

Selected Hot Topics Panel

Christian Büche, Partner, Frankfurt

Andrew Gilchrist, Senior Associate, London

Cary Meer, Partner, Washington D.C.

Philip Morgan, Partner, London

Sarah Turpin, Partner, London

The top half of the image features a dark background with out-of-focus, bokeh-style light spots in shades of yellow, orange, and blue. On the right side, a portion of a server rack with a perforated metal door is visible, showing some internal lights.

Cybersecurity Update





An update on the AIFMD passport for non-EU AIFMs and non-EU AIFs with a particular focus on Germany and the possible impact of Brexit

PASSPORT FOR NON-EU AIFM UNDER AIFMD

AIFMD comes into effect

- National Regimes for non-EU AIFM and non-EU AIF continue to apply
- Opinion and Advice by ESMA due by 22/07/2015 and provided by 30/07/2015
- Letter by European Commission 17/12/2015 postponing decision; completion by 30/06/2016 requested

2013

Delegated Act (Art. 67 (6) AIFMD)

- Specifies date of which passport for non-EU AIFM will become effective

2015

Passport for non-EU AIFM becomes effective

Delegated Act (Art. 68 (4) AIFMD)

- Specifies date when national regimes in Art. 36 and Art. 42 AIFMD terminate

2018

Termination of National Regimes

PASSPORT FOR NON-EU AIFM UNDER AIFMD



European Securities and
Markets Authority

Yes

- Guernsey
- Jersey
- Switzerland

No

- Hong Kong

Delay

- United States
- Singapore

Upcoming
Assessment

- Australia
- Bahamas
- Bermuda
- Brazil
- British Virgin Islands
- Canada
- Cayman Islands
- Curacao
- Isle of Man
- Japan
- Mexico
- Mauritius
- South Africa
- South Korea
- Thailand
- US Virgin Islands
- [United Kingdom]

No Assessment Yet

- Malaysia
- Egypt
- Chile
- Peru
- India
- China
- Taiwan

PASSPORT FOR NON-EU AIFM IN GERMANY

KAGB comes into effect

- Regimes in Germany in place to implement Artt. 36 and 42 AIFMD, however, no NPPR

Delegated Act (Art. 67 (6) AIFMD)

- Specifies date of which passport for non-EU AIFM will become effective

Passport for non-EU AIFM becomes effective

- Regime in Germany implementing Artt. 36, 42 AIFMD terminates
- Grandfathering for non-EU AIF permitted to be marketed in Germany
- Passport required if non-EU AIF is intended to be marketed in other EU member states

