



Implications of Brexit

On the **Gibraltar FS business**



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On 11 April 2019, the European Council agreed with the UK that its exit from the EU should be postponed from 12 April to 31 October 2019. **Therefore, Gibraltar will leave the EU with effect from 1 November 2019 or, if the withdrawal agreement between the EU and the UK is ratified before 31 October 2019, from the first day of the month following completion of the ratification procedures.**

It is not yet certain what will happen as a result of the resignation of Theresa May as PM and the previous decisions of UK the Parliament not to accept the EU-UK withdrawal deal. It does, however, underline that Gibraltar firms need to prepare for a “no deal” outcome, and time is rapidly running out.

Status of Gibraltar

Gibraltar has a special status in the EU by virtue of Article 355(3) of the Treaty on the Functioning of the European Union (previously Article 299(4) of the EC Treaty) which states that:

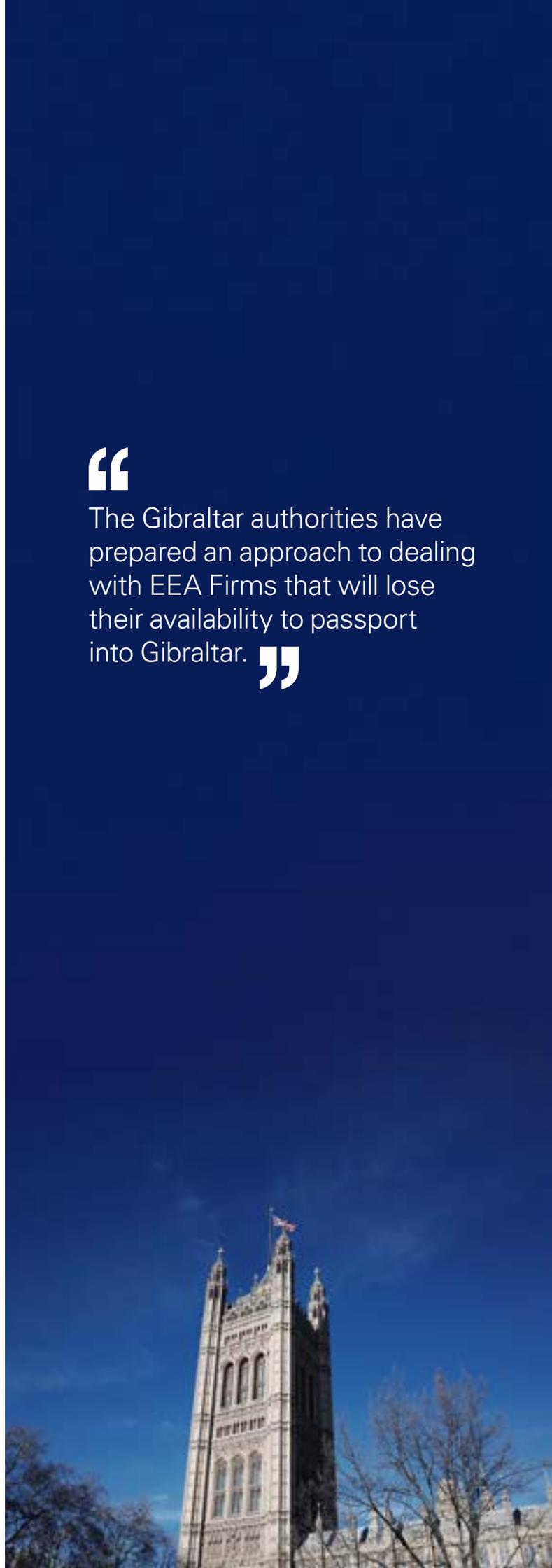
The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible.

Gibraltar is a separate territory to which the EU Treaties apply and Gibraltar has transposed all relevant EU Directives, including all EU Directives that apply to financial services.

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The Gibraltar authorities have prepared an approach to dealing with EEA Firms that will lose their availability to passport into Gibraltar.

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The Government of Gibraltar has enacted its own EU (Withdrawal) Act 2019 (“EUWA”), which forms part of the wider work the Government is undertaking to prepare for the UK’s and Gibraltar’s withdrawal from the EU. The EUWA is in similar terms to the UK’s EU Withdrawal Act 2018.

“No-deal” impact on Gibraltar

Firms providing services locally in Gibraltar and/or in the UK will be able to continue to do so post-Brexit. However, firms which carry out business between Gibraltar and the EEA will be directly affected in case of “no deal”. Passporting allows firms authorised in an EEA state to conduct business within other EEA states based on their “home” Member State authorisation. Post-Brexit the right to passport across the EEA will no longer apply to firms based in Gibraltar. This will have an impact on:

- Firms and funds based in an EEA state that carry out certain types of business or provide services in Gibraltar (“**EEA Firms**”);
- Firms and funds based in Gibraltar that conduct business or provide services in the EEA (“**Gibraltar Firms**”).



