

POLICY STATEMENT

(PS-02-2021)



SUBJECT: POLICY STATEMENT ON THE GRANDFATHERING OF THE OPERATIONS OF UK GROUPS OPERATING UNDER TPR, WHICH HAVE SOUGHT TO ESTABLISH A PHYSICAL PRESENCE IN CYPRUS

DATE OF ISSUE: 14 DECEMBER 2021

PURPOSE OF THE PUBLICATION

The Cyprus Securities and Exchange Commission, publishes this Policy Statement to notify its decision on the grandfathering of the operations of UK Groups operating under the Temporary Permission Regime, which have sought to establish a physical presence in Cyprus.

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

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1. BACKGROUND INFORMATION

- 1.1. Following Brexit, the Cyprus Securities and Exchange Commission (**'CySEC'**), established a Temporary Permission Regime (**'TPR'**) for (ex MiFID II¹) United Kingdom (**'UK'**) investment firms providing investment services and/or undertaking investment activities to *per se*² professional clients and eligible counterparties, without a physical presence in Cyprus, in view of the fact that post Brexit (i.e., after 1 January 2021), UK MiFID II firms became third country financial institutions³ no longer benefiting from the so-called *'MiFID II passport'*⁴.
- 1.2. The TPR has been introduced as a transitional arrangement, in order to provide the said UK firms with sufficient time to restructure their operations in Cyprus as third-country financial institutions in a MiFID II compliant manner. The reason for the establishment of the TPR was that at the time of Brexit, no third-country equivalence decision⁵ was issued by the EU Commission as regards the UK, in order for the (ex MiFID II) UK investment firms to actively⁶ deploy their operations in Cyprus without a branch in the Republic. Thus, the only alternative left, if no TPR had been established, would have been that of requiring these UK investment firms to cease their operations post Brexit in Cyprus and apply to CySEC for a licence to establish a branch in the Republic. In case that cross border activities to other EEA Member States are envisaged, a licence as a Cypriot Investment Firm (**'the CIF'**) under Law 87(I)/2017 is necessary, as branches of third country firms do not enjoy the freedom to provide services in the EEA⁷.

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (**'MiFID II'**).

² The professional clients of the Second Appendix, Part I of the Investment Services and Activities and Regulated Markets Law (**'Law 87(I)/2017'**), transposing Section I of Annex II of MiFID II (excluding the professional clients of Section II of Annex II of MiFID II).

³ See the relevant definition in Art. 2(1)(41) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (**'MiFIR'**).

⁴ Article 6(3) of MiFID II, transposed into Cypriot Law by Article 6(3) of Law 87(I)/2017.

⁵ As per Article 46(1) of MiFIR in conjunction with Article 47(1) of MiFIR, following such equivalence decision and an ESMA registration, third-country financial institution, such as UK firms, may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to *per se* professional clients without a branch, i.e., without a physical presence, in the EU, including Cyprus.

⁶ For the avoidance of doubt, the TPR is without prejudice to the *'reverse solicitation'* exemption, in which case the provision of an investment service and/or the performance of an investment activity by a third-country financial institution takes place at the exclusive initiative of the EU-based, *in casu* Cyprus-based, client. As a result, the said provision or performance is not considered as taking place within the territory of the European Union, hence not requiring regulatory approval. Further information on the *'reverse solicitation'* exemption can be found in Recital (111) and Article 42 of MiFID II, the latter transposed into Cypriot Law by Article 43 of the CIF Law; and in Recital (43) and Article 46(5) subpara.2 of MiFIR for the specific cases of reverse solicitation by eligible counterparties and *per se* professional clients.

