

Cross-border financial services provision allowed to Dutch customers by UK firms after 2020 (non-exhaustive)*

	Type of service	Cross-border services provision allowed under Dutch law	Passive servicing allowed under Dutch law **	Authority responsible in the Netherlands
UK insurers	Life insurance, general/non-life insurance	May temporarily still be allowed in 2021 (see below)	Yes, in case of life insurance products, depends in case of non-life (see below)	DNB
UK reinsurers	Reinsurance	Yes	Yes	DNB
UK credit institutions (Dutch retail customers)***	Deposit taking (savings account, current account)	No	No	DNB
UK credit institutions (Dutch professional market parties)	Deposit taking (savings account, current account)	Yes (see below)	Yes (see below)	DNB
UK payment firms and electronic money institutions	Payment and electronic money services	No	No	DNB

* This table assumes that the Brexit transition period is not extended and no alternative arrangements between the EU and the UK will be in place from 2021.

** Defined here as service that was concluded by a UK firm with a customer living in the UK at that particular moment, but who has since then moved back to the Netherlands, with the provision of the service continuing (also after the Brexit transition period).

*** The Dutch Authority for Financial Markets (AFM) is the responsible authority in the Netherlands in case of cross-border services in the area of mortgage loans, credit cards, other loans and overdraft facilities.

Insurance services (life and non-life/general)

The Dutch Act on Financial Supervision (*Wet op het financieel toezicht, Wft*) allows for cross-border service provision in the area of life and non-life insurance by third country insurers, after following a notification procedure with DNB (article 2:45 Wft). However, the ministry of Finance has announced that this article will be amended, so that providing these cross-border services will no longer be allowed.¹

After the entry into force of the amended legislation, insurers from third countries that have notified before the entry into force of the amended legislation, can make use of an expected transition period of 24 months to wind-down existing cross-border business. However as of yet, it is uncertain when the amended article will enter into force. Also, the anticipated transition period of 24 months is subject to parliamentary approval.

DNB will not confirm possible incoming notifications by UK insurers before 2021. This is because UK insurers can still make use of the EU financial passporting rights during the Brexit transition period in 2020. DNB can confirm possible incoming notifications from UK insurers from 1-1-2021 onwards, only if the current article 2:45 Wft still exists by that date and the Brexit transition period is not extended until after 2020.

It is therefore important that UK insurers take into account in their contingency planning the possibility that the current article 2:45 Wft may no longer exist from 1-1-2021. In any case – as explained above – this article would only still be available for a limited period of time.

Passive servicing (insurers)

Passive servicing by third country insurers is allowed in case of life insurance products. This is not considered to be providing a cross-border service under Dutch law, as long as no amendments are made to these existing products/services that are provided to policyholders. If amendments are made,

¹ Please refer to: <https://www.internetconsultatie.nl/dienstverrichtingsverbod>

then – depending on the specific circumstances – this could be considered as providing a cross-border service (*in this situation, the aforementioned considerations and developments in relation to article 2:45 Wft will also apply*).

In case of non-life/general insurance products, under Dutch law it is important whether the insured object has also moved (back) to the Netherlands together with the policyholder. For example, moving back to the Netherlands together with your car will require registering the car in the Netherlands. If this would lead to amending an existing insurance contract with a UK insurer or concluding a new insurance contract with a UK insurer, this will be considered providing a cross-border service (*in this situation, the aforementioned considerations and developments in relation to article 2:45 Wft will also apply*).

With this interpretation, Dutch law is in line with the relevant EIOPA recommendation.²

Credit institutions

UK credit institutions can no longer provide cross-border deposit taking services to Dutch retail customers after the Brexit transition period. However, specific types of professional Dutch clients ('professional market parties') may continue to be serviced. Professional market parties are defined in Wft article 1:1 and in *het Besluit definitiebepalingen Wft* article 3. Professional market parties (PMP) include for example Dutch banks, investment firms, insurers and pension funds. Providing deposit taking services to Dutch non-financial parties is only allowed if the Dutch party qualifies as a PMP under Dutch law.

One category of customers which qualifies as PMP concerns the 'large denomination lenders', as set out in article 3 of *het Besluit definitiebepalingen Wft*. In order to determine whether a customer qualifies as a large denomination lender one needs to consider the initial situation at the start of the contract/agreement between the depositor and the bank. At this point, when

² Please refer to recommendation 6: https://www.eiopa.europa.eu/content/recommendations-insurance-sector-light-united-kingdom-withdrawing-european-union_en

entering into a new contract/agreement, a deposit of at least EUR 100.000 needs to be deposited at once by the customer in order to qualify as PMP.

Once the customer has qualified as PMP and for example withdraws part of its deposits resulting in the total amount of deposits being less than EUR 100.000 at some point, this does not change its status as PMP. However, if under the existing contract/agreement the initial deposit of a customer was less than EUR 100.000, and it is decided to make an additional deposit resulting in the total amount of deposits being at least EUR 100.000, the customer cannot be (re)classified as PMP under that contract/agreement.