EVERSHEDS SUTHERLAND

Passport to success

EEA access tracker for non-EEA financial services firms

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Introduction

With a total population of 446 million inhabitants and a nominal collective GDP of around US$14 trillion, the European Union ("**EU**") represents the world's second largest market and a key target for the global asset management industry. However, with 27 separate member states separately implementing (and interpreting in slightly but sometimes significantly different ways) a number of overlapping Union-wide Directives, the barriers to entry for non-EU financial services firms can be daunting.

We are seeing an increase in queries from non-EEA clients on doing business in the EU and EEA and so we have created a high level survey of some of the key issues across the EU and EEA member states.

Austria

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
To the extent that respective services are regulated by AIFMD or MiFID, non-EEA firms which are not authorised in the EEA under AIFMD or MiFID are not authorised to offer such services in Austria. Offering shares in the context of M&A transactions is a regulated activity, unless such offering is only an ancillary activity within services not regulated by AIFMD or MiFID.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No.

b. by telephone or Zoom/Teams/etc. calls;
No.

c. on a fly in fly out basis;
No.
d. in response to a reverse solicitation?
Yes. The reverse solicitation exception was transposed in line with MiFID II and is recognised by the Austrian Financial Market Authority.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Theoretically yes.

If so, to what extent and under what circumstances?
Practically it will be almost impossible to evidence required prerequisites for a required Austrian authorisation, which include a minimum capital requirement is available in the EU/EEA and that the legal form of the firm is equivalent to certain Austrian legal forms. Practically, it is, therefore, advisable to set up an Austrian subsidiary for acquiring the necessary authorisation.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
The Austrian subsidiary must fulfil the requirements for an Austrian authorisation, but there are no principal restrictions regarding shareholders.

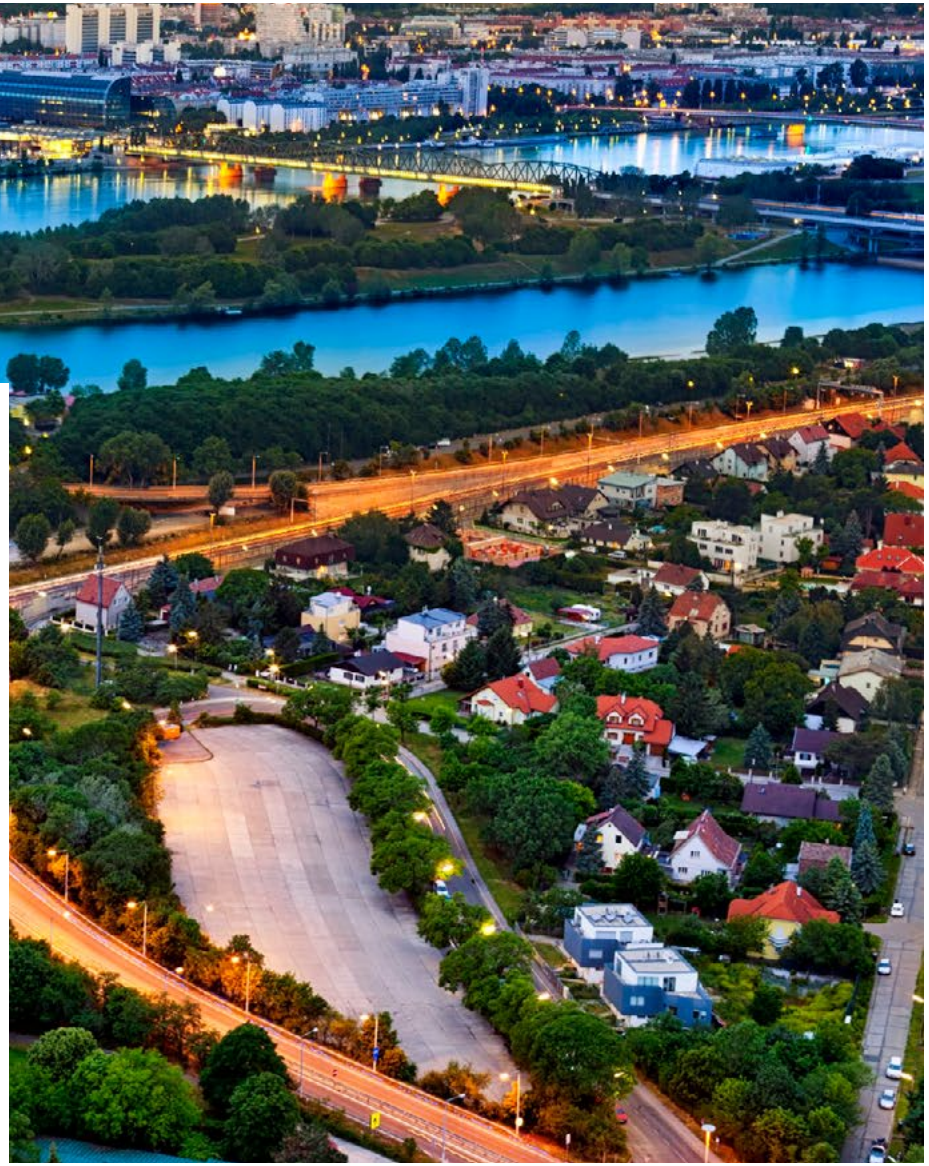
4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)
No.

a. If so, to what extent and under what circumstances?
N/A

Austria (cont)

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A non-EEA firm cannot appoint a tied agent for its services in Austria.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.



Belgium

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?

The key question is whether the offered/provided service will be considered as "corporate finance advice" or "financial investment advice" (advising on buy side), "placing of financial instruments without a firm commitment basis" (advising on sell side and seeking investors) or "receipt and transmission of orders" (either with its basic meaning of receiving and transmitting orders or its extended meaning including making arrangements to bring together two or more investors to enter into a transaction). Corporate finance advice is an "ancillary service" under MiFID II and is not regulated. All the other activities are regulated "investment services" under MiFID II.

a. If so, to what extent and under what circumstances?

The Belgian Financial Services and Markets Authority ("**FSMA**") has not issued specific guidance on corporate finance or M&A advice clarifying the Belgian position in relation to this question. Although not in the specific context of M&A transactions, FSMA issued certain guidance on the outlines of the MiFID concepts of "investment advice", "placing" and "receipt and transmission of orders" which can be helpful but is fact specific and needs to be considered on a case-by-case basis to confirm which service is provided. When assessing whether (MiFID) investment advice is being provided, FSMA will consider the CESR (predecessor of ESMA) document "Questions & Answers - Understanding the definition of advice under MiFID". This states that if a client's primary purpose for seeking advice is in order to generate a financial return on an investment or to hedge risk, this qualifies as the investment service "financial investment advice". If a client's purpose for requesting advice is for an industrial, strategic or entrepreneurial purpose rather than to receive a financial return or hedge a risk, the advice provided will be "corporate finance advice". A separate analysis is required when assessing the possible offering or provision of (MiFID) RTO or placing services.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;

No, to the extent investment services under MiFID II are offered. Cold calling restrictions must also be taken into account.

b. by telephone or Zoom/Teams/etc. calls;

No, to the extent investment services under MiFID II are offered. Cold calling restrictions must also be taken into account.

c. on a fly in fly out basis;

No, to the extent investment services under MiFID II are offered.

d. in response to a reverse solicitation?

"Financial investment advice" and "placing of financial instruments without a firm commitment basis": if a retail client or professional client within the meaning of Section II of Annex II of MiFID II, which is established or situated in the EU, initiates at its own exclusive initiative the provision of an investment service or activity by a non-EEA firm, the service is not considered to be provided within the territory of the EU and does not require a license (reverse solicitation).

Belgium (cont)

ESMA is of the opinion that every means of communication, including press releases, advertising on the internet, brochures, phone calls or face-to-face meetings must be considered when determining whether the client or potential client has been subject to any solicitation, promotion or advertising in the Union on the firm's investment services or activities or on financial instruments. ESMA reminds firms that such a solicitation, promotion or advertising will be considered regardless by whom it is issued: the non-EEA itself; an entity acting on its behalf or having close links with such non-EEA; or any other person acting on behalf of such entity. Care must be taken when relying upon reverse solicitation since recharacterisation of reverse solicitation as active provision of services may give rise to criminal or civil criminal liability for unauthorised provision of investment services. FSMA takes a restrictive approach to reverse solicitation.

"Corporate finance advice": corporate finance advice is not regulated and thus the concept of reverse solicitation does not apply.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
While it is possible to set up a Belgian branch to provide investment services to retail clients and 'per se' professional clients, subject to certain conditions, non-EEA firms as market participants do not choose to operate though Belgian branches.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Non-EEA firms may establish a subsidiary in Belgium and that subsidiary may apply for a licence to act as an investment firm.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
Yes.

a. If so, to what extent and under what circumstances?
Non-EEA firms established in certain countries (including the UK and the US) can apply for a "light-touch licence" (provided for by Article 14 of the Belgian Act dated 25 October 2016) allowing them (subject to prior FSMA notification and under certain conditions) to provide investment services on a cross-border basis to:

- eligible counterparties;
- 'per se' professional clients within the meaning of MiFID II; and
- persons (including retail clients) resident in Belgium but with the nationality of the home state of the non-EEA firm (typically expatriates) or of a country in which such investment firm has established a branch

Many non-EEAs have applied for a light touch licence.

Belgium (cont)

5. What are the requirements for establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A tied agent must be registered with the Registry of Intermediaries in Banking and Investment services held by the FSMA. Only investment firms may register tied agents and must ensure the integrity and professional knowledge of their tied agents. Registration requires filing of a document certifying the existence of an exclusive mandate, stating that the investment firm assumes full responsibility for the tied agent's actions.

Tied agents can:
(i) receive and transmit orders on behalf of third parties;
(ii) place financial instruments with or without a firm commitment;
(iii) provide financial investment advice; or
(iv) promote the services provided by the investment firm and provide advice on those services.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Information kindly provided by our relationship firm in Belgium, Janson.

Bulgaria

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
The key question is whether the provided service would be considered as corporate finance advice or financial investment advice (advising on buy side) or placing of financial instruments without a firm commitment basis (advising on sell side and seeking investors). Corporate finance advice is an "ancillary service" under MiFID II, which is not regulated, while financial investment advice and placing of financial instruments are regulated "investment services" under MiFID II.

The Bulgarian Financial Supervision Commission has not issued any specific guidelines in this respect. The position adopted by CESR, the predecessor of ESMA, in the document "Questions & Answers - Understanding the definition of advice under MiFID" should be followed. If the client's primary purpose for seeking advice is in order to generate a financial return on an investment or to hedge risk, this qualifies as the investment service "financial investment advice". Conversely, if the client's primary purpose for requesting the advice is for an industrial, strategic or entrepreneurial purpose, the advice provided would be "corporate finance advice". The context of the request for advice may be used to determine the primary purpose of the request, which is fact specific and needs to be considered on a case-by-case basis.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, if investment services under MiFID II are offered. This is considered financial canvassing, which can be carried out only by regulated entities.

b. by telephone or Zoom/Teams/etc. calls;
No, if investment services under MiFID II are offered.

c. on a fly in fly out basis;
No, if investment services under MiFID II are offered.

d. in response to a reverse solicitation?
"Financial investment advice" and "placing of financial instruments without a firm commitment basis": in general, if a retail client or professional client (as defined in Section II of Annex II of MiFID II) which is established or situated in the EU, on its own exclusive initiative requests the provision of an investment service or activity by a non-EEA firm, the service is not considered provided within the territory of the EU and does not require authorisation (a circumstance known as reverse solicitation).

ESMA is of the opinion that every means of communication, including press releases, advertising on the internet, brochures, phone calls or face-to-face meetings should be considered to determine if the client or potential client has been subject to any solicitation, promotion or advertising of the firm's investment services, activities or financial instruments, regardless of the person through whom it is issued: the non-EEA itself, an entity acting on its behalf or having close links with such non-EEA or any

Bulgaria (cont)

other person acting on behalf of such entity. Firms should be careful when relying on reverse solicitation since recharacterisation of reverse solicitation as an active provision of services could trigger criminal sanctions for unauthorised provision of investment services.

"Corporate finance advice": corporate finance advice is not regulated so reverse solicitation does not apply.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
A non-EEA firm may set up a Bulgarian branch to provide investment services to retail clients or retail clients who fall into the professional client category.

If so, to what extent and under what circumstances?
The branch must obtain authorisation from the Bulgarian Financial Supervision Commission. Authorisation conditions are broadly the same as the ones set out under article 39(2) of MiFID II, and enables the branch to provide the authorised investment services and activities to eligible counterparties and professional clients as defined in Section I of Annex II of MiFID II in other EU member states, provided that the legal framework and supervisory arrangements of the third country are recognised as equivalent (Article 47 (3) of MiFIR). The Bulgarian authorities and the authorities of the EU member state in which the services are provided may establish cooperation arrangements to ensure an appropriate level of investor protection.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm may establish a subsidiary in Bulgaria and apply for a licence to act as an investment firm.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
In order to appoint a tied agent in Bulgaria, a non-EEA firm must first set up a branch and obtain authorisation from the Bulgarian Financial Supervision Commission to operate in Bulgaria in accordance with Article 39 of MiFID II.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Information kindly provided by our relationship firm in Bulgaria, Djingov, Gouginski, Kyutchukov & Velichkov.

Croatia

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
Under Croatian Law, the described services may be either investment advice, placing of financial instruments without a firm commitment basis, advice on capital structure, industrial strategy and related matters or advice and services relating to mergers and the purchase of undertakings. While investment advice and placing of financial instruments without a firm commitment basis constitute investment services under MiFID II and the Croatian Capital Market Act, advice on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of undertakings do not. The services should be assessed on a case-by-case basis.

