly functioning or the stability of the financial markets or to ensure the protection of unit- or shareholders or investors.

By way of derogation from Chapter 7, the CSSF may allow, for a maximum period of 21 months from the date of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, AIFMs authorised by the UK authorities pursuant to Directive 2011/61/EU at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and appointed as managers of AIFs established in Luxembourg, to continue carrying out the activities referred to in Article 5(2) or (4) in Luxembourg by way of free provision of services or by way of establishment of a branch.

The measures taken by the CSSF in accordance with the second subparagraph shall apply to contracts existing at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and to contracts concluded after the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union where these contracts have close links to contracts existing at the time of the withdrawal.”.

Article 5.

A new Article 321-1 is inserted after Article 321 of the Law of 7 December 2015 on the insurance sector, as amended, which reads as follows:

“Article 321-1. Transitional measures concerning the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

In the event of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without the conclusion of a withdrawal agreement based on Article 50(2) of the Treaty on European Union, the CAA may take the measures referred to in the second subparagraph in order to preserve the orderly functioning or the stability of the financial markets or to ensure the protection of policyholders and beneficiaries.

Without prejudice to the undertakings concerned availing themselves of the application of the second subparagraph of Article 159(1), the CAA may decide to exempt, for a maximum period of 21 months from the date of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, from the approval referred to in the first subparagraph of Article 159(1) and from the application of the provisions of Article 159(2) to (8), insurance or reinsurance undertakings governed by the law of the United Kingdom for the performance of insurance or reinsurance contracts concluded by way of free provision of services or by way of establishment of branches and in force at the time of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.

The decisions taken by the CAA under subparagraph 2 shall apply to contracts concluded or renewed after the date of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union only if they are closely linked to contracts existing at the time of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union.”.

Article 6.

The Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, is amended as follows:

1° In Article 1, a new point 108a. is inserted which reads as follows:

“108a. “third-country system” shall mean a third-country system within the meaning of Article 107, point (1a), of the Law of 10 November 2009 on payment services, as amended;”;

2° In Article 45(2), point (6), the words “or the third-country systems” are inserted between the words “Directive 98/26/EC” and the words “or their participants”, and the words “such system” are replaced by the words “such systems”;

3° In Article 67(4), point (2), the words “or third-country systems or third-country systems operators” are inserted between the words “Directive 98/26/EC” and the words “, central counterparties”;

4° In Article 68(2), the words “or of third-country systems or third-country systems operators” are inserted between the words “Directive 98/26/EC” and the words “, central counterparties”;

5° In Article 69(3), the words “or to third-country systems or third-country systems operators” are inserted between the words “Directive 98/26/EC” and the words “, central counterparties”;

6° In Article 80(1), the words “or of third-country systems” are inserted between the words “Directive 98/26/EC” and the word “, where”;

Article 7.

Articles 1, 2, point (8), and 3 to 6 shall enter into force on the day on which the United Kingdom of Great Britain and Northern Ireland, in accordance with Article 50(3) of the Treaty on European Union, withdraws from the European Union without having reached an agreement, as referred to in Article 50(2) of the Treaty.