⁷ Recital 109 of MiFID II states inter alia the following: *"The provision of services by third country firms in the Union is subject to national regimes and requirements. Firms authorised in accordance with them do not enjoy*

- 1.3. Bearing in mind the lack of a relevant third-country equivalence decision at EU level, CySEC amended Directive 87-04 for the provision of services by third country firms to eligible counterparties and professional clients that do not fall within the scope of MiFIR (**'DI87-04'**), in order to introduce the TPR⁸.
- 1.4. In brief and without prejudice to the *'reverse solicitation exemption'*, the TPR does not require UK investment firms that enjoyed a MiFID II firm status and deployed operations without physical presence in Cyprus before Brexit, to establish a physical presence in the Republic, unlike other third-country firms. More specifically the TPR applies to the benefit of the said UK investment firms when:
 - i. Providing investment services and/or performing investment activities, within the meaning of Law 87(I)/2017, with or without ancillary services, within the meaning of the Law 87(I)/2017; and
 - ii. Solely with regard to professional clients *per se* and eligible counterparties, based in Cyprus.

More information thereupon is provided in DI87-04⁹ and in the Policy Statement on launching a Temporary Permission Regime for the provision of investment services to professional clients and eligible counterparties based in Cyprus, by UK firms (**'PS-02-2020'**)¹⁰.

- 1.5. CySEC received ninety-six applications by such UK Investment firms, seven of which were deemed as inadmissible based on the TPR eligibility criteria, whereas one application was withdrawn after its submission.
- 1.6. The UK firms in question were granted a temporary permission under DI87-04, i.e. under the TPR embedded in the said Directive, to provide investment services and/or perform investment activities, with or without ancillary services, to *per se* professional clients and eligible counterparties, based in Cyprus, without having to establish any physical presence in the Republic up until the 31st of December 2021 (**the "TPR Entities"**).
- 1.7. A *"Dear Applicant Letter"*, dated 27 April 2021, was addressed to TPR Entities, in order to:

the freedom to provide services and the right of establishment in Member States other than the one where they are established".

⁸ Essentially, the TPR is laid down in Paragraph 6A of Directive 87-04.

⁹ Available at: <https://www.cysec.gov.cy/en-GB/legislation/services-markets/epevy/>

¹⁰ Available at: <https://www.cysec.gov.cy/en-GB/public-info/policy-statements/>

- i. Inform them about the incorporation of TPR Entities in a dedicated section in the CySEC register¹¹;
 - ii. Draw their attention to a bespoke section in CySEC’s website, serving as a Brexit Information Hub¹², which contains relevant Announcements, Circulars and Questions and Answers, for the seamless navigation of Brexit related information;
 - iii. Outline the next steps, namely that on 1 January 2022, the TPR will expire and in the absence of an equivalence decision by the European Commission in relation to the UK relevant regulatory framework and a subsequent registration with the European Securities and Markets Authority (“ESMA”), pursuant to Articles 47 and 46 of MiFIR¹³ respectively, TPR Entities will no longer be able to provide any investment services and/or perform any investment activities, with or without any ancillary services, on a solicited basis in Cyprus (including not to *per se* professional clients and to eligible counterparties), without the prior establishment of a physical presence in the Republic or in another EEA Member State¹⁴; and
 - iv. Encourage them to formulate a contingency plan for either phasing out their operations in an orderly fashion, or for the establishment of an appropriate physical presence¹⁵ in Cyprus or in another EEA Member State that best suits their business.
- 1.8. In formulating the contingency plan referred to in Paragraph 1.7(iv), CySEC advised TPR Entities, to inter alia take into account:
- i. The time needed for completely phasing out their solicited operations in Cyprus by 1st January 2022, should they decide to not establish a physical presence in Cyprus or in another EEA Member State;

¹¹ Available at: <https://www.cysec.gov.cy/en-GB/cysec/brexit/TPR-Register/>

¹² Available at: <https://www.cysec.gov.cy/en-GB/cysec/brexit/>

¹³ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

¹⁴ There are two possible forms of physical presence, namely that of establishing a legal entity in an EEA Member State (‘MS’) and that of establishing a branch. However, in contrast to the case of a fully MiFID II authorised legal entity established in an EEA MS, which can benefit from the aforesaid MiFID II passport, a branch of a third country financial institution (e.g. a branch of a third-country financial institution based in the UK) established in an EEA MS, may provide its services solely to residents of that Member State where the branch is located and may not provide any investment services and/or perform any investment activities, with or without any ancillary services, to residents of other EEA Member States. See footnote 7 above herein.

