

POLICY STATEMENT

(PS-02-2020)



SUBJECT: POLICY STATEMENT ON LAUNCHING A TEMPORARY PERMISSION REGIME FOR THE PROVISION OF INVESTMENT SERVICES TO PROFESSIONAL CLIENTS AND ELIGIBLE COUNTERPARTIES BASED IN CYPRUS, BY UK FIRMS

DATE OF ISSUE: 22 DECEMBER 2020

PURPOSE OF THE PUBLICATION

The Cyprus Securities and Exchange Commission, publishes this Policy Statement in order to notify its decision to launch a Temporary Permission Regime for the provision of investment services to professional clients and eligible counterparties based in Cyprus, by UK Investment Firms.

Queries in relation to the content of this Policy Statement may be addressed to the Policy Department of the Cyprus Securities and Exchange Commission at policy@cysec.gov.cy.

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1. PURPOSE OF THIS POLICY STATEMENT

- 1.1. The United Kingdom (UK) left the EU on 31 January 2020. As a result of this decision, a transitional period is currently in force until 31 December 2020 ('the **Transitional Period**')¹. During the Transitional Period the cross-border provision of investment services and/or investment activities, including any relevant ancillary services, within the meaning of Directive 2014/65/EU ('**MiFID II**'), also known as '*MiFID Passport*', will still be possible to or from the UK². As regards investment firms from the UK authorized pursuant to the provisions of Title II of MiFID II ('**UK Firms**'), these may during the Transitional Period continue to make use of the said passport.
- 1.2. More specifically, UK Firms may provide the investment services and/or investment activities including any relevant ancillary services, covered under their authorization on a cross-border basis to Cyprus to all types of clients. However, following the expiration of the Transitional Period the so-called '*MiFID passport*' will cease to apply and the UK Firms will be considered as '*third-country firms*' ('**Third-Country Firms**')

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W/TXT%2802%29> Article 126 of the AGREEMENT on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community-2019/C 384 I/01 ('the **Withdrawal Agreement**').

² Article 127(1) of the Withdrawal Agreement.

- 1.3.** According to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (“**MiFIR**”), the provision of investment services solely to professional clients and eligible counterparties by third country Investment Firms is subject to an equivalence decision by the European Commission, in relation to the regulatory framework of the third country in which such firm is domiciled; and to an ESMA registration. In the absence of an equivalence decision by the European Commission, Member States may allow firms to provide investment services in their territories in accordance with national regimes. In the case of Cyprus, the provision of services to professional clients and eligible counterparties on a solicited basis is subject to the establishment of a branch in Cyprus.
- 1.4.** In view of Brexit and in the absence of an agreement dealing with the cross border provision of services, the UK will be considered as a third country and therefore UK firms will be subject to this requirement.
- 1.5.** Currently there are **52** UK firms providing services to Cyprus Investment Firms (“CIFs”), acting as their Liquidity Providers or otherwise and in total **86** CIFs that have trading arrangements with UK firms. Where such contracts were established on a solicited basis and not as a result of reverse solicitation, will need to be terminated in the case of a UK withdrawal from the EU, without an agreement on the crossborder provision of investment services.
- 1.6.** However, in the case of UK firms, it might be difficult to identify such cases as active solicitation was permitted at the time where these contracts were concluded. In addition to this, the abrupt interruption of those contracts might affect the smooth functioning of the market.
- 1.7.** To this end, CySEC has established a Temporary Permission Regime without physical presence for UK firms providing investment services solely to professional clients and eligible counterparties, in order to allow for the

smooth transition to new contracts on a reverse solicitation basis and for UK firms who wish to continue soliciting Cypriot professional clients and eligible counterparties to establish a physical presence in the Republic.