In Croatia, an investment firm requires prior authorisation by the Croatian Financial Services Supervisory Agency (the "**CFSSA**") to provide investment services and perform investment activities and related ancillary services. The court register must record the provision of such services and activities as the firm's professional activity. No investment firm will be authorised for the provision of ancillary services.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, if investment services under MiFID II are offered.

b. by telephone or Zoom/Teams/etc. calls;
No, if investment services under MiFID II are offered.

c. on a fly in fly out basis;
No, if investment services under MiFID II are offered.

d. in response to a reverse solicitation?
Yes, recital 111 of MiFID II provides, "Where a non-EEA firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client." CFSSA will consider every means of communication used by a non-EEA firm to determine whether it has solicited, promoted or advertised its investment services or activities, or its financial instruments to clients or potential clients in Croatia, including press releases, internet advertisements, brochures, phone calls and face-to-face meetings.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

Croatia (cont)

If so, to what extent and under what circumstances?
An investment firm with a registered office in a third country may obtain CFSSA authorisation to establish a branch in Croatia. The conditions for authorisation follow Article 39(2) of MiFID II. Such authorisation enables the branch to provide the authorised investment services and activities in other EU member states, provided that the legal framework and supervisory arrangements of the third country are recognised as equivalent (Article 47 (3) of MiFIR).

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A subsidiary of a non-EEA firm may provide investment services and perform investment activities and related ancillary services in Croatia subject to obtaining prior authorisation by the CFSSA and provided that the provision and performance of such services and activities are recorded in the court register as the subsidiary's professional activity.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
Only investment firms established in Croatia or another EU member state can appoint tied agents in Croatia.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Information kindly provided by our relationship firm in Croatia, Savoric & Partners.

Cyprus

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
The crucial element is whether the services to be provided involve the provision of a regulated investment service. If the above activity constitutes the provision of "investment advice" and/or "placing of financial instruments without a firm commitment basis" under MIFID II, as opposed to mere "corporate finance advice", then such activity is regulated in Cyprus.

According to the Cypriot law enacting MiFID II, "investment advice" is the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of transactions relating to financial instruments. In the absence of specific local guidance on this matter, a useful source is the CESR (now ESMA) "Q&A – Understanding the definition of advice under MiFID". The guidelines provided by CESR state that if the client's primary purpose for seeking advice is "is in order to generate a financial return on an investment or to hedge risk", then this could qualify as "investment advice". If a client's primary purpose for seeking advice is "for its present or future strategy", for "capital raising, a merger or acquisition, the disposal of a subsidiary or management buyout", such advice would most likely qualify as corporate finance advice and be an ancillary service under MiFID II. In certain circumstances it may be difficult to identify the client's primary purpose. The type of service provided will need to be determined on a case-by-case basis.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, if investment services under MiFID II are offered.

b. by telephone or Zoom/Teams/etc. calls;
No, if investment services under MiFID II are offered.

c. on a fly in fly out basis;
No, if investment services under MiFID II are offered.

d. in response to a reverse solicitation?
Yes. Under the MiFID II Law, if a retail or professional client established or situated in the EU, initiates at its own exclusive initiative the provision of an investment service or the performance of investment activity by a non-EEA firm, the non-EEA does not require authorisation to provide that service or activity to that person.

Recital 111 of MiFID II provides that "Where a non-EEA provides services at the own exclusive initiative of a person established in the EU, the services should not be deemed as provided in the territory of the EU and thus would not trigger any licencing requirements. Where a non-EEA firm solicits clients in the EU or promotes or advertises investment services or activities together with ancillary services in the EU, it should not be deemed as a service provided at the own exclusive initiative of the client ... the client's own exclusive initiative shall be assessed in concreto on a case-by-case basis for each investment service or activity provided, regardless of any contractual clause or disclaimer purporting to state, for example, that the non-EEA will be deemed to respond to the exclusive initiative of the client."

Cyprus (cont)

ESMA provides further guidance on reverse solicitation in the Q&A on MIFID II and MiFIR investor protection and intermediaries. In ESMA's view, any means of communication including "press releases, advertising on the internet, brochures, phone calls or face-to-face meetings should be considered to determine if the client or potential client has been subject to any solicitation, promotion or advertising in the [EU] on the firm's investment services or activities or on financial instruments."

In the absence of any local guidance on reverse solicitation, the Cyprus Securities and Exchange Commission ("**CySEC**") follows ESMA's guidance and assesses each situation on a case-by-case basis.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Under CySEC Directive DI87-04, a non-EEA firm intending to provide investment services or perform investment activities with or without ancillary services in Cyprus to eligible counterparties and professional clients (as defined in the MiFID II Law), can do so, provided that it:

(a) is authorised and subject to effective supervision in the non-EEA country where its head office is located for the provision of the investment services to be provided in the EU, and

(b) establishes a branch in Cyprus and complies with the MiFID II Law.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm can establish a subsidiary in Cyprus and apply for a licence to be authorised as a Cyprus Investment Firm ("**CIF**") by CySEC.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
There is no specific Cypriot law or regulatory guidance which permits non-EEA firms to appoint a tied agent in Cyprus.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Information kindly provided by our relationship firm in Cyprus, Chrysostomides, Advocates & Legal Consultants.

Denmark

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
No person may carry on a regulated activity in Denmark, or purport to do so, unless they are:
a. an authorised person; or
b. an exempt person.

In relation to the above activities and especially in relation to offering of shares in the context of M&A transaction, it is reasonable to consider whether they are MiFID activities and whether the activities fall under the scope of prospectus regulation or any relevant exemptions.

Non-EEA firms may undertake regulated activities in Denmark provided they obtain the relevant authorisations. The requirements for authorisation of non-EEA firms are more extensive than for EEA firms, which is mainly due to absence of a local presence.

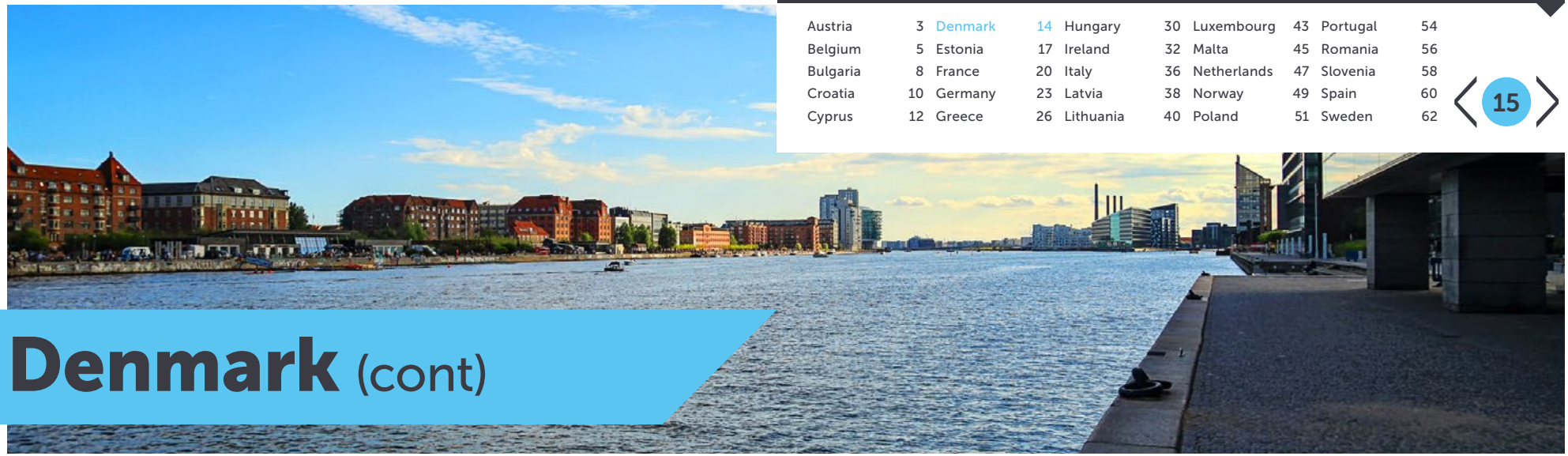
Whether the activities are subject to MiFID-specific rules depends upon whether such activities qualify as "investment services" within the meaning of Annex I, Section A of MiFID and thus require specific permission from the regulator. This will be assessed on a case-by-case basis and include the nature and content of the services to be provided.

There is a general presumption that advice on M&A activities does not qualify as "investment services", and therefore will not constitute a regulated activity (unless for instance "investment in funds" or investment in "shares in private companies" includes arranging or advising on a public offering or private placements). Advising on acquisition, merger, sale of company, divestiture of subsidiary, joint venture, capital raising, licensing, franchising, or general strategic advice, will most likely not be subject to local MiFID-related requirements. This should, however, always be subject to a concrete assessment.

Whether or not the activity is regulated, the firm must observe Danish general marketing rules and other best-practice standards when approaching existing Danish clients.

Marketing of alternative investment funds ("**AIFs**") authorised or registered in Denmark may only be carried out by authorised managers, unless such marketing is delegated to a third party in accordance with applicable rules. Such third party should be an authorised person, ie an authorised AIFM or investment firm.

Under MiFIR II article 46 (1) (read in conjunction with recital 43) a non-EEA firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients as defined in Section I of Annex II to MiFID II throughout the EU without establishing a branch. The non-EEA firm must be on ESMA's register of non-EEA firms in order to provide the services.



Denmark (cont)

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
If investment services under MiFID II are offered, only if authorised by the Danish FSA. The Danish Marketing Act prohibits the sending of marketing emails without prior consent.

b. by telephone or Zoom/Teams/etc. calls;
If investment services under MiFID II are offered, only if authorised by the Danish FSA. The Danish Marketing Act prohibits the making of calls from an automatic system without prior consent and prohibits any other form of communication which the recipient states they refuse to accept.

c. on a fly in fly out basis;
If investment services under MiFID II are offered, only if authorised by the Danish FSA. The Danish Marketing Act must be observed.

d. in response to a reverse solicitation?
Recital 111 of MiFID II provides "Where a non-EEA firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client."

The AIFMD and Danish law transposing the directive do not prevent Danish professional investors from investing in AIFs on their own initiative irrespective of where the manager of the AIF is established. However, AIFMs which intend to rely on reverse solicitation/passive marketing must use means such as secure pass-word-protection to document that communication was made at the initiative of the investor. Managers who do not intend to market AIFs to Danish retail investors must establish appropriate arrangements to prevent that from occurring.

The Danish FSA will consider every means of communication used by a non-EEA firm to determine whether it has solicited, promoted or advertised its investment services or activities, or financial instruments to clients or potential clients in Denmark, including press releases, internet advertisements, brochures, phone calls and face-to-face meetings. The Danish FSA's Questions and Answers on reverse solicitation state that an activity will be considered marketing if investors are approached or advertised to for the purpose of selling investment services or units in funds. Sales at the request of a customer will not be construed as resulting from marketing as long as there has been no advertising of the service or fund.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Under the Danish Investment Firms and Investment Services Act, an non-EEA investment firm which intends to provide or carry out investment services and activities with or without ancillary services in Denmark must obtain permission from the Danish FSA to establish a branch.

Denmark (cont)

The Danish FSA will grant authorisation provided the firm fulfils all statutory requirements, including as to capitalisation and membership of investor guarantee scheme approved or recognised under the Investor Compensation Schemes Directive ("**ICSD**").

The firm must observe the requirements in the Danish Companies Act for establishment of branches in Denmark.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm can establish a subsidiary in Denmark and apply for a license to act as an investment firm under section 20 of the Danish Investment Firms and Investment Services Act.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a) If so, to what extent and under what circumstances?
Denmark does not have special rules for private placement and non-EEA AIFs cannot be marketed in Denmark without prior notification or permission.

A distinction is made between marketing to professional investors and marketing to retail investors, however, a non-EEA investment firm must be authorised by the Danish FSA to provide or perform investment services and activities with or without ancillary services to professional investors in Denmark.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
It is only possible for EU/EEA based investment firms to appoint tied agents in Denmark.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No, the Danish regulators adopt the EU-framework in a consistent manner and follow ESMA and EBA guidelines very closely.

Information kindly provided by our relationship firm in Denmark, Njord Law Firm.

Estonia

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
This must be assessed on a case-by-case basis. Under the Estonian Securities Market Act ("**SMA**"), only authorised investment firms can undertake investment services.

Under the SMA investment services are:
1) reception and transmission of orders related to securities;
2) execution of orders related to securities in the name of or for the account of the client;
3) dealing in securities on own account;
4) securities portfolio management;
5) provision of investment advice;
6) providing guarantees of securities or guarantees of the offer, issue or sale of securities;
7) organising an offer or issue of securities;
8) operation of a multilateral trading facility; and
9) operation of an organised trading facility.

Provision of any of the above services requires authorisation. Other activities, including most activities related to M&A transactions, are not caught by the SMA.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, if they are offering investment services under the SMA.

b. by telephone or Zoom/Teams/etc. calls;
No, if they are offering investment services under the SMA.

c. on a fly in fly out basis;
No, if they are offering investment services under the SMA.

d. in response to a reverse solicitation?
If a non-EEA firm is offering investment services under the SMA, in general, if a retail client or professional client (as defined in Section II of Annex II of MiFID II) which is established or situated in the EU, on its own exclusive initiative requests the provision of an investment service or activity by a non-EEA firm, the service is not considered provided within the territory of the EU and does not require authorisation (a circumstance known as reverse solicitation).

