

Deputy M.R. Higgins of St. Helier of the Chief Minister regarding the number of firms with ‘passporting’ rights to establish a presence in another country in the European Union: [9563]

Will the Chief Minister advise how many firms, in what areas of operation, in the Jersey finance industry have ‘passporting’ or third party rights to establish a presence or carry out permitted activities in another country in the European Union, and will he further explain the current position in relation to third party negotiations with the E.U. (European Union)?

Senator I.J. Gorst (The Chief Minister):

Sorry, it is one of those days. Could I ask the Assistant Chief Minister, who has got responsibility for these areas, to answer the question please?

Senator P.F.C. Ozouf (Assistant Chief Minister - rapporteur):

I was unclear exactly as to the reason for the Deputy’s question because this is quite a complicated issue.

[10:00]

The only directive which provides specifically for passporting for third countries into the E.U. is the Alternative Investment Fund Managers Directive. No passports have yet been issued to any jurisdiction under this directive but that is pending an assessment of other jurisdictions. But Jersey has been adopted as a fully compliant regime and is in the first wave of what is expected to be the approval process for third country passporting. That has nothing to do with Brexit. That was a process that was underway in any event. We will continue to monitor progress with the relevant regulatory authority, in this case E.S.M.A. (European Securities and Markets Authority) in Paris, under this directive. In the meantime Jersey funds can continue to be marketed to E.U. Member States under their national regimes, and this is how we will secure and win business, by promoting Jersey’s high regulatory standards, our good relationships and the good relationships that our regulators have with regulators at the E.U. level and national E.U. level with other jurisdictions and providing international awareness of what that is.

3.3.1 Deputy M.R. Higgins:

An example of a passporting right is Jersey recognised funds, which are entitled to be marketed throughout the European Union, but we are passported through the U.K. because the U.K. accepted Jersey’s legislation and schemes and therefore they were allowed to go into Europe. As far as the third party rights, the Minister has told us that there are none in place at the present time, third party rights into the European Union. With Brexit, which is definitely going ahead, according to the new Prime Minister, does he expect any further negotiations to take place certainly in the next 2 years because I cannot imagine the European Union is going to spend time negotiating with Jersey when it has bigger things to do with the United Kingdom?

Senator P.F.C. Ozouf:

May I perhaps take the opportunity of adding some words which reinforce what the Deputy will also be aware of, if he has read the report put in the name of the Minister for External Relations - P.72 - which happened 4 days after Brexit. We appear to be one of the few jurisdictions in the world to have had a plan in the event of Brexit, which explains all of the matters that we will be dealing with. The U.K. has not triggered Article 50 of the Lisbon Treaty yet and no formal negotiations have commenced. We consider it to be highly unlikely that an E.U. would initiate third party discussions over Brexit in relation to this issue because it is an E.S.M.A. third country issue which we are already dealing with and had an application process for our regulated funds. The Deputy asked whether or not we will be simply doing nothing.

Absolutely not. There is no complacency. There is the existing excellent standing which Jersey has by E.S.M.A., unchanged by Brexit. There are going to be new opportunities which will no doubt occur, of which we are working and we are seized upon. If I may say, I offer congratulations to the London office and External Relations and Chief Minister and other parties for last night, a reception in which there were a number of E.U. ambassadors present, and regulators and other important industry individuals, that we are briefing constantly about Jersey and to protect our interest and to get access to that valuable European market but also the wider commonwealth and the global world.

3.3.2 Deputy G.P. Southern:

Is it not the case that uncertainty over at least the next 2 years continues to exist over such issues as passporting and access to the E.U., which will be changed when the U.K. invokes Article 50 and negotiates fresh terms? Does he not believe that this uncertainty will have a damaging effect on our prime industry?