2. WHO THIS CONCERNS

2.1. UK Firms:

- a) Which currently qualify as investment firms, within the meaning of MiFID II, transposed into Cypriot Law by means of Law 87(I)/2017, which Provides For The Provision Of Investment Services, The Exercise Of Investment Activities, The Operation Of Regulated Markets And Other Related Matters, (**'the CIF Law'**); and
- b) Whose home Member State, within the meaning of the CIF Law (**'Home MS'**) was the United Kingdom; and
- c) Which are currently and until the expiration of the Withdrawal Period have availed of the freedom to provide services³; and
- d) Which they provide investment services to professional clients and to eligible counterparties based in Cyprus; and
- e) Which will qualify as Third-Country Firms, after 31 December 2020, i.e. after the expiration of the Transitional Period.

3. WHAT IS GOING TO CHANGE

3.1. The provision of investment services and/or investment activities, including any relevant ancillary services, within the meaning of MiFID II ('MiFID II Services') by Third-Country Firms in Cyprus is subject to the provisions of the CIF Law, where such services are provided to retail clients and to the provisions of MiFIR, where such services are provided solely to professional clients and eligible counterparties.

3.2. For the provision of investment services (including the performance of

³ As regards UK Firms currently operating a branch in Cyprus, a clarifying statement is included at the end of this Policy Statement.

investment activities) to retail clients on a solicited basis in Cyprus by third country firms, is a prerequisite that such firms establish a physical presence in Cyprus, under the CIF Law (and it is not envisaged to change), whereas for the provision of services (including the performance of investment activities) solely to professional clients and eligible counterparties in the EU by third country firms, is subject to an ESMA registration where the European Commission has deemed that the regulatory framework of the respective third country is equivalent; and to national regimes in the absence of an equivalence decision by the European Commission.

3.3. More specifically, Article 46(1) of MiFIR provides that: *‘A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA in accordance with Article 47.’* However, such registration presupposes the prior issuance of an equivalence decision by the EU Commission as to the legal and regulatory framework of the jurisdiction of the Third-Country Firm. In the absence of such equivalence decision⁴, as it is currently the case with UK Firms despite the conclusion of the Withdrawal Agreement, Article 46(4) subparagraph 5 of MiFIR provides that it is up to each EU Member State to allow Third-Country Firms to provide MiFID Services to eligible counterparties and professional clients within the meaning of MiFID II respectively in accordance with their own national regimes (if any).

3.4. The relevant Third-Country Firm regime in Cyprus, is laid down in CySEC Directive DI-87-04⁵ of the Cyprus Securities and Exchange Commission for the provision of services by third country firms in the Republic of Cyprus to eligible counterparties and professional clients in those cases that do not fall within the scope of Regulation (EU) no. 600/2014 on financial markets (MiFIR) (**the**

⁴ Article 46(2)(a) of MiFIR.

⁵ <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=7d653de6-373f-47a7-950d-facdd5fafa70>

CySEC Directive') as its title explicitly suggest. The CySEC Directive applies in the absence of the said EU Commission's equivalence decision or where such decision is no longer applicable⁶, as it is currently the case with regard to UK Firms being considered Third Country Firms after 31 December 2020.

- 3.5.** The Directive allows Third Country Firms to offer Investment Services (including the performance of investment activities) in Cyprus, only through a branch, within the meaning of the CIF Law (**'Branch'**)⁷; excluding thus offering Investment Services without physical presence in Cyprus.
- 3.6.** For the avoidance of doubt, the Directive does not encompass cases of reverse solicitation, as such cases are excluded from the scope of application of the equivalence decision of Article 46(2)(a) of MiFIR and subsequently of the Directive, since in such case the aforesaid services and activities should not be deemed as being provided in the territory of the Union⁸, including Cyprus.
- 3.7.** Thus, it will not be possible, unless relevant action is taken, for UK Firms to continue providing Investment Services to professional clients and/or eligible counterparties, within the meaning of the CIF Law, in Cyprus, pursuant to contracts established on a solicited basis, without having a physical presence in Cyprus (i.e. at least a branch). The reason is that no equivalence decision exists currently at EU level, whereas the applicable national framework does not provide for the possibility of (remote) provision of Investment Services by Third Country Firms, unless a Branch is established.
- 3.8.** For the purpose of clarity it stressed that such branches are allowed to provide investment services only to professional clients and eligible counterparties based in Cyprus and may not benefit from the right to provide crossborder services in the EU. For the provision of cross border service throughout the EU the establishment of full presence in Cyprus is required, i.e. the establishment of a subsidiary.