PASSPORT FOR NON-EU AIFM IN GERMANY

Delegated Act in respect of a Jurisdiction

Yes

No

Delay

Regimes Artt.
36, 42 AIFMD
terminate

Grandfathering

Passport

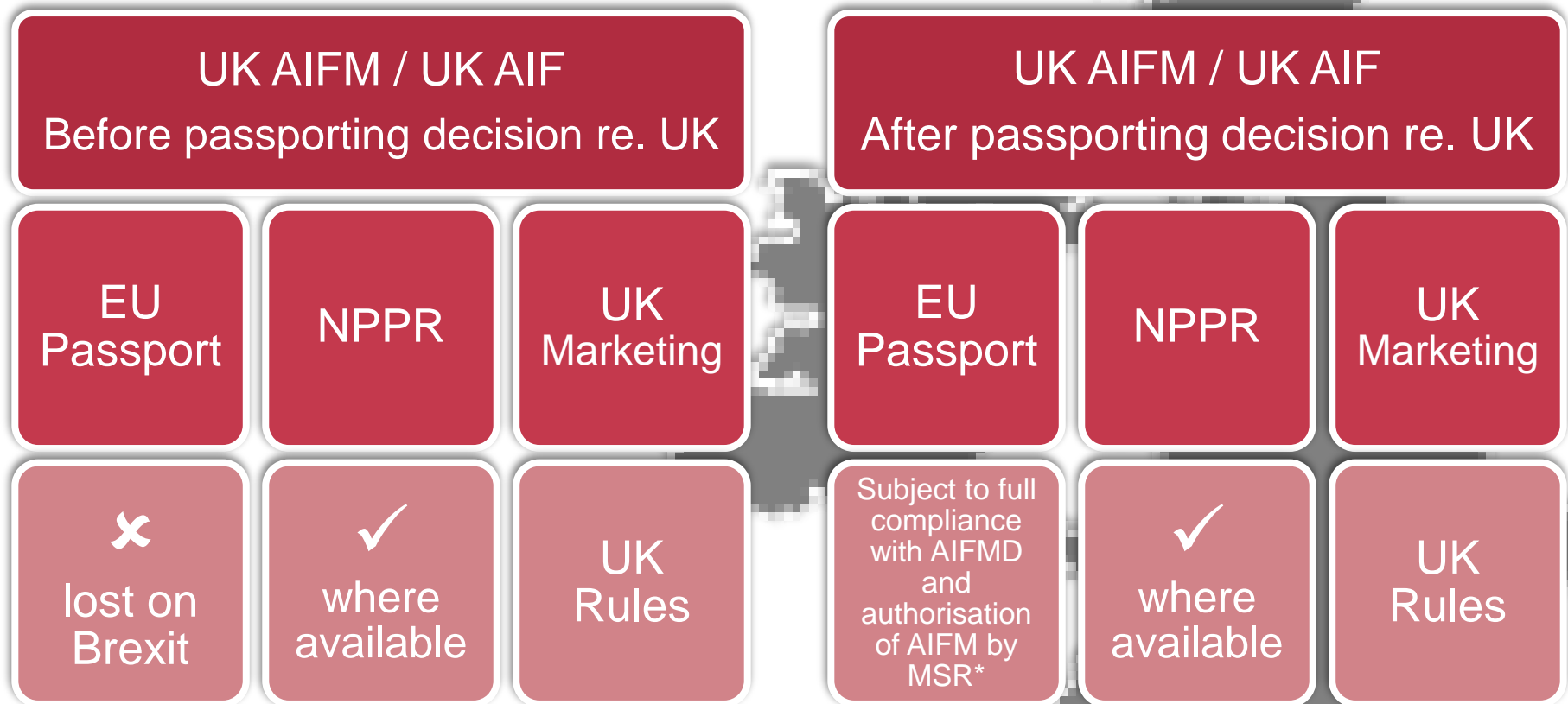
Regimes Artt.
36, 42 AIFMD
terminate

Grandfathering

Regimes Artt.
36, 42 AIFMD
continue

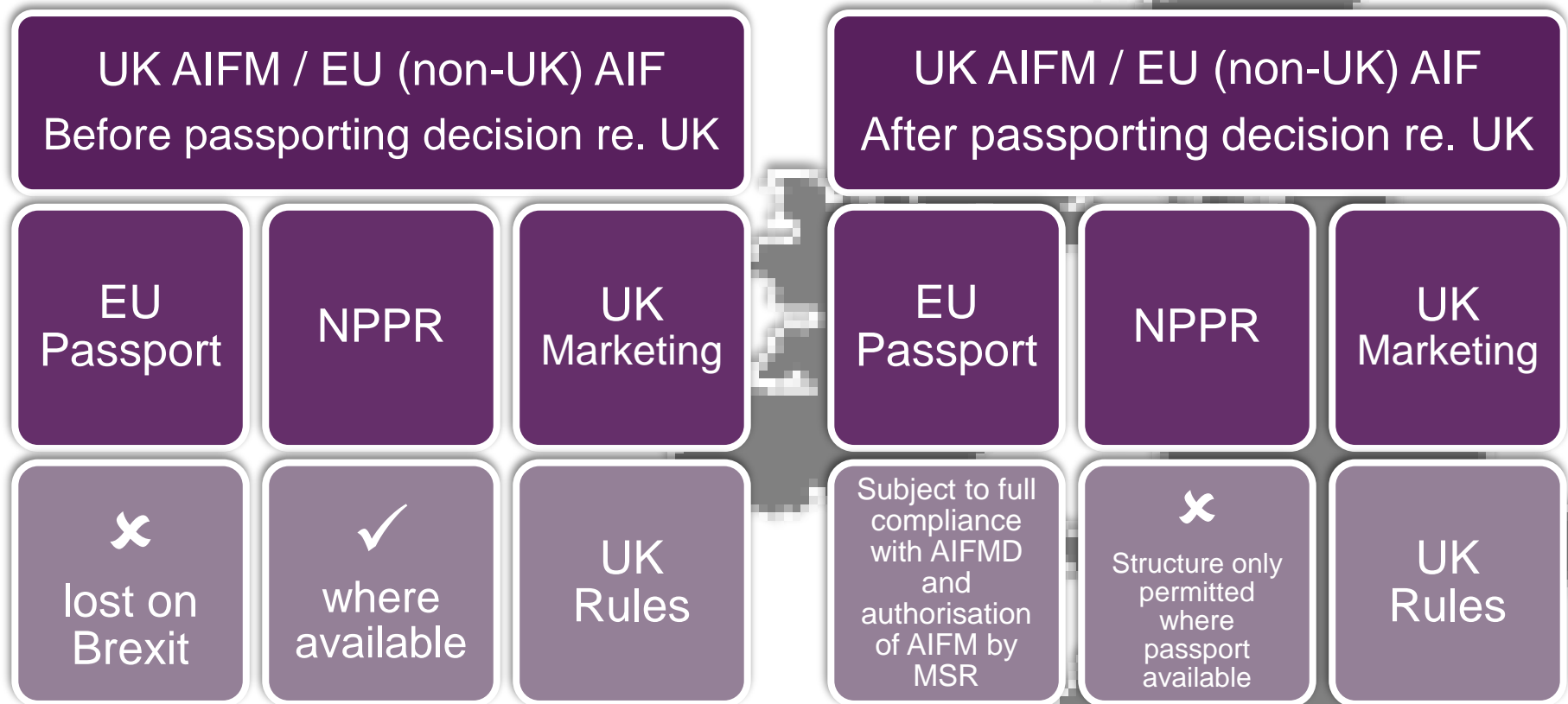
HOW MIGHT THIS APPLY TO THE UK AS A THIRD COUNTRY*?