ESMA is of the opinion that every means of communication used, including press releases, advertising on the internet, brochures, phone calls and face-to-face meetings should be considered to determine if the client or potential client has been subject to any solicitation, promotion or advertising in the Union of the firm's investment services or activities or on financial instruments. ESMA reminds firms that such a solicitation, promotion or advertising should be considered regardless of by whom it is issued: the non-EEA itself; an entity acting on its behalf or having close links with such non-EEA; or any other person acting on behalf of such entity. Care should

Estonia (cont)

be taken when relying on the concept of reverse solicitation since recharacterisation of a reverse solicitation as an active provision of services could trigger criminal and civil sanctions for providing investment services without a license.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.
If so, to what extent and under what circumstances?
Provided a non-EEA firm is authorised to provide the relevant investment services in its home state, the firm may apply to the FSA for authorisation to operate a branch in Estonia. A non-EEA investment firm may only provide investment services in Estonia on a cross-border basis to a professional client or an eligible counterparty.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Provided a non-EEA firm is authorised to provide the relevant investment services in its home state, the firm may apply to the FSA for authorisation to operate a subsidiary in Estonia. A non-EEA investment firm may only provide investment services in Estonia on a cross-border basis to a professional client or an eligible counterparty.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

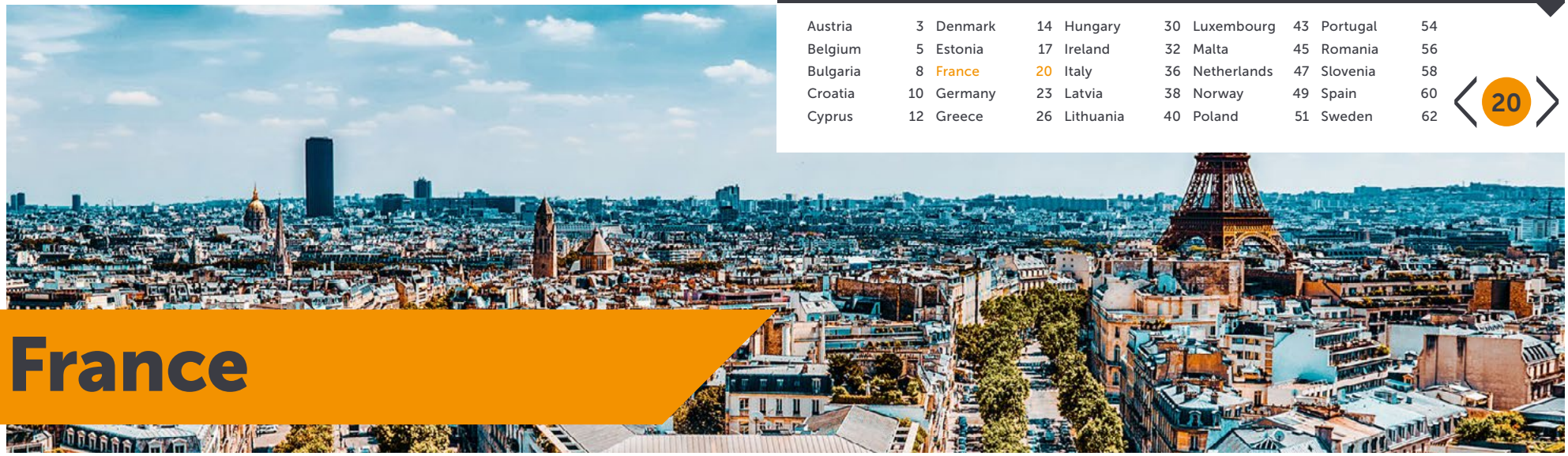
5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
Non-EEA investment firms are permitted to appoint tied agents in Estonia, however they may only provide investment services in Estonia on a cross-border basis to professional clients or eligible counterparties.

If the European Commission adopts the appropriate equivalence decision in respect of a non-EEA country, investment firms incorporated in that non-EEA country will be able to provide cross-border services on the same basis as an EEA firm (i.e. notification to their home state regulator), however, the Commission has not yet adopted any such equivalence decisions.

Estonia (cont)

In the absence of such equivalence decision, a non-EEA firm must obtain an authorisation from the FSA for the cross-border provision of services, as well as obtain consent for cross-border provision of services from its home country regulator, and provide confirmation that it holds a valid authorisation in its home country. In order to appoint a local agent, a non-EEA firm must apply for a licence from the FSA to establish a branch in Estonia as well as obtain permission from its home state regulator. Estonian law is not clear on whether it is possible to appoint only an agent or whether both local branch must be opened and an agent appointed, even though MiFID 2 foresees the first of these options.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.



France

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
The key question is whether the provided service would be considered as "corporate finance advice" or "financial investment advice" (advising on buy side) or "placing of financial instruments without a firm commitment basis" (advising on sell side and seeking investors). Corporate finance advice is an "ancillary service" under MiFID II, which is not regulated, while financial investment advice and placing of financial instruments without a firm commitment basis are regulated "investment services" under MiFID II.

In 2018 the Autorité de Contrôle Prudentiel et de Résolution ("**ACPR**") issued guidance clarifying the French position in relation to this question. It follows the position of CESR, the predecessor of ESMA, as set out in the document "Questions & Answers - Understanding the definition of advice under MiFID". The ACPR states that if a client's primary purpose for seeking advice is to generate a financial return on an investment or to hedge risk, this is the investment service "financial investment advice". If a client's purpose for requesting the advice is for an industrial, strategic or entrepreneurial purpose, the advice provided is "corporate finance advice". The ACPR assesses the nature of a service provided with reference to various criteria, including ongoing engagement and negotiation with counterparty(ies) throughout the M&A transaction, organisation of exchanges between the parties, creation of a data room, coordination with other professionals and comparison of offers (analysis of strengths/weaknesses), all of which are likely to be considered as constituting corporate finance advice rather than financial investment advice or placing of financial instruments without a firm commitment basis. This assessment of which service is provided is fact specific and is considered on a case-by-case basis.

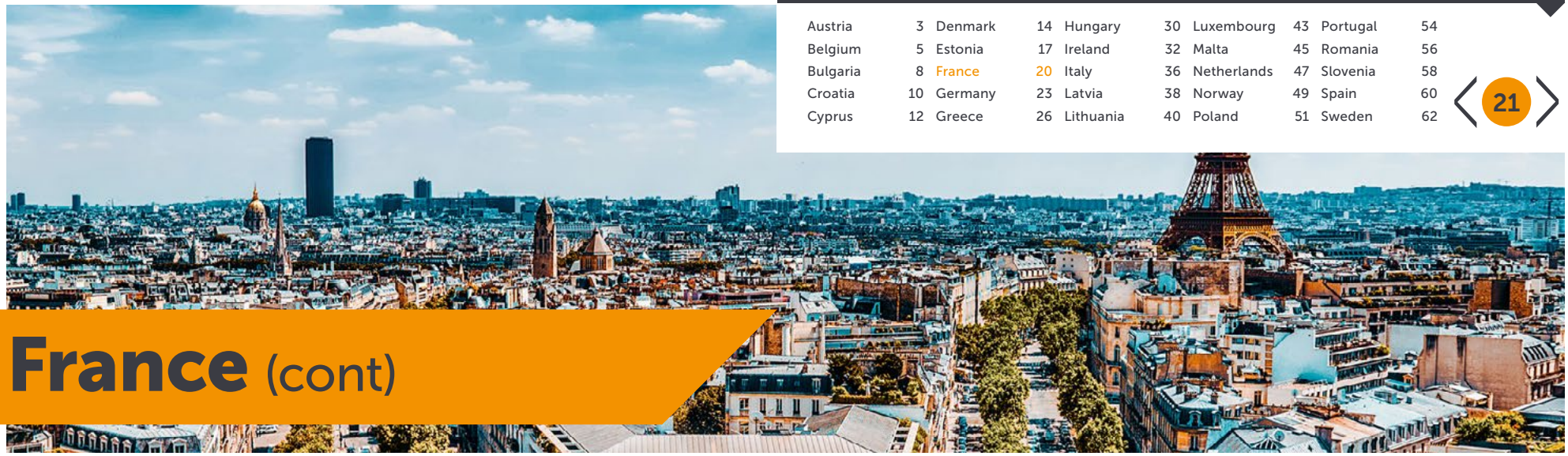
2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, to the extent investment services under MiFID II are offered. This is considered financial canvassing under articles L. 341-1 et seq. of the French Monetary and Financial Code, which can only be carried out by regulated entities.

b. by telephone or Zoom/Teams/etc. calls;
No, to the extent investment services under MiFID II are offered.

c. on a fly in fly out basis;
No, to the extent investment services under MiFID II are offered.

d. in response to a reverse solicitation?
"Financial investment advice" and "placing of financial instruments without a firm commitment basis": if a retail client or professional client within the meaning of Section II of Annex II of MiFID II, which is established or situated in the EU, initiates at its own exclusive initiative the provision of an investment service or activity by a non-EEA firm, the service is not considered to be provided within the territory of the EU and does not require a license (reverse solicitation).



France (cont)

ESMA is of the opinion that every means of communication, including press releases, advertising on the internet, brochures, phone calls or face-to-face meetings must be considered when determining whether the client or potential client has been subject to any solicitation, promotion or advertising in the Union on the firm's investment services or activities or on financial instruments. ESMA reminds firms that such a solicitation, promotion or advertising will be considered regardless by whom it is issued: the non-EEA itself; an entity acting on its behalf or having close links with such non-EEA; or any other person acting on behalf of such entity. Care must be taken when relying upon reverse solicitation since recharacterisation of reverse solicitation as active provision of services may give rise to criminal or civil criminal liability for unauthorised provision of investment services.

"Corporate finance advice": corporate finance advice is not regulated and thus the concept of reverse solicitation does not apply.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
It is possible for non-EEA firms to set up a French branch to provide investment services to retail clients and retail clients who elect to be considered professional investors, subject to certain conditions. However, this option has not been popular with such firms. Under the 2019 Pacte law a non-EEA firm can establish a French branch to provide investment services or activities in France to "per se" professional clients and eligible counterparties.

A branch must obtain a license from the ACPR. The license conditions are broadly those set out in article 39(2) of MiFID II. Such authorisation enables the branch to provide the relevant investment services and activities covered in other EU member states, provided the legal framework and supervisory arrangements of the third country are recognised as equivalent (Article 47 (3) of MiFIR).

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
It has always been possible for non-EEA firms to establish a subsidiary in France and apply for a licence to act as an investment firm.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A non-EEA firm cannot appoint a tied agent in France without establishing a fully authorised subsidiary. Tied agents can only be appointed by an investment service provider authorised by the French regulatory authorities (ACPR and/or AMF) or by the regulatory authorities of another EU member state and benefitting from the EU passport.

France (cont)

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Germany

1. Can non-EEA firms who are not authorised within the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
It depends on whether the provided service would be considered as "corporate finance advice" or "investment advice" (advising on buy side) or "placing of financial instruments without a firm commitment basis" (advising on sell side and seeking investors). A firm can give corporate finance advice without a licence. he other services are regulated activities which a firm will require a licence to perform.

a. If so, to what extent and under what circumstances?
In order to classify whether a service is corporate finance advice, BaFin applies the criteria set out in CESR's "Questions & Answers - Understanding the definition of advice under MiFID", marginal no. 76–87. If a client's primary purpose for seeking advice is to generate a financial return on an investment or to hedge risk, the related advice will qualify as a regulated investment service. If a client's purpose for requesting the advice is for an industrial, strategic or entrepreneurial purpose rather than to receive a financial return or hedge a risk, the advice provided will be "corporate finance advice". Sec. 2 (1) Nr. 15 of the German Banking Act (Kreditwesengesetz - "**KWG**") and sec. 3 (1) no. 16 of the German Securities Institutions Act (Wertpapierinstitutsgesetz - "**WpIG**") provide for an exemption from the license requirement for the performance of investment advice if the company exclusively provides investment advice within the scope of another professional activity without being specifically remunerated for the investment advice. Further details on that exemption are set out in BaFin's "Notes on the exemption for investment advice within the scope of another professional activity" (Hinweise zur Bereichsausnahme für die Anlageberatung im Rahmen einer anderen beruflichen Tätigkeit (German language version)). BaFin construes the exemption restrictively.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?
With regard to a. and b. below, note that cold calling (which includes any kind of contact, by phone, fax, email, teams etc. without the prior approval of the contacted person, but which does not include letters sent by mail) is subject to strict restrictions under German competition law, irrespective of the service which is provided or offered. This applies in particular with regard to retail clients. The following answers work on the assumption the firm is in compliance with these general rules.

a. by email;
No, to the extent investment services under MiFID II are offered.

b. by telephone or Zoom / Teams / etc. calls;
No, to the extent investment services under MiFID II are offered.

c. on a fly in fly out basis;
No, to the extent investment services under MiFID II are offered.

d. in response to a reverse solicitation?
Provision of regulated financial services without a license based in reverse solicitation is possible. Note, however, that the marketing of funds to retail investors is not possible on the basis of reverse solicitation.

Germany (cont)

Contact must be established at the sole initiative of the client. BaFin sets out criteria for reverse solicitation. In particular, a firm seeking to rely upon reverse solicitation:

- must not have advertised its services in Germany prior to having been contacted by the client;
- must not run a website with a ".de" domain;
- must not use German accounts to receive client money; and
- should generally avoid any reference to Germany in its marketing statements, product documentation, presentations etc. that could be interpreted as targeting the German market.

A non-EEA firm can be held to have targeted the German market if a domestic regulated entity is involved in the marketing. BaFin views every case individually. If a firm has targeted the German market prior to having been contacted by the client, BaFin will likely qualify the contact as not having been established at the sole initiative of the client.

Great care should be taken when seeking to rely upon reverse solicitation, which should only be done if the application of the reverse solicitation principle is clear. Otherwise, there is a risk that BaFin will characterise an activity as the active provision of services/marketing which could trigger criminal sanctions for the provision of investment services without a license.

The burden of proof as to whether or not client contact was established via reverse solicitation falls on the firm.

As corporate finance advice is not a regulated activity, the concept of reverse solicitation does not apply to its provision.