¹⁵ As already mentioned, it will be either an entity established in Cyprus and authorized by CySEC as a CIF or a branch, i.e. a form of physical presence lacking legal personality and considered to be an organic extension of the third-country entity, which is authorized by CySEC as a branch of a third-country financial institution under Article 40 of Law 87(I)/2017 and is allowed to deploy its authorized activities within Cyprus only.

- ii. The time needed for the evaluation of an application, should they decide to proceed with establishing a physical presence in Cyprus or in another EEA Member State.
 - iii. The time needed for the compliant onboarding of their existing clientele by a newly established legal entity in Cyprus or in another EEA Member State (e.g. complying with the target market obligation, performing suitability and/or appropriateness tests, performing AML checks per client etc.)
 - iv. Whether an equivalence decision and a subsequent ESMA registration has not taken place whilst the year 2021 progresses; and
 - v. Whether they intend to undertake any activities that require a specific form of physical presence in the EEA.
- 1.9. Amongst the groups¹⁶ of the TPR Entities (**the ‘TPR Groups’**), several sought to continue their solicited activities in Cyprus.
- 1.10. The applications received by CySEC are examined on a first come first served basis, creating thus challenges as to the timely completion of the evaluation of the applications referred to in Paragraph 1.9. To this end, CySEC decided to issue this Policy Statement outlining its amended approach.

2. WHO THIS CONCERNS

- 2.1. This Policy Statement concerns and benefits the TPR Entities, including those that belong to TPR Groups, where the TPR Entities themselves or the TPR Groups (as the case may be):
- i. Have sought to continue their solicited activities through the establishment of a physical presence in Cyprus by means of either establishing a third-country branch¹⁷ or by establishing a new CIF¹⁸ or acquiring stakes, including qualifying stakes¹⁹ in an existing CIF and whose applications have not been fully evaluated yet;
 - ii. Will seek to continue their solicited activities through the establishment of a physical presence in Cyprus by means referred to in point i above (as the case may be) until 31 December 2021 (i.e. those who will submit a relevant application until the end of December of 2021).

¹⁶ As per Article 2(1) of Law 87(I)/2017: ‘ “group” means a group as defined in Article 2(11) of Directive 2013/34/EU’

¹⁷ Article 40 of Law 87(I)/2017.

¹⁸ Article 7 of Law 87(I)/2017 as further laid down in Title I Chapter II of Law 87(I)/2017

¹⁹ The latter being subject to regulatory approval under Article 12 of Law 87(I)/2017.

3. POLICY APPROACH AND RELEVANT RATIONALE

- 3.1. In view of the fact that the evaluation of an application for the establishment of a physical presence in the Republic under one of the forms laid down in section 2.1.i above herein (**'Physical Establishment'**) is an elaborated and lengthy process, CySEC has decided to amend its policy approach on the TPR to avoid disruption of the existing business of the TPR Entities and to facilitate the migration of such business to Physical Establishments.
- 3.2. In an attempt to ensure a smooth transition towards Physical Establishment CySEC has decided to further amend DI87-04²⁰ by introducing a grandfathering clause in relation to TPR Entities, including cases where TPR Entities belong to TPR Groups, in the cases referred to in Paragraph 2.1 above herein, up until the completion of the evaluation of the applications in question.
- 3.3. In case of a successful assessment of such application, a period of additional six months is granted for the smooth and compliant onboarding of clients to the Physical Establishments and/or for such establishment becoming fully operational, as applicable.
- 3.4. In view of our policy becoming immediately applicable without any prior consultation, we have decided to include entities referred to Paragraph 2 (ii) above herein, to avoid negatively affecting applications that are in the process of finalization and submission to CySEC.
- 3.5. The amended Directive DI 87-04 (C), is appended herewith as **Annex 1**.

4. NEXT STEPS

- 4.1. The TPR entities that will be eligible to continue operating under the TPR after 31 December 2021, will be listed in a bespoke section on CySEC's website.
- 4.2. The rest of the TPR entities must cease their actively solicited operations in the Republic by 1 January 2022. We expect that our proactive engagement with such entities has ensured that a contingency plan is in place for smoothly phasing out their solicited operations in Cyprus.