Senator P.F.C. Ozouf:

Not at all. I do understand that this is a complicated issue, and certainly I do not know whether the Deputy was able to attend any of the briefings that have already been held on the issue that was held immediately after the Brexit decision. Can I just reinforce the situation? That Jersey is a third country already. It was the situation before the Brexit, it is the situation after Brexit, and it is the decision whether Article 50 is invoked. Nothing in what I have explained to Deputy Higgins is relevant in terms of accessing the third country provisions because it is simply Jersey is a third country with access. What we need to do is we need to get out of this messaging that somehow there is an issue with Jersey that we are surprised about, or that there is a problem, or that there is going to be an uncertain situation. We have certainty with third country proposals already in dealing with A.I.F.M.D. (Alternative Investment Fund Managers Directive). That is the new directive which will mean that there are new rules and we are one of the first countries only to have in the first wave of approval process. It may be that the U.K. is going to be later in the queue if they get the Article 50 trigger. I make no observation, I just offer the thing that the E.U. has a process that you apply first, if you are conforming to their exacting standards you get past, and the next country that applies or the next wave gets later. So we are in a very good position and the granite rock of stability, the granite rock of certainty, that the Government and Assembly can issue a report setting out clearly the constitutional position, the clear relationship with Europe, is likely to be a jurisdiction as has been clear in the last couple of weeks where people around the world will favour rather than think there is any problem in relation to stable Jersey with everything that we offer.

3.3.3 Deputy G.P. Southern:

Nonetheless, is it not the case that some of our access to the E.U. is via city-based U.K. companies and that they may be subject to lack of clarity?

Senator P.F.C. Ozouf:

The Deputy in his hesitation I think underlines the fact that he might not be expert, and I understand that, and happy to help any Deputy in relation to understanding ...

Deputy G.P. Southern:

Will the Minister stop patronising me?

Senator P.F.C. Ozouf:

I am not patronising. Any patronising is regretted and I withdraw any suggestion. I am just saying that this is complicated. The Deputy hesitated. It may well be city firms that are

referring business but they may be referring business through other jurisdictions. Just because things happen to sit in New York, Singapore, Tokyo or Jersey it is the fact that they are advising international clients on the use of different jurisdictions with access to different markets. One of which is the European Union of which we have an application process in place with an authorisation regime in the first wave of country for funds. If he can think of any other ideas of where we will have a challenge with our single market provision for financial services I will be pleased to put my team to it, but I imagine they are already working on it. We think there are as many upsides as there are downsides ahead in the months of uncertainty for some countries.

3.3.4 Deputy M.R. Higgins:

The Senator knows very well that in the real world and when we get to real politics things like negotiating the third party rights will be put on the backburner because Jersey is associated with the United Kingdom. We know that the European Union countries, such as France and others, have concerns about the Jersey finance industry and they are not going to do us any favours. What they shall do is put it on the backburner, along with the U.K., and I personally think there will be very little progress going forward on these third party questions.

The Deputy Bailiff:

Deputy, if you could ask a supplementary question.

Deputy M.R. Higgins:

Yes, I am coming to that now. I am just saying, I hope I am wrong, but does not the Minister recognise that in real politics the game is totally different? We are not going to get quick progress on these third party rights.

Senator P.F.C. Ozouf:

Again, the Deputy indicates a lack of understanding of the decision process. But I will answer clearly both to allay his concerns. E.S.M.A. is a regulatory body which is not a political issue. He knows about regulation because he used to work, I think, for a regulator and that they are unaffected by political matters because they are independent and E.S.M.A. is the European regulator of which we have already passed that first wave and look forward to their deliberations for the implementation of the directive, of which we are one of the first countries to get into the E.U. provision. He does not like it when I give him the facts. Secondly, the excellent relations that we now have with a number of countries around the world, we received warmly the French Ambassador, I think, just 2 or 3 weeks ago. We saw the French Ambassador last night at our reception. He was gracious enough to spend some time with us attending our Jersey reception. Indeed other E.U. ambassadors were also present where we are engaging, where they understand not simply the rhetoric, but they understand the facts. I would also point out to the Deputy, as far as France is concerned, we may have been blacklisted but we were de-blacklisted with warm words from the words of the now E.U. Commissioner Moscovici of the standing of Jersey when we removed from the blacklist and given a clean bill of health for our transparency and our high standards in terms of financial regulation. I wish the Deputy would join me in sending the good and positive messages of Jersey rather than its inappropriate speculation.