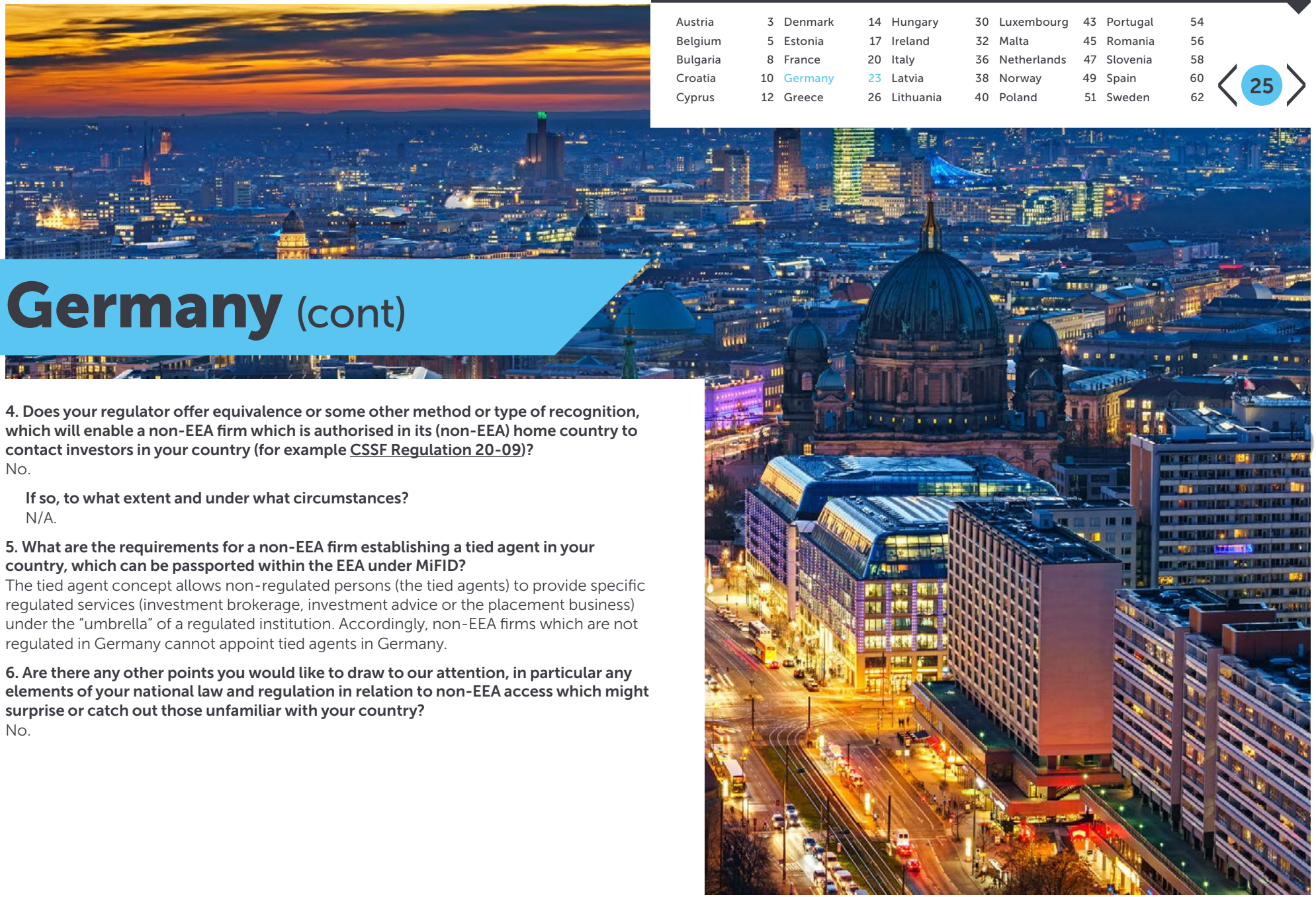
3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
There are no general corporate law or regulatory restrictions to be observed for non-EEA firms if they want to establish a branch in Germany, provided the home state of the firm seeking to establish the branch is not a country which qualifies as high-risk country under AML regulations. The branch must apply for a licence for any regulated activities it intends to perform. In order to meet all the regulatory and supervisory requirements, a branch must have the same organisational and financial set up as if it were a subsidiary. This includes, for example, being a separate accounting unit to the establishing firm so that the branch can produce a year end closing under the German accounting principles for banks and financial institutions.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Non-EEA firms may establish a subsidiary in Germany and apply for a licence to act as an investment firm. There are no general corporate law or regulatory restrictions to be observed for non-EEA companies which want to establish a branch in Germany, provided the home state of the firm seeking to establish the subsidiary is not a country which qualifies as high-risk country under AML regulations. The subsidiary must apply for a licence for any regulated activities it intends to perform.



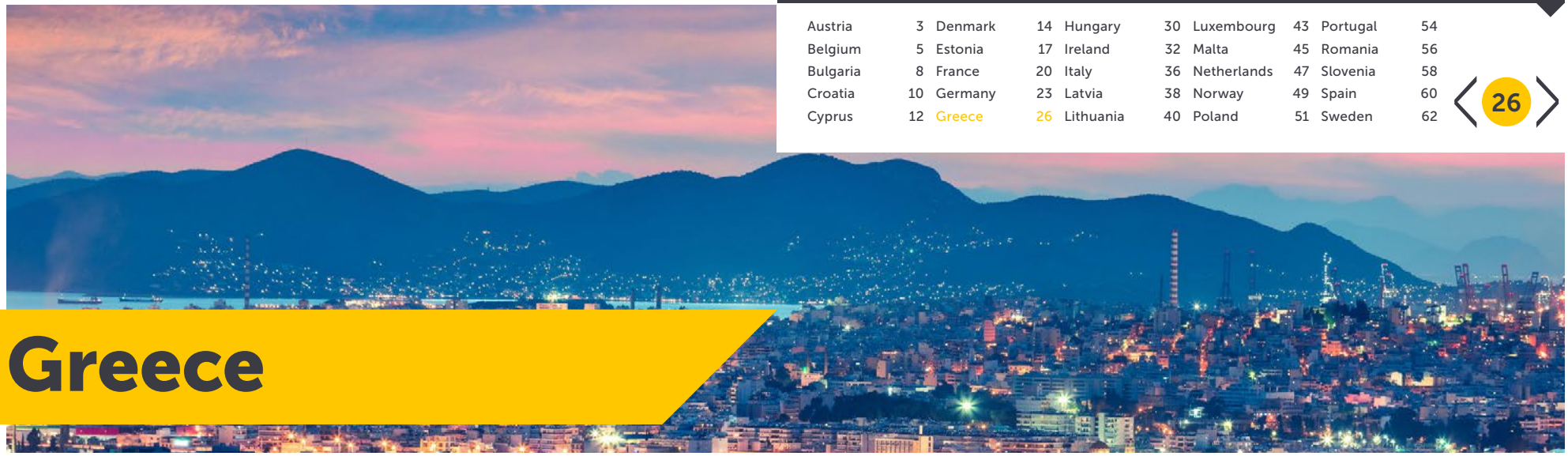
Germany (cont)

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can be passported within the EEA under MiFID?
The tied agent concept allows non-regulated persons (the tied agents) to provide specific regulated services (investment brokerage, investment advice or the placement business) under the "umbrella" of a regulated institution. Accordingly, non-EEA firms which are not regulated in Germany cannot appoint tied agents in Germany.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.



Greece

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
The answer depends on whether or not the activity qualifies as a regulated service taking place in Greece.

Shares
The offering of shares is not, in principle, a regulated activity but is subject to public offering restrictions (i.e. Prospectus Regulation). However, depending on the exact circumstances, the offering of shares on a professional basis may fall within the scope of the regulated investment activities of:
- underwriting of financial instruments;
- placing of financial instruments on or without a firm commitment;
- investment advice in relation to financial instruments

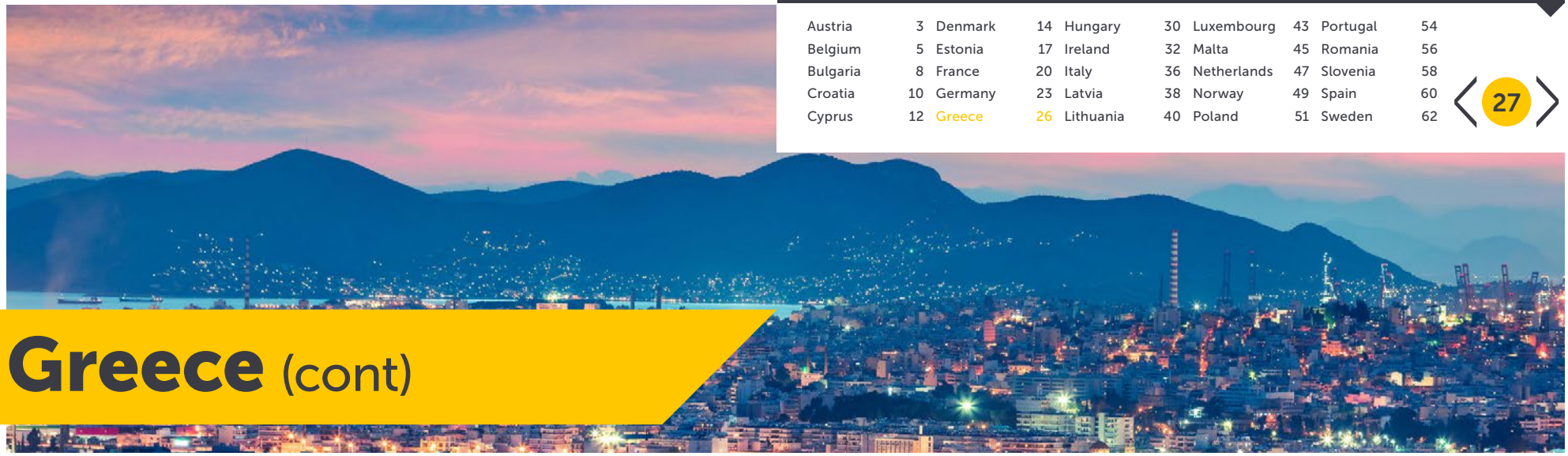
The provision of such investment services on a professional basis to clients in Greece will usually trigger licensing requirements under Greek law 4514/2018 implementing MiFID II. There are exemptions including:
- the provision of investment services on a reverse solicitation basis;
- intragroup provision of services;
- provision of the investment advice in the course of providing another professional activity not covered under MiFID II provided that the provision of such advice is not specifically remunerated)

As regards the potential provision of underwriting or placement services, Greek law will be applicable if such services are offered to issuers established in Greece. As regards the potential provision of investment advice, Greek law will in principle be applicable if the recipient of the investment advice is located in Greece.

Offering of shares in the context of an M&A transaction may also qualify as corporate finance advice (i.e. advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings) or provision of other forms of general recommendation relating to transactions in financial instruments which are both ancillary services under MiFID II. Provision of such services in Greece on a stand-alone basis does not trigger licensing requirements.

Funds
Unlike the offering of shares, the offering of funds (i.e. UCITS or AIFs) is a regulated activity and is subject to licensing requirements.

The differences between investment advice and ancillary services were set out by CESR (the predecessor of ESMA) in "Questions & Answers - Understanding the definition of advice under MiFID" which still applies and which the Hellenic Capital Markets Commission ("**HCMC**") will follow. This document provides five key tests by which to assess whether information or advice constitutes investment advice. The



Greece (cont)

assessment must be made on a case-by-case basis. If a non-EEA firms does not receive any kind of consideration from potential investors/clients in Greece, it can be validly argued that no provision of investment services takes place in Greece.

A non-EEA firm must have a licence to carry out the regulated activity of marketing of UCITS in Greece, which may only be carried out by an authorised distributor, which can be a credit institution, management company, insurance company or investment firm either established or with a branch in Greece.

A non-EEA firm must have a licence to market AIFs in Greece.

A licence is required to market non-EEA funds in Greece and the funds can only be marketed to professional investors.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
Yes, subject to regulatory restrictions set out above (which means no investment services under MiFID II can be offered) and provided that the investors have provided their consent to receive such e-mails.

b. by telephone or Zoom/Teams/etc. calls;
Yes, subject to the regulatory restrictions set out above (which means no investment services under MiFID II can be offered) and provided that the investors have provided their consent to receive such calls.

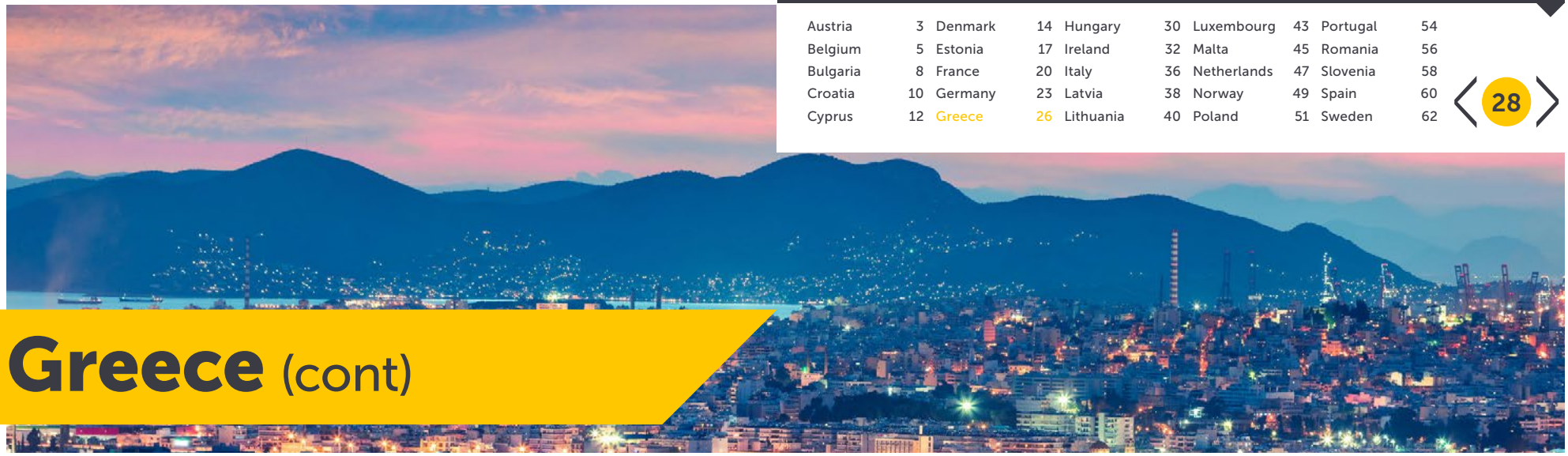
c. on a fly in fly out basis;
Yes, subject to restrictions set out above (which means no investment services under MiFID II can be offered).

d. in response to a reverse solicitation?
Yes, when responding to reverse solicitation, the above regulatory restrictions are not applicable.

Under the Greek law implementing MiFID II non-EEA firms may provide investment services to retail clients and/or elective professional clients in Greece "at the own exclusive initiative of the client" ("**reverse solicitation**") without triggering licensing requirements, since the service will not be deemed to be provided in Greece.

MiFIR provides a reverse solicitation regime for the provision of investment services to per se professional clients and eligible counterparties. Recital 111 of MiFID II provides that "where a non-EEA firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client."