*This assumes the UK does not opt for EEA membership

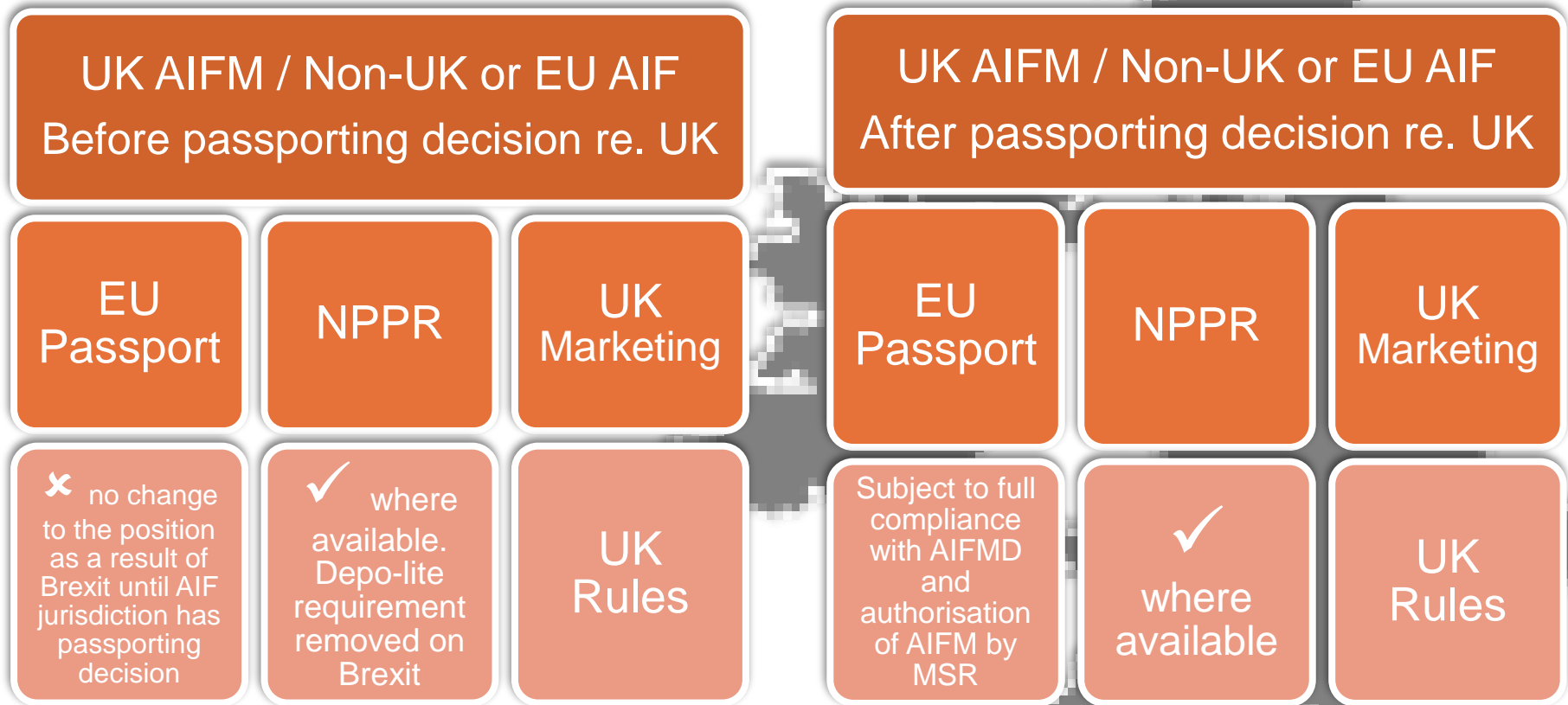


*MSR = Member State of Reference

HOW MIGHT THIS APPLY TO THE UK AS A THIRD COUNTRY?