⁶ Article 46(4) subpara.5 of MiFIR and Paragraph 3 of the Directive.

⁷ Paragraphs 4(1)(ii) and 4(2) of the Directive.

⁸ Article 46(5) subparagraph 2 of MiFIR and Recital 43 of MiFIR, Paragraph 5 of the Directive.

4. INTENDED ACTION AND NEXT STEPS

4.1. Having regard to the above, the following two issues have been identified as possible obstacles for UK Firms towards a smooth transitioning from the passporting regime of MiFID II to the national regime of the Directive⁹:

- a) The absence in the Directive of the possibility for former MiFID Firms and subsequently Third Country Firms, such as UK Firms after 31 December 2020, to provide Investment Services to eligible counterparties and professional clients, only by means of remote provision of services without having a Branch in Cyprus for the smooth phasing out of their operations; and
- b) The difficulty to distinguish, given the applicable passporting regime, which are the UK firms that were providing investment services in Cyprus based on the reverse solicitation exemption and which ones had acted bases on the '*MiFID Passport*' notification procedure (i.e. on a solicited basis).

4.2. Bearing in mind the aforesaid and the fact that UK Firms will be Third Country Firms after the 31 December 2020, CySEC has amended the Directive to enable the smooth phasing out of contracts established on a solicited basis. The said provisions will allow UK Firms, after having become Third Country Firms to provide Investment Services in Cyprus without having a branch in Cyprus, under observance of a notification procedure; provided that such Services will be offered only to professional clients and/or eligible counterparties, within the meaning of the CIF Law up until 31 December 2021, unless a relevant decision is taken by the EU Commission in the meantime as to the existence of an equivalence (or not) pursuant to Article 46(2)(a) of MiFIR. From 1st January 2022, UK firms who provided investments services on the basis of the Temporary Permission Regime and who wish to continue soliciting Professional

⁹ Which applies to Third Country Firms.

Clients and Eligible Counterparties based in Cyprus, they will need to establish at least a Branch.

4.3. The relevant notification form is attached hereto as Annex 1 and could be also found in a word format on CySEC's website (see [here](#)). The relevant Directive will be published in the Official Gazette of the Republic and could be also found on CySEC's website (see [here](#)).

4.4. Interested parties must submit the relevant notification by 31 December 2020 at TPR@cysec.gov.cy.

5. EXCURSE: UK FIRMS OPERATING A BRANCH IN CYPRUS

5.1. In case of UK Firms operating in Cyprus by means of a Branch, such operation shall be deemed, after the 31 December 2020, as compliant with the provisions of Paragraph 4 of the Directive for as long and until a relevant decision as to a possible equivalence (or not) is taken pursuant to the provisions of Article 46 of MiFIR; provided at all times that such operations are limited to the provision of MiFID Services only towards professional clients and/or eligible counterparties, all within the meaning of MiFID II, in Cyprus.

**NOTIFICATION OF INTENTION
OF UK INVESTMENT FIRMS TO OFFER SERVICES TO PROFESSIONAL CLIENTS AND/OR ELIGIBLE
COUNTERPARTIES IN CYPRUS**

<p>Name of UK Investment Firm : «.....»</p> <p>FCA Authorisation Number : «.....»</p>

Purpose of this form

This form should be completed by investment firms located in the United Kingdom, in the context of Paragraph 6A of the [Directive DI87-04 of the Cyprus Securities and Exchange Commission for the provision of services by third country firms in the Republic of Cyprus to eligible counterparties and professional clients in those cases that do not fall within the scope of Regulation \(EU\) no. 600/2014 on financial markets \(MiFIR\)](#)

Please submit this form **by email in pdf format** at TPR@cysec.gov.cy.