Solicitation of both new and existing clients in respect of new investment services and/or products by non-EEA firms is not allowed. ESMA provides further guidance on reverse solicitation. Although there is no HCMC guidance in respect of reverse solicitation, we reasonably anticipate HMRC will follow ESMA's guidance. When determining if a client or potential client was subject to any solicitation, promotion or advertising in the EU of a non-EEA firm's investment services, activities or financial



Greece (cont)

instruments, every means of communication including press releases, advertising on the internet, brochures, phone calls or face-to-face meetings must be considered, regardless of by whom it is issued (i.e. the non-EEA firm itself, an entity acting on its behalf etc.). ESMA notes certain questionable practices by non-EEA firms trying to circumvent the MiFID II requirements. Great care should be taken when relying upon reverse solicitation, since the recharacterisation of a reverse solicitation as an active provision of services may give rise to criminal and civil liability.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm may establish a branch in Greece to provide investment services to retail clients and/or to elective professional clients (within the meaning of MiFID II) subject to obtaining a licence from the HCMC (or the Bank of Greece ("**BoG**") in case of a non-EEA credit institution). The licence must be obtained in accordance with articles 39-41 of Greek law 4514/2018 (implementing articles 39-41 of MiFID II). The firm establishing the branch must be authorised to undertake such activities in its country of origin. The HCMC (or the BoG as applicable) will grant a license to a branch of a non-EEA firm within 6 months from submission of a complete application.

It is possible for non-EEA firms to provide investment services to per se professional clients (within the meaning of Section I of Annex II of Greek law 4514/2018) and to eligible counterparties on a cross-border basis in Greece, provided that the non-EEA firm is registered in the register of non-EEA firms kept by ESMA in accordance with articles 46 et seq. of MiFIR.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm may establish a subsidiary in Greece subject to obtaining a license from the HCMC to act as an investment firm. The subsidiary should be incorporated as a société anonyme with registered shares, and be authorised and supervised by the HCMC in accordance with Law 4514. The application to HCMC must include details of the investment services to be offered, its shareholding structure, its internal organisation, its two senior managers and its internal policies and procedures. The HCMC will inform the applicant whether the application will be granted or rejected within 6 months from submission of the complete application.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

Greece (cont)

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
It is only possible for EU/EEA based investment firms to appoint tied agents in Greece.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
The HCMC has concerns about the risks of non-EEA firms seeking to circumvent the licensing requirements under Greek law. The HCMC regularly makes announcements and issues warnings to firms it deems to be providing services to clients in Greece without the necessary license or passport.

Information kindly provided by our relationship firm in Greece, Zepos & Yannopoulos.

Hungary

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
No.

If so, to what extent and under what circumstances?
No. Under Section 7 of the Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (the "**Act**") an investment firm established in a third country may only provide services or perform activities in Hungary through the establishment of a Hungarian branch.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No.

b. by telephone or Zoom/Teams/etc. calls;
No.

c. on a fly in fly out basis;
No.

d. in response to a reverse solicitation?
Yes, the Hungarian National Bank adopts the same approach as ESMA. Recital 111 of MiFID II provides "Where a non-EEA firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client." The Hungarian regulator will consider every means of communication used by a non-EEA firm to determine whether it has solicited, promoted or advertised its investment services or activities, or its financial instruments to clients or potential clients in Hungary, including press releases, internet advertisements, brochures, phone calls and face-to-face meetings.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?

Under Section 8 of the Act a branch of a non-EEA firm provide investment services and ancillary services to retail and professional clients if it is authorised by the competent supervisory authority in the country where it is established to undertake the activity in question, and the following requirements are satisfied:

- the Hungarian regulator has an agreement with the competent supervisory authority of the third country where the investment firm is established which fully complies with the standards laid down in Article 26 of the Organization for Economic Cooperation and Development ("**OECD**") Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;
- the Hungarian regulator has a cooperation agreement with the competent supervisory authority of the third country where the investment firm is established;

Hungary (cont)

- the third country where the investment firm is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force ("**FATF**");
- the non-EEA firm:
  - meets the capital requirements;
  - its executive officers meet the relevant conditions; and
  - provides proof of membership of a recognised investor compensation scheme

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Yes. An investment firm established in a third country may establish a subsidiary in Hungary. If the non-EEA firm is authorised to provide investment services by its competent national supervisory authority, it may carry out the authorised activities in Hungary on a cross-border basis, provided it first obtains authorisation from the Bank of Hungary ("**MNB**"). Detailed information on the application process can be found on the MNB website.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
It is only possible for EU/EEA based investment firms to appoint tied agents in Hungary.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Ireland

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
This will depend on whether the services offered by the non-EEA firm are "investment services and activities" per Part 1 Schedule 1 of S.I. No. 375/2017 - European Union (Markets in Financial Instruments) Regulations 2017 ("**Irish MiFID Regulations**") (i.e. regulated activities) or "ancillary services" per Part 2 Schedule 1 of the Irish MiFID Regulations (i.e. non-regulated activities). Non-EEA firms are generally capable of providing non-regulated ancillary services and activities.

Under the Irish MiFID Regulations, "investment advice" and "placing of financial instruments without a firm commitment basis" are regulated activities, which non-EEA firms are not authorised to carry out. If, however, the services are "advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings" or "Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments," then these are ancillary services, which non-EEA firms are be able to provide.

Overseas Persons Exemption

It may be possible for non-EEA firms to provide services to certain Irish clients on an offshore basis (other than through reverse solicitation) if the firm meets the requirements of the exemption provided in regulation 5(4) of the Irish MiFID Regulations, known as the Overseas Persons Exemption (the "**OPE**") or the "safe harbour" exemption.

Under the OPE a firm will not be considered as operating in Ireland (and therefore will not require authorisation) if the firm provides investment services or performs investment activities, with or without any ancillary services, to eligible counterparties or to professional clients within the meaning of Schedule 2 of the Irish MiFID Regulations. An OPE firm may not establish a branch in Ireland and its head or registered office must be in a non-EEA country.

Regulation 5(4) of the Irish MiFID Regulations refers only to providing services to professional clients and eligible counterparties, unlike reverse solicitation, and so for a firm to take advantage of the OPE the following requirements under regulation 5(5):
· the firm must be subject to authorisation and supervision in the non-EEA country where it is established;
– the competent authority of the non-EEA country must pay due regard to any recommendations of FATF in the context of anti-money laundering and countering the financing of terrorism; and

Ireland (cont)

– there are co-operation arrangements including provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors between the Central Bank of Ireland ("**CBI**") and the competent authorities of the non-EEA country firm's home state

A key element of this exemption is that it only applies where services are provided to professional clients.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No - not to the extent that MiFID II services and activities are offered.

b. by telephone or Zoom/Teams/etc. calls;
No - not to the extent that MiFID II services and activities are offered.

c. on a fly in fly out basis;
No – not to the extent that MiFID II services and activities are offered.

d. in response to a reverse solicitation?
Yes - Recital 111 of MiFID II provides "Where a non-EEA firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client."

The "reverse solicitation" exemption is transposed into Irish law by regulation 51 of the Irish MiFID Regulations. The essential element of a reverse solicitation relationship with a client is that the client, be they retail or professional, must approach the non-EEA firm and request the provision of investment services and activities "at its own exclusive initiative" without any prior solicitation, marketing or promotion by the non-EEA firm (or by any person on the non-EEA firm's behalf, for example a local finder).

In such cases, a non-EEA firm may contact an investor. However, the non-EEA firm or fund manager must ensure that future communications between the parties do not result in the active marketing of funds or other financial instruments.

While there is no CBI guidance on reverse solicitation, we note that the CBI regularly adopts ESMA guidance and opinions without qualification. ESMA issued a statement warning UK firms against engaging in "questionable practices" in relation to reverse solicitation (the "**ESMA Statement**"). The ESMA Statement claimed UK firms were "trying to circumvent MiFID II requirements by including general clauses in their Terms of Business or through the use of online pop-up "I agree" boxes whereby clients state that any transaction is executed on the exclusive initiative of the client." The ESMA Statement reminded firms of the position outlined in the EMSA Q&A on MiFID II and MiFIR investor protection and intermediaries topics ("**ESMA Q&A**"). This states that every means of communication used, including press releases, advertising on the internet, brochures, phone calls or face-to-face meetings will be considered when determining if the client or potential client has been the subject to any solicitation, promotion or advertising in EU in respect of a firm's investment services or activities or financial instruments.

Ireland (cont)

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Regulation 48(1) of the Irish MiFID Regulations states:

"A non-EEA firm intending to provide investment services or perform investment activities, with or without any ancillary services, in the State to retail clients or to professional clients within the meaning of paragraph 4 of Schedule 2 shall establish a branch in the State."

Such a firm will need to obtain prior authorisation from the CBI before undertaking regulated activities.

Non-EEA firms carrying on a banking business may also be licensed through a branch in Ireland under section 9(A) of the Central Bank Act 1971.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
The CBI emphasise that when a subsidiary applies for authorisation, its "heart and mind" must be located in Ireland. The CBI will need to be satisfied that the applicant will be properly run in Ireland and that the CBI will be able to supervise it effectively. Among other things, the CBI will expect to see the following persons present in Ireland:

- senior management with strength and depth overseen and directed by a strong board; and
- organisation structure and reporting lines which ensure there is appropriate separation and oversight of all activities

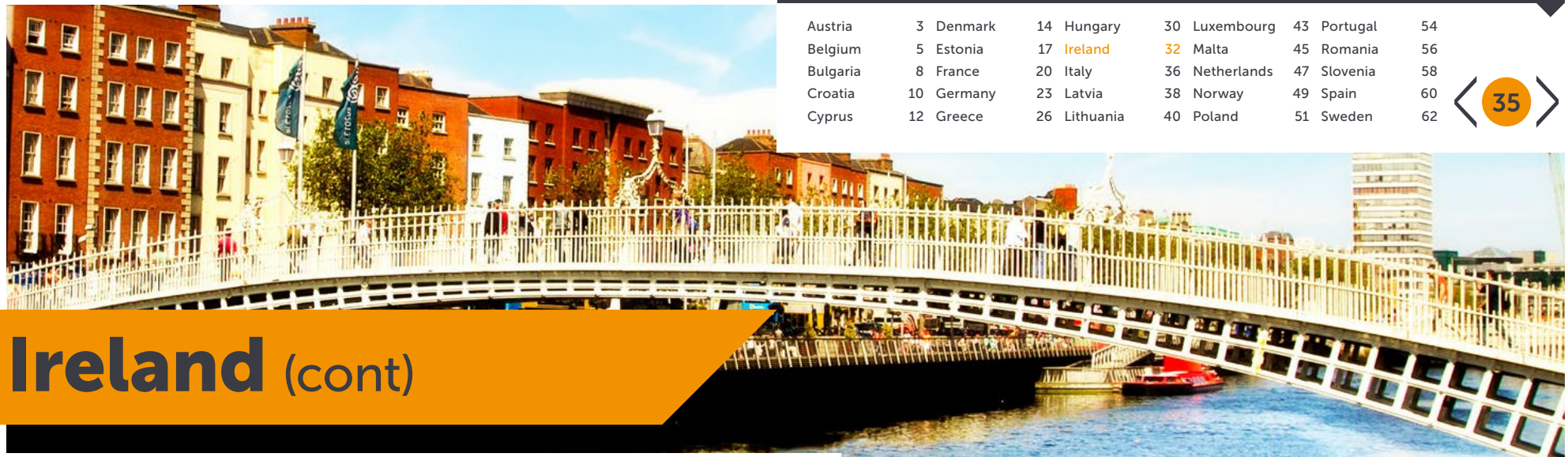
While there is no requirement for any specific individual to be resident in Ireland, the CBI has stated:

"When any institution comes to the Central Bank seeking authorisation the key expectations we have of them is that they will have 'Hearts and Minds' in Ireland and that their decision making will be based here by locating their Board and management team in Ireland".

Thus, the personnel who are to fulfil the applicant's core functions should operate out of Ireland, in order to maximise chances of authorisation.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

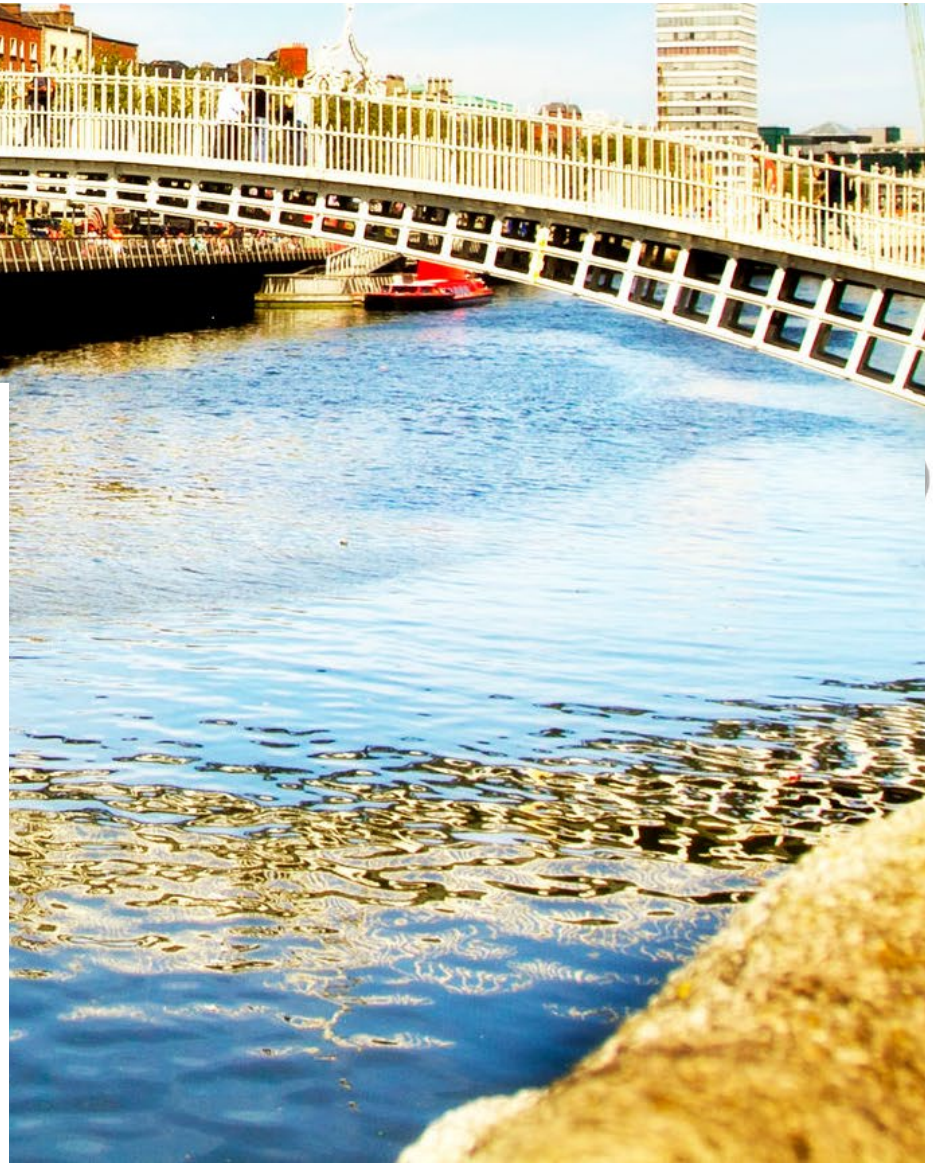


Ireland (cont)

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
Two questions in the CBI's revised Investment Firms Q&A deal with the appointment of tied agents under MiFID II and confirm that:

- only EEA MiFID firms can appoint tied agents (ie a UK investment firm cannot appoint an Irish tied agent to provide services on its behalf); and
- tied agents appointed by EEA investment firms must be established in the EEA (ie it is not possible for an EEA investment firm to appoint a UK tied agent)

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.