HOW MIGHT THIS APPLY TO THE UK AS A THIRD COUNTRY?





Transparency Directive Update

TRANSPARENCY DIRECTIVE 2013/50/EU

Amends Transparency
Directive 2004/109/EC

In force since
27/11/2013

To be implemented by
27/11/2015

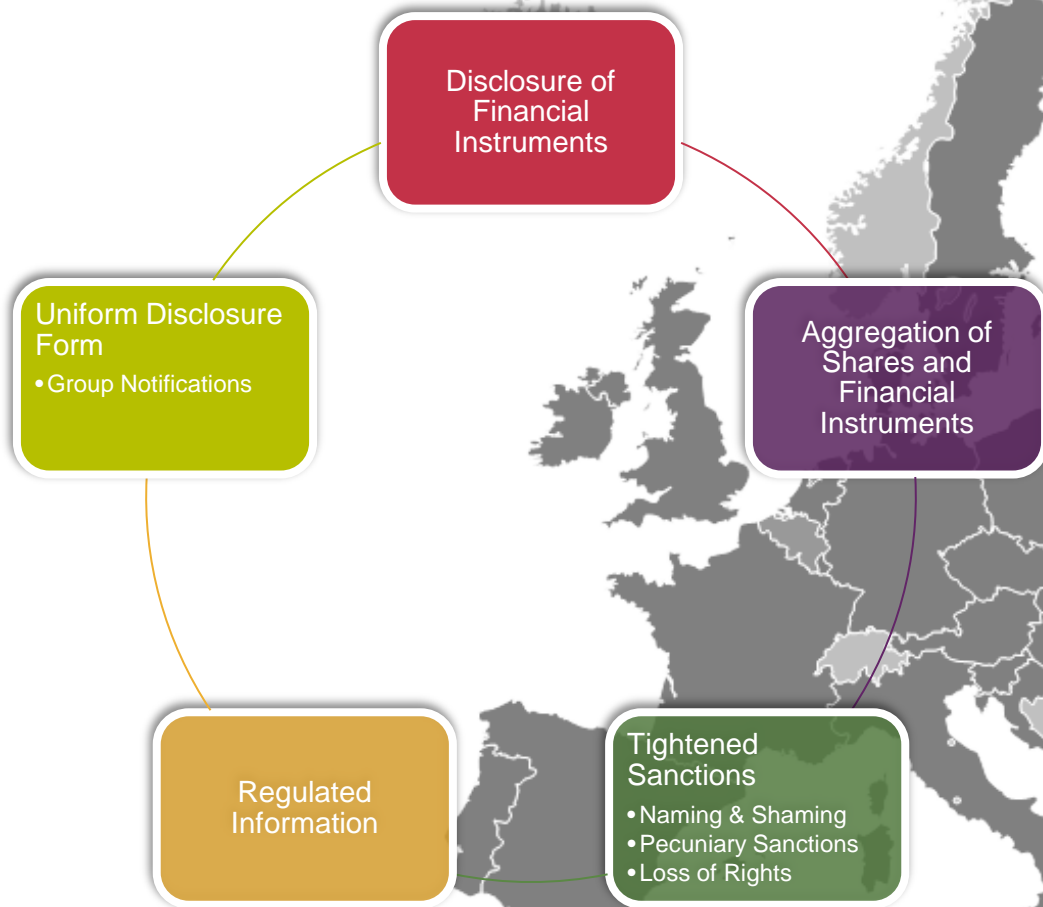
Disclosure
of Major
Holdings

to extend to financial
instruments that provide
for economic interest in
listed companies that
have the same effect as
holding equity and used
for secret stake-building

Quarterly
Reports

abolished

WHAT'S NEW?



FINANCIAL INSTRUMENTS



European Securities and
Markets Authority

Indicative List of Financial Instruments

Transparency Directive:

- transferable securities
- options (call, put, combinations)
- futures
- swaps
- forward rate agreements
- contracts for differences
- any other contracts or agreements with similar economic effects which may be settled physically or in cash

According to current developments in financial markets:

- irrevocable convertible and exchangeable bonds referring to already issued shares
- financial instruments referenced to a basket of shares or an index and which comply with the criteria laid down in Article 4(1) of Commission Delegated Regulation [3]
- warrants
- repurchase agreements
- rights to recall lent shares
- contractual buying pre-emption rights
- other conditional contracts or agreements than options and futures
- hybrid financial instruments
- combinations of financial instruments
- shareholders' agreements having Directive 2004/109/EC Article 13(1)(a) and (b) financial instruments as an underlying

WHY IS IT IMPORTANT FOR ME?

Funds

Activist Shareholders

Public Take-Overs

Financings/Security

K&L GATES