The TPR proposed by the Gibraltar Government for EEA Firms that currently provide their services in the Gibraltar market under a European passport (in the areas of the CRD IV, MiFID II, Solvency II, IDD or PSD2, among others) and wish to continue to do so, will allow firms to continue with their activity for a limited period of time.”

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EEA Firms and Gibraltar Firms will need to plan and action their own internal processes for coming into compliance with the additional rules by exit day.”

How to prepare your firm for a “no deal”?

EEA Firms

The Gibraltar authorities have prepared an approach to dealing with EEA Firms that will lose their availability to passport into Gibraltar. The Gibraltar Government’s transitional arrangements will allow EEA Firms to provide services in Gibraltar for a limited period of time regardless of their loss of passporting rights. These arrangements consist of:

- **The temporary permission regime (“TPR”) for EEA Firms that want to continue Gibraltar business after Brexit:** The TPR proposed by the Gibraltar Government for EEA Firms that currently provide their services in the Gibraltar market under a European passport (in the areas of the CRD IV, MiFID II, Solvency II, IDD or PSD2, among others) and wish to continue to do so, will allow firms to continue with their activity for a limited period of time. Likewise, collective investment institutions (“CII”) marketed in Gibraltar under the UCITS or AIFMD Directives will continue to be sold to investors in Gibraltar. **This arrangement is provided they notify the Gibraltar Financial Services Commission (“GFSC”) before exit day.**

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In the case of Gibraltar Firms, the GFSC has mentioned in several communications that these firms should have plans in place to address any risk arising from Brexit.”



These firms will have to use this limited period of time to work on their application for full authorisation under Gibraltar rules. Neither the Government of Gibraltar nor the GFSC has confirmed the specific period of time that the TPR will be available. However, as a guideline, the homologous TPR approved by the UK Government has an extension for up to three years.

- **The TPR for EEA Firms that want to wind down their business in Gibraltar:** EEA Firms which want to cease its activity in Gibraltar and notify its intention to the GFSC **will be granted a temporary permission for a period of six months beginning on exit day.**

During these six months EEA Firms under the regime will be able carry out the passported activities in Gibraltar for the purpose of the orderly cessation of its pre-Brexit business. EEA Firms under the regime will not permitted to conduct new regulated business in Gibraltar after exit day (e.g. enter into new contracts or accept new deposits).

- **The restricted TPR: Financial Contracts Regime (“FCR”):** for EEA Firms that have not submitted a TPR notification or are unsuccessful in securing full Gibraltar authorisation but which already have pre-existing contracts with clients, **the GFSC will grant a “restricted temporary permission” for the performance of those contracts.**
- This regime will ensure that EEA Firms can still fulfil their existing Gibraltar contractual obligations, independent of the TPR, for up to (i) fifteen years, for the purpose of performing pre-existing contracts of insurance; (ii) five years, for the purpose of performing any other pre-existing contracts.

Gibraltar Firms

In contrast with the TPR available for inbound EEA entities, **Gibraltar cannot put in place unilateral measures in order to provide contingency measures for the Gibraltar Firms carrying out business in other EEA states.** These entities should, as appropriate, analyse whether there are national arrangements available and monitor developments at the EEA level.

By way of illustration, at present, countries like **Ireland, Italy, the Netherlands, Belgium, Denmark, Norway and Finland, are introducing something similar to the Gibraltar TPR**, which will allow Gibraltar Firms to continue EEA business with counterparts and clients in these countries. Likewise, **Spain, France, Germany, Poland and Sweden are introducing something similar to the Gibraltar FCR. However, it is important to check the conditions and limitations to those regimes.**

In the case of Portugal, Austria, Cyprus, Czech Republic, Greece and Malta, currently these countries are not planning to provide any relief.

Compliance implications

The GFSCs overall intention is to preserve the status quo as much as possible. However, **EEA Firms** relying on the TPR and FCR firms will be under scope of the Gibraltar supervision and certain new rules and levies will apply to them immediately after Brexit.

In the case of **Gibraltar Firms**, the GFSC has mentioned in several communications that these firms should have plans in place to address any risk arising from Brexit. Gibraltar Firms providing services into the EEA should familiarise themselves with the relevant applicable law in all jurisdictions in which they operate.

EEA Firms and Gibraltar Firms will need to plan and action their own internal processes for coming into compliance with the additional rules by exit day.

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KPMG has market leading expertise and experience in advising clients through the different regulatory compliance and authorisation process.”



How can we help?

If you are unsure whether you will need a temporary permission in Gibraltar or rely on EEA national arrangements, **the UK regulators recommends seeking legal advice**. Our KPMG legal and consulting experts can advise on how to navigate these new frameworks and comply with the regulatory requirements. We have a lot of experience providing services to UK and EEA clients on its Brexit contingency plans, helping them to rely on temporary permissions or other existing arrangements available in the EEA states.

KPMG, with a network of **1,300+ lawyers operating in 74 jurisdiction**, has market leading expertise and experience in advising clients through the different regulatory compliance and authorisation process.

For more information on how we can help, please contact us:



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