Italy

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances.
Under Italian law, offering shares in private companies may fall within the definition of a securities placement service which is a regulated activity. Only duly authorised firms may perform such services in Italy. However, offering shares in private companies may alternately fall within the definition of corporate finance advice which, as an ancillary service, does not require any specific license or authorisation. In the context of a single and specific M&A transaction, the offering of shares of a company my fall outside the scope of application of the MiFID II regulatory framework, if the offer is made on a stand-alone basis.

2. Can non-EEA firms contact investors

a. by email;
No, to the extent that the offering of shares in private companies falls within the definition of a securities placement service and, as a consequence, within the ambit of application of the MiFID II regulatory framework.

b. by telephone or Zoom/Teams/etc. calls;
No, to the extent that the offering of shares in private companies falls within the definition of a securities placement service and, as a consequence, within the ambit of application of the MiFID II regulatory framework.

c. on a fly in fly out basis;
No, to the extent that the offering of shares in private companies falls within the definition of a securities placement service and, as a consequence, within the ambit of application of the MiFID II regulatory framework.

d. in response to a reverse solicitation?
Yes, they can.

If a retail or professional client within the meaning of Section II of Annex II of MiFID II, which is established or situated in the EU, initiates at its own exclusive initiative the provision of an investment service or activity by a non-EEA firm, the service is not considered to be provided within the territory of the EU and does not require a license (reverse solicitation).

ESMA is of the opinion that every means of communication, including press releases, advertising on the internet, brochures, phone calls or face-to-face meetings must be considered when determining whether the client or potential client has been subject to any solicitation, promotion or advertising in the Union on the firm's investment services or activities or on financial instruments. ESMA reminds firms that such a solicitation, promotion or advertising will be considered regardless by whom it is issued: the non-EEA firm itself; an entity acting on its behalf or having close links with such non-EEA firm; or any other person acting on behalf of such entity. Care must be taken when relying upon reverse solicitation since recharacterisation of reverse solicitation as active provision of services may give rise to criminal or civil criminal liability for unauthorised provision of investment services.

Italy (cont)

Note that ESMA has repeated its advice in respect of reverse solicitation in its public statement "Reminder to firms of the MiFID II rules on 'reverse solicitation' in the context of the recent end of the UK transition period", which also warns firms against engaging in "questionable practices" in relation to reverse solicitation.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm is permitted to establish a branch for the provision of investment services and to retail clients and 'per se' professional clients in Italy, subject obtaining authorisation from the relevant Italian supervisory authorities (i.e. Consob and Banca d'Italia).

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm can set up a subsidiary in Italy and apply for a licence for the provision of investment services and activities to Italian clients, subject obtaining authorisation from the relevant Italian supervisory authorities (i.e. Consob and Banca d'Italia).

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A non-EEA firm can appoint a tied agent in Italy only if the relevant non-EEA firm is authorised to provide investment services and activities in Italy in accordance with Article 28 of the Italian Financial Act.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Latvia

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
It is necessary to make an assessment for the purposes of MiFID II as to whether the respective service is:
- an "investment service";
- an "ancillary service"; or
- is not a regulated service

A non-EEA firm which is not authorised to offer investment services under AIFMD or MiFID will not be eligible to provide such an offer. To provide regulated investment services in Latvia a non-EEA firm must be authorised through a subsidiary or branch registered in Latvia.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No.

b. by telephone or Zoom/Teams/etc. calls;
No.

c. on a fly in fly out basis;
No.

d. in response to a reverse solicitation?
If a client established or situated in the EU initiates at its own initiative the provision of an investment service by a non-EEA firm, the service will not be considered to be provided within the territory of the EU and will not require a license.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm can set up a branch in Latvia to provide investment services, subject to obtaining a licence in accordance with article 113.4 of the Latvian Financial Instrument Market Law.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm can establish a subsidiary to provide investment services in accordance with the Latvian Financial Instrument Market Law. The subsidiary must meet all relevant Latvian regulatory requirements.

Latvia (cont)

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A non-EEA firm can appoint agent in Latvia. The requirements for an investment firm establishing a tied agent and determining their powers are principally governed by the constitutional agreements of the investment firm and the tied agent and the contractual arrangements between them.

The Financial Instruments Market Law does not oblige the Financial and Capital Market Commission (the National regulator of capital market participants in Latvia) to register tied agents of investment brokerage companies and credit institutions, but instead provides for investment brokerage firms and credit institutions to maintain a publicly available online register of their tied agents. Investment brokerage firms and credit institutions will be responsible for the accuracy and completeness of the information recorded in the registers of tied agents.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Lithuania

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
No.

a. If so, to what extent and under what circumstances?
A non-EEA firm is not allowed to offer investment services into Lithuania and must not approach Lithuanian investors. If it wishes to offer investment services in Lithuania it must do so by establishing a Lithuanian branch and obtaining authorisation from the Bank of Lithuania.

Advice in respect of corporate capital structure, business strategy and related matters, as well as advice and services related to corporate reorganisation and acquisition are considered "additional services" according to the Lithuanian Law on Markets in Financial Instruments (the "**Law**") and are usually provided together with "investment services".

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No.

b. by telephone or Zoom/Teams/etc. calls
No.

c. on a fly in fly out basis;
No.

d. in response to a reverse solicitation
Yes. If a client approaches a non-EEA firm for the provision of investment services on its own initiative, that non-EEA firm is not required to establish a Lithuanian branch in order to provide investment services. However, a non-EEA firm may not offer new investment products or new investment services to a client which has approached it on a reverse solicitation basis other than through a Lithuanian branch.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Branches of non-EEA firms must obtain authorisation under Article 49 of the Law which requires:

- the non-EEA firm is seeking authorisation for an activity it is authorised to undertake in its home state, where it is licensed and supervised by a regulator which meets the Financial Action Task Force ("**FATF**") recommendations on money laundering and terrorist financing;
- the management and supervisory bodies of the non-EEA firm are of good repute, qualified and experienced;
- the persons who hold a qualifying holding in the share capital and/or voting rights of the non-EEA firm, its subsidiaries and shareholders are of good repute and the financial position of the non-EEA firm is stable and sound;

Lithuania (cont)

- the Lithuanian supervisory authority and the supervisory authority of the non-EEA country have concluded a cooperation agreement which provides for the exchange of information on the supervision of the branch, the preservation of market integrity and the protection of investors;
- the branch has sufficiently capitalised, to an amount not less than that specified in Article 14 of the Law, which varies depending on which investment services the branch offers;
- the source of the non-EEA firm's branch's capital lawful;
- the non-EEA firm appoints a branch manager meeting the requirements of the Law with power to bind the non-EEA firm and represent the non-EEA firm in the Lithuanian court and before other state authorities;
- the third country where the non-EEA firm is established has signed an agreement with Lithuania which complies with Article 26 of the OECD Model Tax Convention on Income and Capital and ensures effective exchange of tax information;
- the non-EEA firm is a member of an investor-compensation scheme;
- the branch of the non-EEA firm is prepared to comply with the requirements set out in the applicable Articles of the Law and there is no reason to believe that sound and prudent management of the branch, protection of investors' interests and continuity of investment services will not be ensured.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm seeking to provide investment services in Lithuania must obtain a financial brokerage firm licence from the Bank of Lithuania. The following requirements must be met to obtain authorisation:

- application documents and data must comply with the requirements of the legislation regulating the activities of financial brokerage firms and their supervision;
- minimum capitalisation of EUR 730,000;
- fitness and propriety of the financial brokerage firm and its shareholders (holders of voting rights): entities with a qualifying holding in the financial brokerage firm's authorised capital and/or voting rights must be able to ensure sound and prudent management of the financial brokerage firm, have good repute and be financially sound;
- the senior management of a financial brokerage firm must be of good repute and possess the qualification and experience necessary to properly perform their duties;
- the business plan must reflect the capability of those who control the financial brokerage firm (shareholders or holders of voting rights) to implement it, while the prospective financial brokerage firm must, at the time of authorisation, be prepared to provide financial services in a safe and sound manner.

A financial brokerage firm must have governance procedures adequate to the nature, scope and complexity of the financial brokerage firm's activity. These should include: an organisational structure ensuring the separation of functions and clearly defining vertical and horizontal responsibilities, transparent and consistent limits of responsibility; risk management; and a management information and internal control system, including reliable administrative measures and an accounting system.

Lithuania (cont)

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A non-EEA firm is not permitted to appoint a tied agent in Lithuania.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Luxembourg

1. Can non-EEA firms who are not authorised within the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
No, offering of investments in funds and financial instruments by non-EEA firms to investors in Luxembourg is a regulated activity.

a) If so, to what extent and under what circumstances?
N/A.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a) by email;
No, to the extent investment services are provided.

b) by telephone or Zoom / Teams / etc. calls;
No, to the extent investment services are provided.

c) on a fly in fly out basis;
Yes, provided that such contact is limited to per se professional clients and eligible counterparties in Luxembourg and on the basis of:
- a decision from the CSSF under its "national regime";
- an equivalence decision of the European Commission and registration in the register of non-EEAs kept by the European Securities and Markets Authority.

d) in response to a reverse solicitation?
Yes. If an investment service is requested based on reverse solicitation, the non-EEA firm can respond to the client and provide the investment service or activity:
- without having to establish a branch or without having to obtain a decision of the CSSF; and
- irrespective of the client's classification (retail client, per se professional client, professional client on request or eligible counterparty)

The applicability of reverse solicitation must be assessed on case-by-case and continuous basis and does not entitle a non-EEA firm to market new categories of investment services to such clients.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Non-EEA firms which want to provide investment services or activities in Luxembourg to retail or professional clients within the meaning of Annex B of Section III (professionals on request) of the Luxembourg Law of 5 April 1993 on the financial sector (the "**1993 Law**") must establish a branch which will be subject to the same authorisation requirements applicable to credit institutions and investment firms established under Luxembourg law.

Luxembourg (cont)

Non-EEA firms which want to provide investment services or activities in Luxembourg to eligible counterparties or professional clients within the meaning of Annex A of Section III (professional clients) of the 1993 Law must establish a branch in Luxembourg and obtain authorisation from the CSSF.

b. a subsidiary in your country to undertake activities listed in 1. above?
No. Luxembourg law does not provide for the possibility of a non-EEA firm to establish a subsidiary to provide the investment services and activities set out in 1 above.

If so, to what extent and under what circumstances?
N/A.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
Yes.

a. If so, to what extent and under what circumstances?
In order to comply with the third country regime, a non-EEA firm must be subject to supervision and authorisation rules that are deemed equivalent by the CSSF to those laid down by the Luxembourg Law of 5 April on 1993 on the financial sector, as amended. The purpose of Regulation 20-09 is to recognise the UK supervision and authorisation rules as equivalent and allow UK firms to benefit from the third country regime in Luxembourg. This recognition does not extend to other non-EEA states.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can be passported within the EEA under MiFID?
Article 37-8 of the Luxembourg Law of 5 April 1993 on financial services sector which governs the appointment of tied agents in Luxembourg does not mention non-EEA firms, therefore it is assumed that such entities cannot appoint tied agents in Luxembourg.

6. If there are any other points you would like to draw to our attention, please do let us know.
No.

Malta

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Maybe.

a. If so, to what extent and under what circumstances?
Non-EEA firms providing investment services in relation to investment instruments in or from Malta need to be authorised. The term "investment instrument" includes shares in private companies and a person that provides investment advice, underwrites instruments, places instruments on or without a firm commitment basis, even in respect of shares in private companies, will be deemed to be providing investment service and accordingly will therefore need to be licensed.

There are exemptions in specific cases and persons offering shares in an M&A transaction or offering to buy shares may well benefit from such exemptions.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No.

b. by telephone or Zoom/Teams/etc. calls;
No.

c. on a fly in fly out basis;
No.

d. in response to a reverse solicitation?
The Malta Financial Services authority ("**MFSA**") has adopted ESMA's approach on reverse solicitation. If a non-EEA firm solicits clients or potential clients in the EU or promotes or advertises investment services or activities together with ancillary services in the EU, any service provided as a result will not be deemed as a service provided at the exclusive initiative of the client. The MFSA will consider every means of communication used by a non-EEA firm to determine whether it has solicited, promoted or advertised its investment services or activities, or its financial instruments to clients or potential clients in Malta, including press releases, internet advertisements, brochures, phone calls and face-to-face meetings.

