

How to continue providing investment services In Belgium in the event of a “no deal”?

September 2020

With the 31 December 2020 deadline looming, an inflow of financial sector clients currently licensed under UK MiFID are seeking advice on how they can continue providing investment services in Belgium and/or whether Belgium can be a suitable jurisdiction to set up an EU hub to continue providing investment services in the EEA in case of a “no deal”. This outline intends to provide a high level summary on some of the available options in Belgium.

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	Full MiFID	MiFID Light	AIFM Plus	Non-EEA Branch	Limited Registration	Intermediary
Legal name	<ul style="list-style-type: none"> Stockbroking firm 	<ul style="list-style-type: none"> Company for portfolio management and investment advice 	<ul style="list-style-type: none"> (Full) AIFM with an additional MiFID authorization 	<ul style="list-style-type: none"> Branch of a non-EEA investment firm (Full MiFID or MiFID Light) 	<ul style="list-style-type: none"> Registration of a non-EEA investment firm 	<ul style="list-style-type: none"> Banking and investment services intermediary
Type of license	<ul style="list-style-type: none"> License 	<ul style="list-style-type: none"> License 	<ul style="list-style-type: none"> License 	<ul style="list-style-type: none"> License 	<ul style="list-style-type: none"> Notification 	<ul style="list-style-type: none"> Registration
Supervisor	<ul style="list-style-type: none"> National Bank of Belgium (NBB) for prudential matters Financial Services Markets Authority (FSMA) for conduct rules 	<ul style="list-style-type: none"> FSMA 	<ul style="list-style-type: none"> FSMA 	<ul style="list-style-type: none"> FSMA NBB for prudential matters in case of Full MiFID 	<ul style="list-style-type: none"> FSMA ESMA (<u>Draft Technical Standards of 28 September 2020</u>) 	<ul style="list-style-type: none"> FSMA
European passport	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> No

	Full MiFID	MiFID Light	AIFM Plus	Non-EEA Branch	Limited Registration	Intermediary
Corporate form	<ul style="list-style-type: none"> Belgian company 	<ul style="list-style-type: none"> Belgian company 	<ul style="list-style-type: none"> Belgian company 	<ul style="list-style-type: none"> UK company 	<ul style="list-style-type: none"> UK company 	<ul style="list-style-type: none"> Belgian company
Minimum capital	<ul style="list-style-type: none"> EUR 250.000 (fully paid up) In some cases EUR 730.000 euros is required (e.g. transactions in financial instruments for their own account; placement activities; etc) 	<ul style="list-style-type: none"> EUR 125.000 (fully paid up) 	<ul style="list-style-type: none"> EUR 125.000 and cannot be lower than 1/4 of the general expenses If AuM exceed EUR 250 million, the capital must be increased by 0.02% 	<ul style="list-style-type: none"> Precise amount of allocation to be decided by the NBB (Full MiFID) or the FSMA (MiFID Light) 	<ul style="list-style-type: none"> UK law 	<ul style="list-style-type: none"> No specific requirements
Substance	<ul style="list-style-type: none"> At least 2 effective leaders No letter box: central management must be effectively in Belgium; the criteria of set out in the ESMA Opinion of 13 July 2017 apply Investment services need to be performed in Belgium. For instance, if the MiFID activity includes investment advice, at least part of that investment advice must be given from the Belgian office 			<ul style="list-style-type: none"> At least 2 effective leaders 	<ul style="list-style-type: none"> Investment services can be rendered without substance in Belgium 	<ul style="list-style-type: none"> No letter box; but somewhat lower substance requirements when compared to Full MiFID – MiFID Light – AIFM Plus
Permitted activities	<ul style="list-style-type: none"> All MiFID investment services (including portfolio management and investment advice) 	<ul style="list-style-type: none"> RTO Order execution Portfolio management Investment advice 	<ul style="list-style-type: none"> AIFM management RTO Portfolio management Investment advice Custody and administration of units in collective investment undertakings 	<ul style="list-style-type: none"> See Full MiFID / MiFID Light 	<ul style="list-style-type: none"> All MiFID investment services that are rendered in the UK can also be rendered in Belgium to UK expats, per se professional clients and eligible counterparties 	<ul style="list-style-type: none"> Intermediation activity (as a broker or as an agent). This includes promotion of UCITS or public AIFs. No investment advice for own account

This client memo intends to provide our UK clients with a high level summary on how to continue conducting business in Belgium after 31 December 2020 in case of a “no deal”. Please note that this table is not exhaustive and may be subject to change. This memo cannot be considered legal advice. Copyright Liedekerke Wolters Waelbroeck Kirkpatrick CVBA.