²⁰ Already amended by Directive DI87-04(A) and Directive DI87-04(B).

ANNEX 1

1.1 UNOFFICIAL TRANSLATION OF THE AMENDING DIRECTIVE

**DIRECTIVE DI87-04 (C) OF THE CYPRUS SECURITIES AND EXCHANGE COMMISSION
FOR THE PROVISION OF SERVICES BY THIRD COUNTRY FIRMS IN THE REPUBLIC OF
CYPRUS TO ELIGIBLE COUNTERPARTIES AND PROFESSIONAL CLIENTS IN THOSE
CASES THAT DO NOT FALL WITHIN THE SCOPE OF REGULATION (EU) NO. 600/2014 ON
MARKETS IN FINANCIAL INSTRUMENTS (MIFIR)
(Amending Directive DI87-04)**

The Cyprus Securities and Exchange Commission, in accordance with the power vested in it by virtue of section 96 of the Provision of Investment Services, the Exercise of Investment Activities, the Operation of Regulated Markets and other related matters Law of 2017, issues the following Directive:

- Short Title. 1. The present Directive shall be cited as Directive DI87-04 (C) of the Cyprus Securities and Exchange Commission for the provision of services by third country firms in the Republic of Cyprus to eligible counterparties and professional clients in those cases that do not fall within the scope of Regulation (EU) no. 600/2014 on markets in financial instruments (MiFIR) and shall be read in conjunction with Directive DI87-04, Directive DI87-04(A) and Directive DI87-04(B) of the Cyprus Securities and Exchange Commission for the provision of services by third countries firms in the Republic of Cyprus to eligible counterparties and professional clients in those cases that do not fall within the scope of Regulation (EU) no. 600/2014 on markets in financial instruments (MiFIR) (hereinafter the DI87-04, DI87-04(A) and DI87-04(B) will be cited as the 'main directive') and the main directive and this Directive will be cited together as the Directives for the provision of services by third country firms to eligible counterparties and professional clients of 2018 to 2021.
- R.A.D. 5/2018
R.A.D. 645/2020
R.A.D. 41/2021
- Amendment of Paragraph 6A. 2. Paragraph 6A of the main directive is amended by means of replacement of subparagraph (2) with the following new sub-paragraphs:
- '(2) By way of derogation from the provisions of paragraph 4(1)(ii) and paragraph 4(2) and without prejudice to the provisions of paragraph 5, following the period refer to in point (i) of subparagraph (1), the Investment Firms of sub-paragraph (1) may continue providing investment services to eligible counterparties or/and to professional clients within the meaning of Part I of the Second Appendix of the Law, provided that they have submitted to the Commission by 31 December 2021;
- (a) an application for acquiring a qualifying holding in a CIF, in accordance with the provisions of Article 12 of the Law; or
- (b) an application for the establishment of a branch in the Republic, as per paragraph 4(2),
- up until the completion of the evaluation of the application by the Commission and for a period up to six (6) months after the approval of the application or the granting of an authorisation to the branch, as the case may be.
- (3) The provisions of subparagraph (2) apply in relation to the Investment Firms of sub-paragraph (1), also in the following cases:
- (i) where the Investment Firms of sub-paragraph (1) belong to a group and an application for granting a CIF authorisation has been submitted to the Commission up until 31 December 2021, by a member of the group, in accordance with Chapter I of Title II of the Law;
- (ii) where the Investment Firms of sub-paragraph (1) belong to a group and an application for acquiring a qualifying holding in a CIF has been submitted to the Commission up until 31 December 2021, by a member of the group in accordance with the provisions of Article 12 of Law;
- (iii) where the Investment Firms of sub-paragraph (1) belong to a group and an application for establishing a branch in the Republic has been submitted to the

Commission up until 31 December 2021, by a member of the group, as per paragraph 4(2).

(4) Following the period refer to in sub-paragraph (2), Investment Firms of sub-paragraph (1) may continue providing investment services to professional clients and/or to eligible counterparties in the Republic, only if a branch has been established in the Republic.