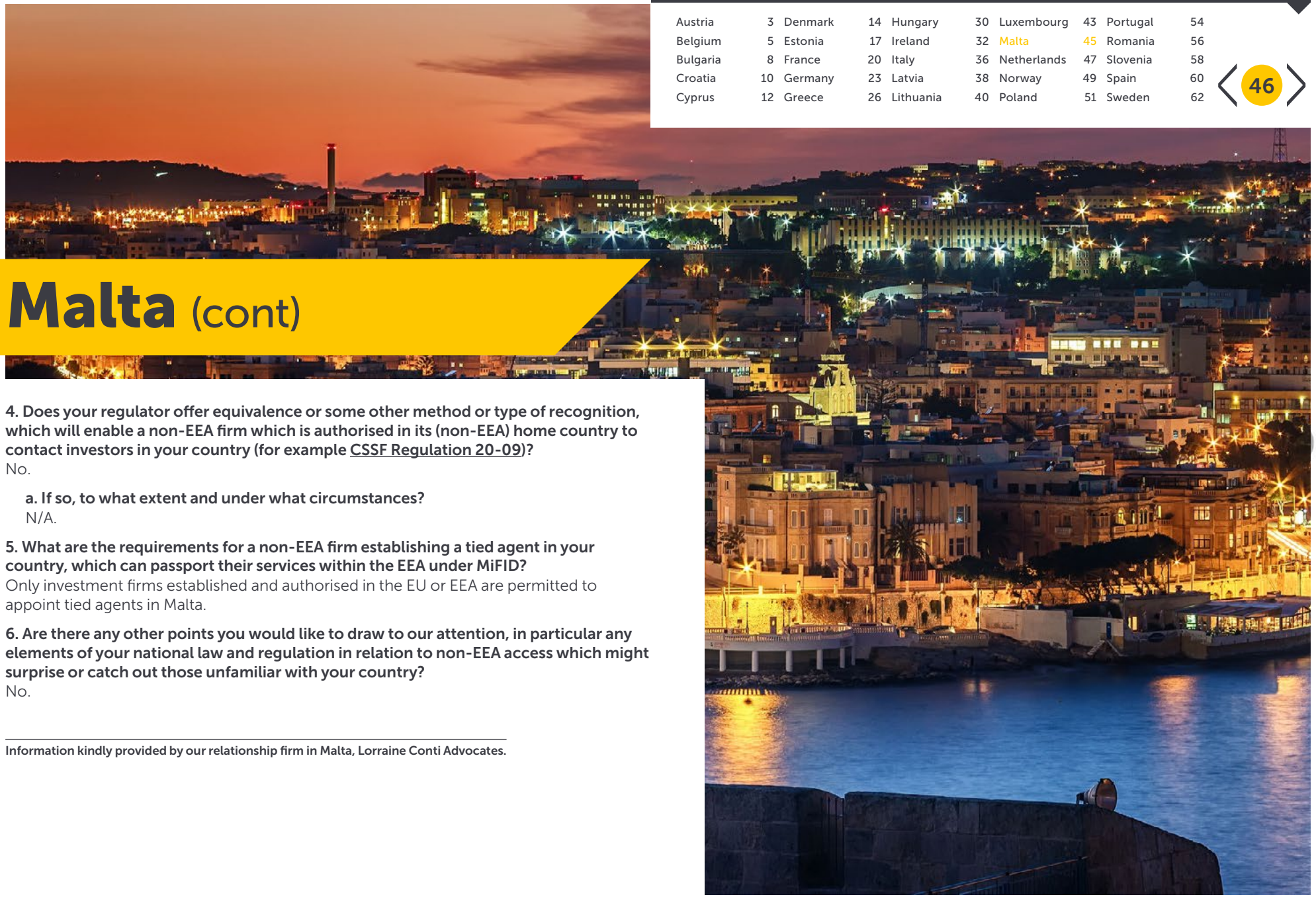
3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA can establish a branch, subject to obtaining relevant authorisation from MFSA. The Non-EEA firm will also need to fulfil criteria similar to those set out in article 39 (2) of MIFID.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

c. If so, to what extent and under what circumstances?
A non-EEA firm can establish a subsidiary, subject to obtaining relevant authorisation from MFSA and having its head office situated in Malta.



Malta (cont)

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
Only investment firms established and authorised in the EU or EEA are permitted to appoint tied agents in Malta.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Information kindly provided by our relationship firm in Malta, Lorraine Conti Advocates.

Netherlands

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?

The key question is whether the provided service is considered "corporate finance advice" or "financial investment advice" (advising on buy side) or "placing of financial instruments without a firm commitment basis" (advising on sell side and seeking investors), corporate finance advice being an "ancillary service" under MiFID II, which is not regulated, and financial investment advice and placing of financial instruments without a firm commitment basis being regulated "investment services" under MiFID II.

a. If so, to what extent and under what circumstances?

Corporate finance advice is an ancillary service (B3) under Annex I of MiFID II: "Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings". Corporate finance advice is not regulated and does not require a license in the Netherlands. There is, however, a grey area between corporate finance advice and investment services. Under the Dutch Financial Supervision Act ("**FSA**") investment services can only be provided by an authorised investment firm. Accordingly, firms must consider on case-by-case basis whether corporate finance advice or an investment service is provided. Corporate finance advice can include (i) investment advice and/or (ii) placing of financial instruments without a firm commitment. While there is little guidance in the Netherlands regarding the distinction between corporate finance advice and investment services, the predecessor of ESMA, CESR, did provide some guidance in the document 'Understanding the definition of advice under MiFID' regarding corporate finance advice and investment advice. CESR states that if a client's primary purpose for seeking advice is in order to generate a financial return on an investment or to hedge risk, this will qualify as the investment service 'investment advice'. If a client's purpose for requesting the advice is for an industrial, strategic or entrepreneurial purpose rather than to receive a financial return or hedge a risk, the advice provided will be corporate finance advice.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;

No, to the extent this is in relation to investment services under MiFID II.

b. by telephone or Zoom/Teams/etc. calls;

No, to the extent this is in relation to investment services under MiFID II.

c. on a fly in fly out basis;

No, to the extent this is in relation to investment services under MiFID II.

d. in response to a reverse solicitation?

Yes, if an investment firm provides investment services or conducts investment activities at the client's own volition and without inducement. The Dutch Financial Authority for Financial Markets ("**AFM**") will consider every means of communication used by a non-EEA firm to determine whether it has solicited, promoted or advertised its investment services or activities, or its financial instruments to clients or potential clients in the Netherlands, including press releases, internet advertisements, brochures, phone calls and face-to-face meetings. Please note that AFM only recognises reverse solicitation in very exceptional circumstances. Whether reverse solicitation applies should be assessed on a case-by-case basis.

Netherlands (cont)

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Under article 2:99a FSA non-EEA firms can establish a branch office in Netherlands and apply to AFM for a license to act as investment firm to provide investment services to retail clients. If a non-EEA firm wants to provide services only to professional clients, a license will be required under article 2:99b FSA, but there will no requirement to establish a branch office in the Netherlands.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm may establish a subsidiary in the Netherlands and apply to AFM for a license to act as investment firm under article 2:96 FSA.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
Yes, for Australian, Swiss and US firms.

If so, to what extent and under what circumstances?
Section 10 Exemption Regulation of the FSA exempts investment firms with registered offices in Australia, the US or Switzerland which provide investment services to professional clients referred to in Appendix II, Category I MiFID II or eligible counterparties or which deal on own account from the license obligation under certain conditions. To apply for this exemption:

- the provision of the investment services must be subject to supervision by a supervisory body in the non-EEA firm's home state;
- a notification form must be filed with the AFM; and
- a certificate of supervised status from the supervisory body in the non-EEA's home state or a reference to a public register of the non-EEA's home state regulator must be submitted to AFM prior to the provision of investment services in the Netherlands

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
Only investment firms established and authorised in the EU or EEA are permitted to appoint tied agents in the Netherlands.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Norway

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
The key question is whether the provided service would be considered as "investment advice" (advising on buy side) or "placing of financial instruments without a firm commitment basis" (advising on sell side and seeking investors), both being regulated "investment services" under MiFID, or general corporate advice ("advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings") being unregulated ancillary services under MiFID.

"Investment advice" must include a personal recommendation. If advice is presented as suited for a customer or is based on circumstances related to a customer, this may indicate it is investment advice.

"Placing of financial instruments without a firm commitment basis" describes intermediating between an issuer and an investor, often in combination with feedback to the issuer regarding subscriptions. Even direct placements are covered.

Services involving transfer of ownership of a company may require authorisation, depending on the nature of the transaction: if the buy-side is fragmented, such that investors have a financial, rather than a strategic, interest, authorisation is normally required. If the whole company is for sale and the buy-side consists of one (or very few) buyer(s) generally active in operational issues and not passive financial investors, authorisation will normally not be required.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, to the extent investment services under MiFID are offered.

b. by telephone or Zoom/Teams/etc. calls;
No, to the extent investment services under MiFID are offered.

c. on a fly in fly out basis;
No, to the extent investment services under MiFID are offered.

d. in response to a reverse solicitation?
Yes, with caution. Recital 111 of MiFID II provides "Where a non-EEA firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client." The Norwegian regulator Finanstilsynet ("**NFSA**") will consider every means of communication used by a non-EEA firm to determine whether it has solicited, promoted or advertised its investment services or activities, or financial instruments to clients or potential clients in Norway, including press releases, internet advertisements, brochures, phone calls and face-to-face meetings. NFSA has adopted the ESMA approach and generally requires adherence to ESMA guidelines.

Norway (cont)

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
It is possible to set up a branch in Norway which can apply for a license to provide investment services. Such authorisation may be able to be passported within the EEA provided the legal framework and supervisory arrangements of the home state of the non-EEA firm are recognised as compliant with EU requirements (Article 47 (3) of MiFIR). The non-EEA firm must be member of an investor protection scheme compliant with Directive 97/9 and the branch must have sufficient equity capital.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
It has always been possible for non-EEA firms to establish subsidiaries in Norway and for the subsidiary to apply for a licence to act as an investment firm. The licence conditions are broadly the same as the those required for a branch.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
Only EEA-authorised investment firms can have tied agents.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Information kindly provided by our relationship firm in Norway, Haavind Vislie.

Poland

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?

The majority of the contemplated activities are considered by the Polish regulator to be regulated services which may only be carried out by authorised investment firms and banks rendering brokerage activities.

a. If so, to what extent and under what circumstances?

On the basis of guidance issued by the Polish Financial Supervisory Authority ("**KNF**") in 2019, the contemplated services may consist of up to four types of activities described in the Polish act on trading in financial instruments which implementing MIFID II. Depending on the circumstances, these are:

(i) corporate finance advice;

(ii) investment advice;

(iii) offering of financial instruments (a position covering jointly underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis as well as placing of financial instruments without a firm commitment basis ("offering of financial instruments")); or

(iv) reception and transmission of orders in relation to one or more financial instruments.

Only authorised investment firms and banks performing brokerage activities may provide the services listed in points (ii), (iii) and (iv), subject to some very limited exceptions. Corporate finance advice is not a regulated service. When considering whether or not the services are regulated, it does not matter if the services are provided to professional clients, institutional investors or retail clients.

There is only a small unregulated gap for offers on the buy side of financial instruments if such offers do not involve investment advice or acceptance and transferring of financial instruments. However, note that under Polish law, the acceptance and transferring of financial instruments, acquisition or disposal orders consist of an investment firm undertaking to accept and transfer financial instruments, acquisition or disposal orders by:

1) accepting and forwarding orders to buy or sell financial instruments to another entity, including to the issuer of a given financial instrument, the grantor of a financial instrument or the offeror of such an instrument, for the purpose of their performance, or

2) matching two or more entities in order to effect entering into a transaction between these entities.

Therefore, if a non-EEA firm receives and transmits acquisition or disposal orders in relation to one or more financial instruments or performs services comprising of matching entities to enter into such transaction then it will be performing regulated services listed in Section A, point 1 of Annex I to MIFID II.

Poland (cont)

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, to the extent services listed in points (ii) – (iv) above are offered.

b. by telephone or Zoom/Teams/etc. calls;
No, to the extent services listed in points (ii) – (iv) above are offered.

c. on a fly in fly out basis;
No, to the extent services listed in points (ii) – (iv) above are offered.

d. in response to a reverse solicitation?
"Financial investment advice" and "placing of financial instruments without a firm commitment basis": in general, where a retail or professional client, within the meaning of Section II of Annex II of MiFID II, established or situated in the EU initiates at its own exclusive initiative the provision of an investment service or activity by a non-EEA firm, the service will not be considered to be provided within the territory of the EU and will not require a license ("**reverse solicitation**"). Note that ESMA is of the opinion that every means of communication used, including press releases, advertising on the internet, brochures, phone calls or face-to-face meetings should be considered when determining if a client or potential client has been subject to any solicitation, promotion or advertising in EU of the non-EEA firm's investment services or activities or financial instruments. ESMA also reminds firms that such a solicitation, promotion or advertising will be considered regardless of the person through whom it is issued: the non-EEA firm itself, an entity acting on its behalf or having close links with the non-EEA firm or any other person acting on behalf of such entity. Care should be taken when relying upon reverse solicitation since the recharacterisation of reverse solicitation as active provision of services could trigger criminal sanctions for unauthorised provision of investment services.

"Corporate finance advice": corporate finance advice is not regulated and thus reverse solicitation does not apply.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
It is possible to set up a Polish branch to provide investment services to local clients subject to obtaining a license from the Polish authorities. The conditions for obtaining authorisation are broadly the same as those set out under article 39(2) of MiFID II. Authorisation will enable the branch to provide investment services and activities covered by that authorisation in other EU member states, provided that the legal framework and supervisory arrangements of the non-EEA firm's home state are recognised as equivalent (Article 47 (3) of MiFIR).

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
It is possible for non-EEA firms to establish a subsidiary in Poland and apply for a licence to act as an investment firm. The Polish authorities and the authorities of the home state of the non-EEA firm may establish cooperation arrangements to ensure an appropriate level of investor protection.

Poland (cont)

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A non-EEA firm investment firm which wants to establish a tied agent in Poland must itself be authorised as an investment firm in Poland.

A tied agent must be registered with the Polish register of investment firms' agents maintained by KNF. Only investment firms are entitled to register tied agents. They are obliged to ensure the integrity and professional knowledge of their tied agents. Registration requires submission of a document certifying the existence of an exclusive mandate, under which full responsibility for the tied agent's actions is assumed by the investment firm. Tied agents are not authorised to collect funds or financial instruments from the customers of the principal. Tied agents can be used to provide the investment services of:
(i) reception and transmission of orders on behalf of third parties;
(ii) placing of financial instruments with or without a firm commitment; or
(iii) financial investment advice.

Tied agents can also promote the services provided by the investment firm and provide advice on those services.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Portugal

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
No.

a. If so, to what extent and under what circumstances?
We believe that such services fall within the investment services and activities and ancillary services set out in Annex I (Sections A and B) of MiFID II and, as such, are regulated activities. Accordingly, non-EEA firms may only provide these services in Portugal through a branch or a subsidiary.

