



## **The application of CONC to EEA authorised firms providing products and services in the UK**

We have come across a number of enquiries where debtors have taken out credit in the UK from a non-UK creditor. Advisers dealing with these agreements have wondered whether the FCA's Consumer Credit Sourcebook (CONC) applies and whether the Financial Ombudsman Service (FOS) has the jurisdiction to deal with complaints. An example of this would be a credit agreement taken out through Paypal, who are a firm based in Luxembourg.

### **Regulation and complaints**

Firstly, when dealing with a creditor who you think may not be based in the UK, you can check the Financial Conduct Authority (FCA) register. If the creditor is a UK based firm the register should state that they are FCA regulated. If they are not a UK company but are an EEA firm (a firm based in the European Economic Area) the FCA register should state that they are EEA authorised, provided they are exercising an EEA right and meet certain conditions (please see below).

The FCA website states that EEA authorised firms 'can offer certain products or services in the UK. The firm must meet the minimum standards agreed across all EEA countries.' The FCA register will also confirm the firm's country of business.

The FCA website lists the financial products and services that an EEA authorised firm can provide under their 'passport' and this list includes 'lending including consumer credit, mortgage credit, factoring and financing of commercial transactions '.

Please see [this page of the FCA website](#) for further details on 'passporting'.

The FCA website also provides details of whether the company is regulated by a body in the country where they are based. For example, PayPal (Europe) Sarl et Cie SCA is regulated by the [Financial Sector Supervisory Commission \(CSSF\)](#), which is Luxembourg's financial sector regulator.

We contacted the FOS to see whether they could deal with complaints against EEA authorised firms. They could not give a definitive answer as it will depend on various factors, but they said that if an EEA authorised firm is providing products and services in the UK a complaint may come under their jurisdiction.

If the FOS cannot deal with a complaint against an EEA firm a complaint can be made to the regulator in the EEA firm's country of business. For example, CCSF have their own 'out-of-court complaint resolution' process for complaints against firms based in Luxembourg. Please see [this page of their website](#) for further details.

## **The application of CONC**

[SUP 13A.3.1](#) states that "a firm will meet the definition of an EEA firm that qualifies for authorisation [under the Financial Services and Markets Act 2000 – amended by the Financial Services Act 2012] if:

- (1) it is seeking to establish a [branch](#) in the [United Kingdom](#) in exercise of an [EEA right](#) and satisfies the [establishment conditions](#) (see [SUP 13A.4.1 G](#) and [SUP 13A.4.2 G](#)); or
- (2) it is seeking to provide [cross border services](#) into the [United Kingdom](#) in exercise of an [EEA right](#) and satisfies the [service conditions](#) (see [SUP 13A.5.3 G](#))."

Under the legislation 'EEA right' means:

- (a) in accordance with the [Treaty](#) as applied in the [European Economic Area](#); and
- (b) subject to the conditions of the relevant [Single Market Directive](#) or the [auction regulation](#).

These are referred to as 'EEA Passport Rights'.

SUP 13A 3.3 goes on to explain, where an [EEA firm](#) which has qualified for [authorisation](#), this is referred to as an [incoming EEA firm](#) in the [Handbook](#).

SUP 13A Annex 1 sets out the application of the FCA Handbook to incoming EEA firms and states the following: 'CONC applies except to the extent necessary to be compatible with European law. Provisions on the territorial application of CONC are contained in CONC 1.2.5 R and [CONC 1.2.6 R](#).'

In addition to the rules and guidance under CONC, the EEA authorised firm will be subject to the regulatory rules in relation to consumer credit in their country of business, which we cannot advise on.

### **How to approach these debts**

These debts can be dealt with in the same way as if the creditor were a UK based firm. The debts are enforceable through the UK courts.

### **Impact of Brexit**

At the time of writing this article, the UK is still a member of the European Union. If this changes in the future, the position in relation to European firms providing products and services to people in the UK may change. In the event of a no deal Brexit, the UK will no longer be party to the EEA Treaty or the Single Market Directive and the passporting process will come to an end.