Section 1.
Information about the Investment Firm

1.1 Name of investment firm:	
1.2 Trading name:	
1.3 Address:	
1.4 Telephone number:	
1.5 E-mail:	
1.6 Name of the contact person at the investment firm:	
1.7 Authorisation Status:	Authorised by:
1.8 Authorisation Date:	
1.9 Please indicate whether you have previously notified your intention to carry out investment services and activities as well as ancillary services (if any) in Cyprus.	<input type="checkbox"/> Yes <input type="checkbox"/> No If your answer is 'YES', please continue to the following question. If your answer is 'NO' your application may not proceed
1.10 Please indicate whether the investment services and activities, ancillary services as well as the financial instruments for which you intend to provide services remain the same as per your previous notification	<input type="checkbox"/> Yes <input type="checkbox"/> No If your answer is 'NO', please fill in the information in the Table of Section 2
1.11 Please confirm that the investment services and activities, and financial instruments notified are still covered by your license with FCA and provide the relevant reference number and the link to the FCA public registry.	

Section 2

Intended Investment services, activities and ancillary services

This section should only be filled by Applicants which have provided a negative answer in section 1.10.

Please indicate the investment services and activities, ancillary services as well as financial instruments that the Applicant wishes to provide and/or perform (as the case may be) to/towards eligible counterparties and professional clients in Cyprus.

		Investment Services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1																
	C2																
	C3																
	C4																
	C5																
	C6																
	C7																
	C8																
	C9																
	C10																
	C11																

*Please place an (x) in the appropriate boxes.

I responsibly declare, having full knowledge of the consequences of the Investment Services and Activities and Regulated Markets Law of 2017 (Law 87(I)/2017) (the “Law”), that:

- a) I have exercised all due diligence in ensuring that all the information stated in this notification, as well as the details and documents that accompany it are correct, complete and accurate.**
- b) I am authorised to sign on behalf of the IF.**

I acknowledge and accept that the Commission may reveal information in the discharge of its duties, as these are defined in the Law.

In accordance with sections 71, 93 and 94 of the Law, I understand that the provision of false, or misleading information or data or documents or forms, or the withholding of material information from the current notification, is subject to an administrative fine and may constitute a criminal offence.

Full name:

Position held in the Investment Firm:

Signature:

Date:

Annex 2

<p>DIRECTIVE DI87-04(2) OF THE CYPRUS SECURITIES AND EXCHANGE COMMISSION FOR THE PROVISION OF SERVICES BY THIRD COUNTRY FIRMS IN THE REPUBLIC OF CYPRUS TO ELIGIBLE COUNTERPARTIES AND PROFESSIONAL CLIENTS IN THOSE CASES THAT DO NOT FALL WITHIN THE SCOPE OF REGULATION (EU) NO. 600/2014 ON FINANCIAL MARKETS (MiFIR)</p> <p>(Amending Directive DI87-04 of 2018)</p>		
<p>The Cyprus Securities and Exchange Commission in accordance with the power vested in it by virtue of section 96 of the Provision of Investment Services, the Exercise of Investment Activities, the Operation of Regulated Markets and other related matters Law of 2017, issues the following Directive:</p>		
Short Title.	1.	<p>The present Directive shall be cited as Directive DI87-04(2) of the Cyprus Securities and Exchange Commission for the provision of services by third country firms in the Republic of Cyprus to eligible counterparties and professional clients in those cases that do not fall within the scope of Regulation (EU) no. 600/2014 on financial markets (MiFIR).</p>
New Paragraph 6A. R.A.D 5/2018	2.	<p>The Directive DI 87-04 of the Cyprus Securities and Exchange Commission for the provision of services by third country firms in the Republic of Cyprus to eligible counterparties and professional clients in those cases that do not fall within the scope of Regulation (EU) no. 600/2014 on financial markets (MiFIR) is amended by adding a new Paragraph 6A bearing the title 'Transitional Provisions, which reads as follows:</p> <p><i>'(1) By means of exception from the provisions of Paragraph 4(1)(ii) and of Paragraph 4(2) and without prejudice to Paragraph 5, the following shall apply after the expiration of the transitional period provided in Article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01):</i></p> <p><i>(i) A United Kingdom Investment Firm may provide in the Republic investment services or perform investment activities with or without any ancillary services only towards eligible counterparties and professional clients within the meaning the Law for a period of up to twelve months (12 months) following the expiration of the said transitional period; unless a decision has been taken in the meantime by the European Commission as to the existence or not of an equivalence, within the meaning of Article 46(2)(a) of Regulation (EU) No. 600/2014; and</i></p> <p><i>(ii) The United Kingdom Investment Firm mentioned in sub-paragraph (i) has duly completed and submitted to the Commission the Form 87-04-01, which is available on the Commission's website, by 31 December 2020; and</i></p> <p><i>(iii) The United Kingdom Investment Firm mentioned under sub-paragraph (i) fully complies with any other applicable requirements.</i></p> <p><i>(2) Following the period refer to in Paragraph (1)(i), Investment Firms of Paragraph 1 may continue providing investment services to professional clients and/or to eligible counterparties in the Republic, only if a branch has been established in the Republic.</i></p>
Entry into force	3.	<p>The present Directive shall enter into force as of its publication in the Official Gazette of the Republic.</p>