However, it is necessary to analyse each service on case-by-case analysis in order to be certain as to the nature of the service and whether or not it is a regulated activity.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No.

b. by telephone or Zoom/Teams/etc. calls;
No.

c. on a fly in fly out basis;
No.

d. in response to a reverse solicitation?
Yes. Under article 199 - FD of the Portuguese Legal Framework of Credit Institutions and Financial Companies, if a retail or professional client, established or situated in Portugal, at its own exclusive initiative seeks the provision of investment services or activity by a non-EEA investment firm, the non-EEA firm is not subject to the Portuguese licensing requirements (including the requirement to establish a branch) and can provide the service or activity requested. However, the relationship must be established exclusively on the initiative of the customer, without any preceding marketing or advertising by the non-EEA firm.

CMVM will consider every means of communication used by a non-EEA firm to determine whether it has solicited, promoted or advertised its investment services or activities, or its financial instruments to clients or potential clients in Portugal, including press releases, internet advertisements, brochures, phone calls and face-to-face meetings.

3. Can non-EEA firms establish:
a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A branch of a non-EEA firm can provide investment services or perform investment activities with or without any ancillary services subject to obtaining authorisation by Banco de Portugal and subject to the following conditions:
(a) the non-EEA firm being authorised to provide those services in its home state where it is supervised by a regulator which pays due regard to FATF recommendations

Portugal (cont)

on anti-money laundering and countering the financing of terrorism;
(b) there are cooperation arrangements between the non-EEA firm's home state regulator and Banco de Portugal which provide for the exchange of information for the purpose of preserving the integrity of the market and protecting investors;
(c) the person(s) managing the branch meet reputation, professional qualification, independence and availability requirements;
(d) the non-EEA firm's home state has an agreement with Portugal which complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements;
(e) the branch is sufficiently capitalised;
(f) the non-EEA firm belongs to an investor- compensation scheme authorised or recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997.

Branch authorisation takes 6 months from the date when the Banco de Portugal is in receipt of the application and all necessary supporting evidence and information.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA investment firm that wishes to pursue business in Portugal may also set up a subsidiary. To this end, the investment firm must submit an application for authorisation and registration with the Banco de Portugal. The investment firm authorisation process lasts for 6 months from the date when the Banco de Portugal receives all evidence and information necessary for a proper examination of the application, but no more than 12 months from the date of the initial application.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A non-EEA firm can only appoint a tied agent in Portugal if it is authorised to provide financial services or activities in Portugal (through a branch or a subsidiary) and after prior registration with the CMVM. The branch or subsidiary must be opened in order to appoint a tied agent.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Information kindly provided by our relationship firm in Portugal, Marchado, Sarmento.

Romania

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Under AIFMD the activity contemplated comprises the marketing to professional investors of units or shares in EU and non-EU AIFs.

Under MiFID II the key question is whether the provided service is "corporate finance advice" or "financial investment advice" (advising on buy side) or "placing of financial instruments without a firm commitment basis" (advising on sell side and seeking investors), corporate finance advice being an "ancillary service" under MiFID II, which is not regulated, and financial investment advice and placing of financial instruments without a firm commitment being regulated "investment services" under MiFID II.

a. If so, to what extent and under what circumstances?
The management of an AIF, including the marketing of units or shares in that AIF can only be undertaken by a non-EEA AIFM with prior authorisation from the Romanian Financial Supervisory Authority ("**FSA**").

Financial investment advice and placing of financial instruments without a firm commitment are regulated investment services while corporate finance advice is not. The Romanian competent authority has not clarified when such activity is financial investment advice or corporate finance advice. That assessment should be made with reference to the CESR (ESMA's predecessor) document "Questions & Answers - Understanding the definition of advice under MiFID".

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?
A non-EEA firm can only promote its services in Romania if it has first established a branch in Romania and obtained authorisation from the Romanian competent authority. Any such promotion must comply with the advertising rules established by the competent authority.

a. by email;
No.

b. by telephone or Zoom/Teams/etc. calls;
No.

c. on a fly in fly out basis;
No.

d. in response to a reverse solicitation?
Yes, a non-EEA firm can respond to reverse solicitation by a client. Romanian law provides that if a retail customer or a professional customer, established or located in Romania, at its exclusive initiative seeks the provision of a service or the performance of an investment activity by a non-EEA firm, that non-EEA firm does not require Romanian to provide the service or perform that activity for the client concerned, nor for any relationship specifically related to the provision of the service or the performance of that activity. A reverse solicitation approach by a client does not entitle a non-EEA firm to market new categories of investment products or investment services to that client other than through a Romanian branch. The Romanian competent authority has not provided any additional guidance to or commentary on the ESMA guidelines on reverse solicitation.

Romania (cont)

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm which intends to provide investment services or carry out investment activities in Romania must first establish a branch in Romania and obtain authorisation from the Romanian competent authority. The requirements for obtaining a licence are the same as those set out under MiFID.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm can establish a subsidiary in Romania. The subsidiary must obtain authorisation from the Romanian competent authority before providing investment services or carrying out investment activities in Romania.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
Romania does not offer equivalence or any other type of recognition for such investment firms. However, an AIFM established in a third country which intends to manage an AIF in the EU and/or to distribute units of an AIF which it manages in the EU must obtain prior authorisation from the Romanian Financial Supervisory Authority.

a. If so, to what extent and under what circumstances?
N/A

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
Only investment firms or credit institutions which are established in an EU member state can appoint a tied agent in Romania.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Slovenia

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
The conditions under which non-EEA firms may provide investment services (i.e. offer investments in funds or other financial instruments, and/or give investment advice) in Slovenia are set out in the Market in Financial Instruments Act ("**ZTFI-1**"). If non-EEA firms offer investments in AIFs the provisions of the Alternative Investment Fund Managers Act ("**ZUAIS**") and Investment Funds and Management Companies Act ("**ZISDU-3**") apply as well – the provisions of ZUAIS apply for professional investors and the provisions of ZISDU-3 apply for non-professional investors. Therefore, it is necessary to first determine the nature of the investments services (i.e. the "**products**") which a non-EEA firm is intending to offer and provide to investors in Slovenia.

Under Article 59 of ZTFI-1 investment services (other than offering investments in AIFs) may only be provided in Slovenia by non-EEA investment firms and non-EEA banks which have established a branch in Slovenia. Under Article 319 of the ZUAIS, non-EEA firms are prohibited from offering investments in AIFs (either EEA AIFs or non-EEA AIFs) in Slovenia unless and until the EU Commission adopts a Delegated act under Paragraph 6 of Article 67 of AIFMD. Under ZISDU-3 non-EEA investment firms may not offer investments in funds to non-professional investors.

Under Article 19 ZTFI-1 advice and services in relation to M&A transactions are considered "ancillary services" for the purposes of MiFID II. If ancillary services are performed as an independent service, a non-EEA firm can only provide such services through a Slovenian branch. Investment advice relating to M&A transactions is a regulated investment service under Article 11 of ZTFI-1. The Slovenian Securities Market Agency ("**ATVP**") refers to the definition of investment advice set forth in Article 4 of MiFID II.

The EU Prospectus Regulation applies the public offering of securities.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No.

b. by telephone or Zoom/Teams/etc. calls;
No.

c. on a fly in fly out basis;
No.

d. in response to a reverse solicitation?
Yes. Paragraph 2 of Article 215 of the ZTFI-1 provides that if an investor initiates contact with a non-EEA firm, the investment service or activity by the non-EEA firm is not provided in Slovenia. If the reverse solicitation relates to an offer of units or shares in an AIF, the provisions of ZTFI-1 specifically apply, in particular in relation to investment advisory services and the regulatory requirements for the performance of those services.

Slovenia (cont)

Such transactions may, however, raise suspicions with the ATVP, who may investigate whether the purported reverse solicitation was proceeded by any kind of marketing or advertising activities in Slovenia.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm may establish a branch to undertake investment services and activities in Slovenia; subject to obtaining authorisation from ATVP in accordance with the requirements of Article 218 of ZTFI-1.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm may establish a subsidiary to undertake investment services and activities in Slovenia. The subsidiary must be established as an investment firm under Slovenian law and will be subject to the provisions of ZTFI-1 regarding establishment of an investment firm and its owners (e.g. regarding minimum initial capital).

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a, If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
ZTFI-1 does not permit a non-EEA investment firm to establish a tied agent in Slovenia.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Information kindly provided by our relationship firm in Slovenia, Rojs, Peljhan, Prelesnik & Partners.

Spain

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
Yes.

a. If so, to what extent and under what circumstances?
The Spanish regulatory body distinguishes between (i) corporate finance advice, which is not regulated; and (ii) financial investment advice and placing of investment products, both of which are regulated activities. Therefore, if the services provided are considered "corporate finance advice" these can be provided without prior authorisation as these are an "ancillary service" under MiFID II.

The provision of corporate finance advice is not a regulated service and can be offered by non-EEA firms without a license. However, a prudent non-EEA firm should consider on a case-by-case basis which services and products they intend to provide, in order to confirm that those can be considered as corporate finance advice. The following activities are mainly considered as corporate finance advice:
· seeking investors for non-regulated target companies;
· ongoing engagement and negotiation with counterparties throughout an M&A transaction along with ancillary advice services to an M&A transaction

Financial investment advice and placing of investment products are considered regulated services and a non-EEA firm will require authorisation to provide such services in Spain. The type of the licence the non-EEA firm will require will depend upon which regulated services the non-EEA firm intends to provide in Spain.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, to the extent investment services under MIFID II are offered.

b. by telephone or Zoom/Teams/etc. calls;
No, to the extent investment services under MIFID II are offered.

c. on a fly in fly out basis;
No, to the extent investment services under MIFID II are offered.

d. in response to a reverse solicitation?
Reverse solicitation requests in respect of financial instruments are permitted. The reverse solicitation provision in article 42 of MIFID II regulations has not been transposed into Spanish law. As a result of the concept not being recognised in Spanish national law, the Spanish regulator takes an unfavourable view of reverse solicitation, which it considers a grey area and to be assessed on a case-by-case basis. The Spanish regulator applies reverse solicitation very restrictively and infrequently recognises isolated incidents of reverse solicitation. A non-EEA firm seeking to rely upon reverse solicitation is strongly advised to obtain as much evidence as possible to demonstrate the client requested investment services on its own initiative and sent the first communication between the client and the non-EEA firm.

Spain (cont)

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A non-EEA firm may apply to the CNMV for a third country license to provide investment services through the establishment of a Spanish branch. The non-EEA firm must be authorised to provide the same investment services it intends to provide in Spain in its home state, where it must also be supervised by a competent regulatory authority.

A non-EEA firm operating through a Spanish branch may provide services to both retail and professional clients.

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
Non-EEA firms may establish a subsidiary in Spain and apply for a licence to act as an investment firm. The subsidiary will be treated as if it were a local entity for the purposes of applying for and obtaining a licence.

A non-EEA firm operating through a Spanish subsidiary may provide services to both professional clients and retail clients.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

a. If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
A non-EEA firm cannot appoint a tied agent in Spain unless the non-EEA firm is itself authorised to offer financial services by the CNMV.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No.

Sweden

1. Can non-EEA firms which are not authorised in the EEA under AIFMD or MiFID offer investments in funds or other financial instruments, such as shares in private companies, including in M&A transactions, to investors in your country? In particular is offering shares in the context of an M&A transaction, or offering to buy shares in an M&A transaction a regulated activity?
The answer depends on whether the services provided qualify as an investment service (primarily investment advice) or corporate finance advice. Corporate finance advice is an ancillary service as defined in Annex I, Section B(3) of MIFID II: "Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings". Corporate finance advice is not a regulated activity, while investment advice is a regulated activity.

a. If so, to what extent and under what circumstances?
The distinction between corporate finance advice and investment advice is not entirely clear and the provision of corporate finance advice and investment advice are not mutually exclusive. In light of this uncertainty and the lack of clarifying statements from the Swedish Financial Supervisory Authority (the "**SFSA**"), an assessment on a case-by-case basis is recommended (which is also in line with ESMA's recommendations). Corporate finance advice does not, for example, include advice on placements of financial instruments.

2. Can non-EEA firms contact investors (it is assumed that contact with ordinary retail investors will not be permitted)?

a. by email;
No, to the extent investment services under MiFID II are offered.

b. by telephone or Zoom/Teams/etc. calls;
No, to the extent investment services under MiFID II are offered.

c. on a fly in fly out basis;
No, to the extent investment services under MiFID II are offered.

d. in response to a reverse solicitation?
Yes, however, this should always be done with caution. Recital 111 of MIFID II provides: "Where a non-EEA firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client." To assess whether a non-EEA firm has solicited, promoted or otherwise advertised investment services, investment activities or financial instruments to (potential) clients in Sweden, the SFSA will take into consideration all means of communication which were used. The SFSA has broadly adopted ESMA's approach and generally requires adherence to ESMA guidelines.

3. Can non-EEA firms establish:

a. a branch in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
An undertaking established outside the EEA may provide investment services though a branch in Sweden following authorisation from the SFSA under the Swedish Securities Market Act (Sw. lagen (2007:528) om värdepappersmarknaden). The requirements for authorisation are broadly the same as the ones set out under article 39 and article 41.1 of MIFID II.

Sweden (cont)

b. a subsidiary in your country to undertake activities listed in 1. above?
Yes.

If so, to what extent and under what circumstances?
A firm domiciled outside the EEA can establish a subsidiary in Sweden and apply for a license/authorisation to act as an investment firm, in which case the license will be requested and obtained as a local entity.

4. Does your regulator offer equivalence or some other method or type of recognition, which will enable a non-EEA firm which is authorised in its (non-EEA) home country to contact investors in your country (for example CSSF Regulation 20-09)?
No.

If so, to what extent and under what circumstances?
N/A.

5. What are the requirements for a non-EEA firm establishing a tied agent in your country, which can passport their services within the EEA under MiFID?
Only EEA-authorised investment firms can appoint tied agents.

6. Are there any other points you would like to draw to our attention, in particular any elements of your national law and regulation in relation to non-EEA access which might surprise or catch out those unfamiliar with your country?
No

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