Entry into force 3. This Directive shall enter into force on the day of its publication in the Official Gazette of the Republic

1.2 AMENDING DIRECTIVE IN GREEK

ΟΔΗΓΙΑ ΟΔ87-04 (Γ) ΤΗΣ ΕΠΙΤΡΟΠΗΣ ΚΕΦΑΛΑΙΑΓΟΡΑΣ ΚΥΠΡΟΥ ΓΙΑ ΤΗΝ ΠΑΡΟΧΗ ΥΠΗΡΕΣΙΩΝ ΑΠΟ ΕΠΙΧΕΙΡΗΣΕΙΣ ΤΡΙΤΩΝ ΧΩΡΩΝ ΣΤΗΝ ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ ΣΕ ΕΠΙΛΕΞΙΜΟΥΣ ΑΝΤΙΣΥΜΒΑΛΛΟΜΕΝΟΥΣ ΚΑΙ ΕΠΑΓΓΕΛΜΑΤΙΕΣ ΠΕΛΑΤΕΣ ΣΤΙΣ ΠΕΡΙΠΤΩΣΕΙΣ ΠΟΥ ΔΕΝ ΕΜΠΙΠΤΟΥΝ ΣΤΟ ΠΕΔΙΟ ΤΟΥ ΚΑΝΟΝΙΣΜΟΥ (ΕΕ) ΑΡΙΘ. 600/2014 ΓΙΑ ΤΙΣ ΑΓΟΡΕΣ ΧΡΗΜΑΤΟΠΙΣΤΩΤΙΚΩΝ ΜΕΣΩΝ (MiFIR)

(Τροποποιητική της Οδηγίας ΟΔ87-04))

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

- Συνοπτικός τίτλος.
- Κ.Δ.Π. 5/2018
Κ.Δ.Π. 645/2020
Κ.Δ.Π. 41/2021/
- Τροποποίηση της παραγράφου 6Α
1. Η παρούσα Οδηγία θα αναφέρεται ως η Οδηγία ΟΔ87-04 (Γ) της Επιτροπής Κεφαλαιαγοράς για την Παροχή υπηρεσιών από επιχειρήσεις τρίτων χωρών σε επιλέξιμους αντισυμβαλλόμενους και επαγγελματίες πελάτες στις περιπτώσεις που δεν εμπίπτουν στο πεδίο εφαρμογής του Κανονισμού (ΕΕ) αριθ. 600/2014 στις χρηματοπιστωτικές αγορές (MiFIR) και θα διαβάζεται μαζί με την Οδηγία ΟΔ87-04, την Οδηγία ΟΔ87-04(Α) και την Οδηγία ΟΔ 87-04(Β) της Επιτροπής Κεφαλαιαγοράς για την παροχή υπηρεσιών από επιχειρήσεις τρίτων χωρών στην Κυπριακή Δημοκρατία σε επιλεγμένους αντιπροσώπους και σε επαγγελματίες πελάτες, στις περιπτώσεις που δεν εμπίπτουν στο πεδίο εφαρμογής του Κανονισμού (ΕΕ) αριθ. 600/2014 στις χρηματοπιστωτικές αγορές (MiFIR) (που στο εξής η ΟΔ87-04, ΟΔ87-04(Α) και ΟΔ87-04(Β) θα αναφέρονται ως η «βασική οδηγία») και η βασική οδηγία και η παρούσα Οδηγία θα αναφέρονται μαζί ως οι Οδηγίες για την Παροχή υπηρεσιών από επιχειρήσεις τρίτων χωρών σε επιλέξιμους αντισυμβαλλόμενους και επαγγελματίες πελάτες του 2018 έως 2021.
 2. Η παράγραφος 6Α της βασικής οδηγίας τροποποιείται με την αντικατάσταση της υποπαραγράφου (2) με τις ακόλουθες νέες υποπαραγράφους:

«(2) Κατά παρέκκλιση των διατάξεων της παραγράφου 4(1)(ii) και της παραγράφου 4(2) και άνευ επηρεασμού των διατάξεων της παραγράφου 5, με την πάροδο της δωδεκάμηνης περιόδου που αναφέρεται στο σημείο (i) της υποπαραγράφου (1), Επιχειρήσεις Επενδυτικών Υπηρεσιών της υποπαραγράφου (1) δύνανται να συνεχίσουν παρέχουν επενδυτικές υπηρεσίες ή να εκτελούν επενδυτικές δραστηριότητες με ή χωρίς παρεπόμενες υπηρεσίες προς επιλέξιμους αντισυμβαλλόμενους ή/και σε επαγγελματίες πελάτες κατά την έννοια του Μέρους Ι του Δεύτερου Παραρτήματος του Νόμου, εφόσον έχουν υποβάλει στην Επιτροπή έως τις 31 Δεκεμβρίου 2021:

(α) αίτηση για απόκτηση ειδικής συμμετοχής σε ΚΕΠΕΥ, σύμφωνα με τις διατάξεις του άρθρου 12 του Νόμου, ή

(β) αίτηση για εγκατάσταση υποκαταστήματος στη Δημοκρατία, βάσει της παραγράφου 4(2),

και επιτρέπεται να το πράττουν μέχρι την ολοκλήρωση εξέτασης της υποβληθείσας αίτησης από την Επιτροπή και για διάστημα μέχρι έξι (6) μηνών μετά την έγκριση της αίτησης ή της χορήγησης άδειας λειτουργίας στο υποκατάστημα, αναλόγως της περίπτωσης.

(3) Οι διατάξεις της υποπαραγράφου (2) ισχύουν υπέρ των Επιχειρήσεων Παροχής Επενδυτικών Υπηρεσιών της υποπαραγράφου (1) και στις ακόλουθες περιπτώσεις-

- (i) όταν οι Επιχειρήσεις Παροχής Επενδυτικών Υπηρεσιών της υποπαραγράφου (1) ανήκουν σε όμιλο και υποβληθεί αίτηση στην Επιτροπή για χορήγηση άδειας λειτουργίας ΚΕΠΕΥ έως τις 31 Δεκεμβρίου 2021 από μέλος του ομίλου σύμφωνα με το Κεφάλαιο Ι του Τίτλου ΙΙ του Νόμου·
- (ii) όταν οι Επιχειρήσεις Παροχής Επενδυτικών Υπηρεσιών της υποπαραγράφου (1) ανήκουν σε όμιλο και υποβληθεί αίτηση στην Επιτροπή έως τις 31 Δεκεμβρίου 2021 από μέλος του ομίλου για απόκτηση ειδικής συμμετοχής σε ΚΕΠΕΥ, σύμφωνα με το άρθρο 12 του Νόμου·
- (iii) όταν οι Επιχειρήσεις Παροχής Επενδυτικών Υπηρεσιών της υποπαραγράφου (1) ανήκουν σε όμιλο και υποβληθεί αίτηση στην Επιτροπή για εγκατάσταση υποκαταστήματος στη Δημοκρατία έως τις 31 Δεκεμβρίου 2021 από μέλος του ομίλου βάσει της παραγράφου 4(2).

(4) Με τη λήξη της προθεσμίας των έξι (6) μηνών που παρέχεται στην υποπαραγράφο (2), Επιχειρήσεις Επενδυτικών Υπηρεσιών της υποπαραγράφου (1) δύνανται να συνεχίσουν παρέχουν επενδυτικές υπηρεσίες ή να εκτελούν επενδυτικές δραστηριότητες με ή χωρίς παρεπόμενες υπηρεσίες προς επιλέξιμους αντισυμβαλλόμενους ή/και σε επαγγελματίες πελάτες κατά την έννοια του Μέρους Ι του Δεύτερου Παραρτήματος του Νόμου, μόνο εάν έχουν εγκαταστήσει υποκατάστημα στη Δημοκρατία.

Έναρξη ισχύος

3. Η παρούσα Οδηγία ισχύει από τη δημοσίευσή της στην Επίσημη Εφημερίδα της Δημοκρατίας.