ΟΔΗΓΙΑ ΤΗΣ ΕΠΙΤΡΟΠΗΣ ΚΕΦΑΛΑΙΑΓΟΡΑΣ ΚΥΠΡΟΥ ΓΙΑ ΤΗΝ ΠΑΡΟΧΗ ΥΠΗΡΕΣΙΩΝ ΑΠΟ ΕΠΙΧΕΙΡΗΣΕΙΣ ΤΡΙΤΩΝ ΧΩΡΩΝ ΣΤΗΝ ΔΗΜΟΚΡΑΤΙΑ, ΓΙΑ ΕΠΙΛΟΓΗ ΤΩΝ ΑΝΤΙΠΡΟΣΩΠΕΙΩΝ ΚΑΙ ΤΩΝ ΕΠΑΓΓΕΛΜΑΤΙΩΝ ΠΕΛΑΤΩΝ ΣΕ ΑΥΤΕΣ ΤΙΣ ΠΕΡΙΠΤΩΣΕΙΣ ΠΟΥ ΔΕΝ ΕΜΠΙΠΤΟΥΝ ΣΤΟ ΠΛΑΙΣΙΟ. 600/2014 ΣΤΙΣ ΧΡΗΜΑΤΟΠΙΣΤΩΤΙΚΕΣ ΑΓΟΡΕΣ (MiFIR).

(Τροποποιητική της Οδηγίας ΟΔ87-04)

Η Επιτροπή Κεφαλαιαγοράς Κύπρου σύμφωνα με την εξουσία που της παρέχει το άρθρο 96 του περί της Παροχής Επενδυτικών Υπηρεσιών, της Άσκησης Επενδυτικών Δραστηριοτήτων, της Λειτουργίας Ρυθμιζόμενων Αγορών και άλλων συναφών θεμάτων Νόμου του 2017, εκδίδει την ακόλουθη Οδηγία:

