Allowed cross-border financial services provision by UK firms to Dutch customers after 2020 (non-exhaustive)

	Type of service	**Cross-border service provision allowed under Dutch law**	**Passive servicing allowed under Dutch law***	**Dutch competent authority**
UK insurers	Life insurance, general/non-life insurance	Still temporarily allowed in 2021 (see below)	Yes, in case of life insurance products; non-life insurance products depending on situation (see below)	DNB
UK reinsurers	Reinsurance	Yes	Yes	DNB
UK banks (Dutch retail customers) **	Deposit taking (savings accounts, current accounts)	No	No	DNB
UK banks (Dutch professional market parties)	Deposit taking (savings accounts, current accounts)	Yes (see below)	Yes (see below)	DNB
UK payment firms and electronic money institutions	Payment and electronic money services	No	No	DNB

* Defined here as service that a UK-based financial institution provided to a customer living in the UK in the past that has since 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 Dutch competent authority 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 Financial Supervision Act (*Wet op het financieel toezicht – Wft*) currently allows for cross-border service provision to Dutch customers by third country insurers in accordance with Section 2:45 of the *Wft.* However, the Ministry of Finance has introduced a bill (TK 35599, no. 2) to amend this section, so that providing these cross-border services will no longer be allowed.

After the entry into force of the legislative amendment, insurers from third countries that have given a notification pursuant to Section 2:45 of the *Wft*, which was confirmed by us before the entry into force of the legislative amendment, can temporarily still make use of an anticipated transition period of 24 months to wind down existing cross-border business. However, at the current juncture it is still unclear when the legislative amendment will enter into force. The anticipated transition period of 24 months is also pending parliamentary approval. We will confirm any notification pursuant to Section 2:45 of the *Wft* given by British insurers as long as the current Section 2:45 of the *Wft* is still in force.

It is important that, in their contingency planning, UK insurers take into account the envisaged amendment of the current Section 2:45 of the *Wft*, which is expected to invalidate that section in the near future.

Passive servicing (insurers)

Passive servicing by third country insurers is allowed in case of life insurance products. This is not considered to be providing cross-border services under Dutch law, as long as a service provider does not modify the existing products and services provided to policyholders. Depending on the specific circumstances, this could be considered as providing cross-border services. The aforementioned considerations and developments in relation to Section 2:45 of the *Wft* apply.

In case of non-life/general insurance products, under Dutch law it is important whether the insured object (the risk) has also moved (back) to the Netherlands together with the policyholder. For example, if someone moves back to the Netherlands and brings their car, they will have to register the car in the

Netherlands. If this means amending an existing car insurance contract with a UK-based insurer or concluding a new insurance contract with a UK-based insurer, this will be considered as providing a cross-border service. The aforementioned considerations and developments in relation to Section 2:45 of the *Wft* will apply.

Our interpretation is in line with the relevant EIOPA recommendation. [1]

Banks

Now that the Brexit transition period has ended, UK banks can no longer provide cross-border services to Dutch retail customers by inviting from the public, acquiring or holding repayable funds in the pursuit of business, as is evident from Section 3:5 of the *Wft*. The scope of this prohibition is limited to servicing in the Netherlands. In order to determine whether the servicing takes place in the Netherlands, it must be assessed whether the customer is a resident of the Netherlands. For this purpose, we use the interpretation of the Dutch government that persons who have lived in the Netherlands longer than four months must register with the Personal Records and Travel Documents Database Agency (BPR).

There may be exceptions whereby a customer cannot be regarded as a resident of the Netherlands and therefore does not fall within the scope of the prohibition. For example, some customers may claim a privileged status under international treaties which prevents them from being regarded as a resident of the Netherlands. These situations should be assessed on a case-by-case basis considering the specific facts and circumstances that apply. For example, British military personnel temporarily stationed in the Netherlands are not considered to be a resident of the Netherlands due to their privileged status under the NATO Status Agreement. Officials temporarily deployed abroad by the British government, such as diplomats, may also be subject to international treaties, which gives them a privileged status so that they are not considered residents of the Netherlands.

[1] See recommendation 6: https://www.eiopa.europa.eu/content/recommendations-insurance-sector-light-united-kingdom-withdrawing-european-union_en

Services to specific groups of professional customers (professional market parties – PMPs) can also be continued. PMPs are defined in Section 1:1 of the *Wft* and Section 3 of the Decree on Definitions under the Financial Supervision Act. They for example include Dutch banks, investment firms, insurers and pension funds. Providing deposit facilities to Dutch non-financial parties is only allowed if the Dutch party qualifies as a PMP under Dutch law.

A special category of customers that qualify as PMPs concern the large denomination lenders, as defined in Section 3 of the Decree on Definitions under the Financial Supervision Act. In order to determine whether a customer qualifies as a large denomination lender, the starting point of the service provision of the bank to the depositor is important. If, at the time the bank starts the service provision, the customer has made a deposit of at least EUR 100,000 in one single transaction, the customer qualifies as a PMP.

Once a customer has qualified as a PMP but subsequently 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 a PMP. However, if under the existing contract a customer made a deposit that was less than the EUR 100,000 described above, and later on decides to make an additional deposit only to arrive at the minimum of EUR 100,000, the customer cannot be (re)classified as a PMP under the contract.

Given the exceptional circumstances of the Brexit transitional period, UK banks were until recently allowed to invite repayable funds under the applicable EU rules without having to qualify as a PMP. For pragmatic reasons, these banks are allowed to consider the situation as at 31 December 2020 for determining whether a customer qualifies as a large denomination lender and therefore as a PMP. If a customer held a deposit or deposits of at least EUR 100,000 on 31 December 2020, it is allowed to qualify as a PMP.