Σύντομος Τίτλος	1.	Η παρούσα οδηγία θα αναφέρεται ως η Οδηγία ΟΔ87-04(02) της Επιτροπής Κεφαλαιαγοράς για την παροχή υπηρεσιών από εταιρείες τρίτων χωρών στην Κυπριακή Δημοκρατία σε επιλεγμένους αντιπροσώπους και σε επαγγελματίες πελάτες, στις περιπτώσεις που δεν εμπίπτουν στο πεδίο εφαρμογής του Κανονισμού (ΕΕ) αριθ. 600/2014 στις χρηματοπιστωτικές αγορές (MiFIR)
Προσθήκη νέας παραγράφου 6Α Κ.Δ.Π 5/2018	2.	<p><i>Η Οδηγία ΟΔ 87-04 της Επιτροπής Κεφαλαιαγοράς Κύπρου για την παροχή υπηρεσιών από εταιρείες τρίτων χωρών στην Κυπριακή Δημοκρατία σε επιλεγμένους αντιπροσώπους και επαγγελματίες πελάτες στις περιπτώσεις που δεν εμπίπτουν στο πεδίο εφαρμογής του Κανονισμού (ΕΕ) αρ. 600/2014 στις χρηματοπιστωτικές αγορές (MiFIR) τροποποιείται, με την προσθήκη της νέας παραγράφου 6Α που φέρει το τίτλο «Μεταβατικές διατάξεις», η οποία έχει ως εξής:</i></p> <p><i>«6Α. (1) Κατά παρέκκλιση των διατάξεων της παραγράφου 4(1)(ii) και της παραγράφου 4(2) και άνευ επηρεασμού των διατάξεων της παραγράφου 5, ισχύουν τα ακόλουθα μετά τη λήξη της μεταβατικής περιόδου που προβλέπεται στο άρθρο 126 της συμφωνίας για την απόσυρση του Ηνωμένου Βασιλείου της Μεγάλης Βρετανίας και της Βορείου Ιρλανδίας από την Ευρωπαϊκή Ένωση και την Ευρωπαϊκή Κοινότητα Ατομικής Ενέργειας (2019 / C 384 I / 01):</i></p> <p><i>(i) Εταιρεία Παροχής Επενδυτικών Υπηρεσιών από το Ηνωμένο Βασίλειο δύναται να παρέχει στη Δημοκρατία επενδυτικές υπηρεσίες ή να εκτελεί επενδυτικές δραστηριότητες με ή χωρίς παρεπόμενες υπηρεσίες μόνο προς επιλεγμένους αντιπροσώπους και επαγγελματίες πελάτες κατά την έννοια του Μέρους I, δεύτερο προσάρτημα του Νόμου για περίοδο έως και δώδεκα (12) μηνών μετά τη λήξη της εν λόγω μεταβατικής περιόδου εκτός εάν έχει ληφθεί εν τω μεταξύ από την Ευρωπαϊκή Επιτροπή απόφαση σχετικά με την ύπαρξη ή όχι ισοδυναμίας, κατά την έννοια του άρθρου 46(2)(α) του κανονισμού (ΕΕ) αριθ. 600/2014 και</i></p> <p><i>(ii) Η Εταιρεία Παροχής Επενδυτικών Υπηρεσιών από το Ηνωμένο Βασίλειο που αναφέρεται στην υποπαραγράφο (i) έχει συμπληρώσει δεόντως και υποβάλει στην Επιτροπή το Έντυπο 87-01-04 μέχρι τις 31 Δεκεμβρίου 2020 και</i></p> <p><i>(iii) Η Εταιρεία Παροχής Επενδυτικών Υπηρεσιών από το Ηνωμένο Βασίλειο που αναφέρεται στο εδάφιο (i), συμμορφώνεται πλήρως με οποιεσδήποτε άλλες ισχύουσες απαιτήσεις.</i></p> <p><i>(2) Με την πάροδο της δωδεκάμηνης περιόδου που αναφέρεται στην υποπαραγράφο (1)(i) Εταιρείες Επενδυτικών Υπηρεσιών της Παραγράφου 1 θα δύναται να συνεχίσουν παρέχουν επενδυτικές υπηρεσίες σε επιλέξιμους αντισυμβαλλόμενους ή/και σε επαγγελματίες πελάτες, μόνο εάν έχουν εγκαταστήσει στη Δημοκρατία Υποκατάστημα »</i></p>
Έναρξη ισχύος	3.	Η παρούσα οδηγία αρχίζει να ισχύει από τη δημοσίευσή της στην Επίσημη Εφημερίδα της Δημοκρατίας