

**Helping you through
changing times**

Our European Brexit tracker for
financial services institutions



Introduction

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Helping you through changing times

Our European Brexit tracker for financial services institutions.

Eversheds Sutherland's Financial Services team is one of the leading law practices focusing on asset management and financial services product development and regulation. Since June 2016, our lawyers and consultants have advised various institutions passporting into the UK from EU27 Member States and passporting from the UK into the EU27 on Brexit planning and Brexit related issues.

Our European Brexit tracker provides a quick overview of the current position in relation to UK funds and UK fund managers seeking to sell services into EU27 countries after Brexit, including what steps may be necessary to relocate to those countries and whether delegation of functions from those countries to the UK after Brexit may be possible.

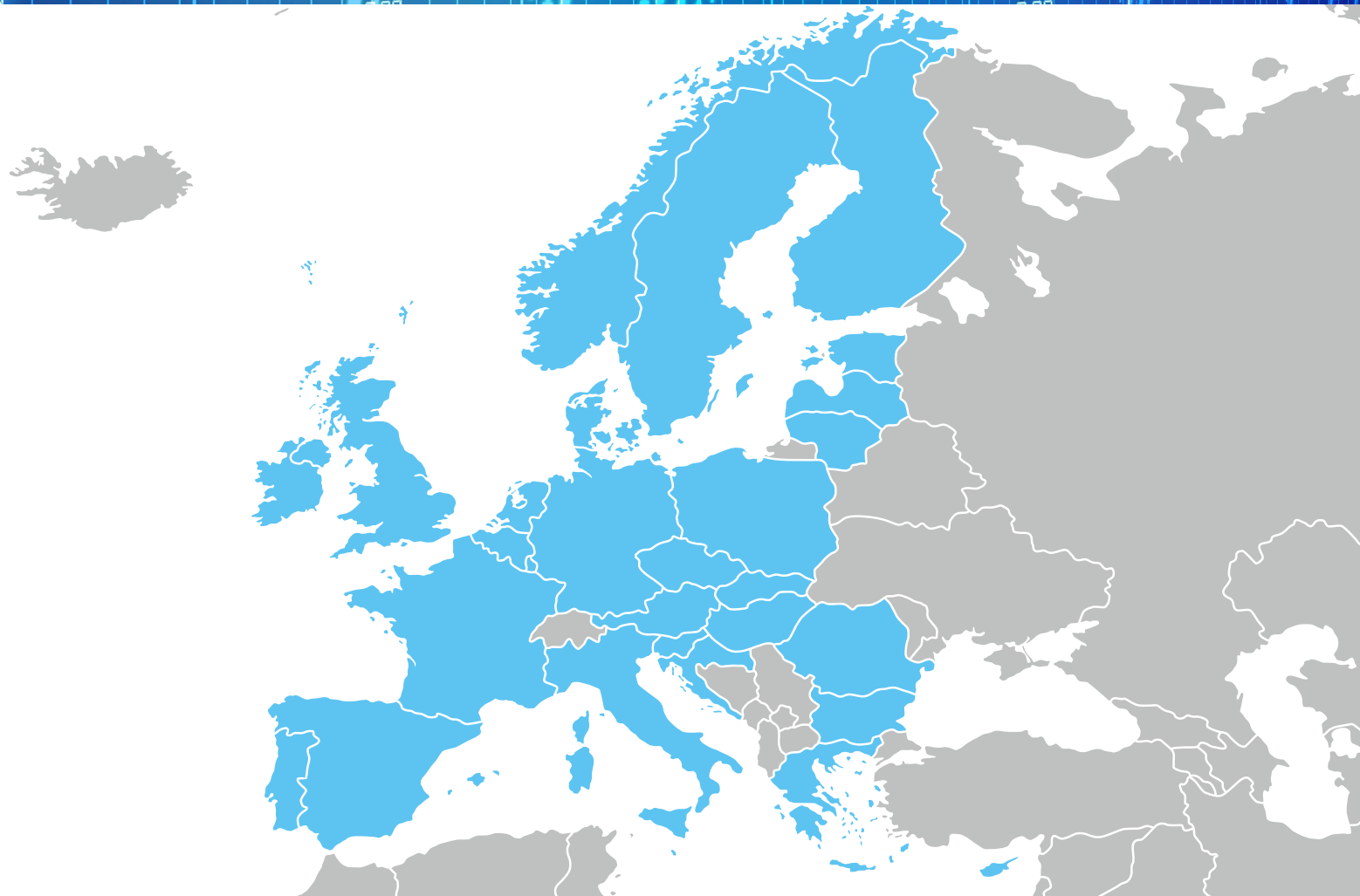
As with all things Brexit, the picture is an emerging one and we will be updating this tracker as new information becomes available. Further, the tracker is not a substitute for obtaining detailed, tailored legal advice and we would strongly encourage you to make contact with a member of our team if you would like to discuss the content of this tracker and how it may impact your business in more detail.

About Eversheds Sutherland

Eversheds Sutherland is one of the largest global law organisations in the world. With some 4,000 people, including more than 700 partners and 2,300 lawyers, located in over 30 countries worldwide, we are well-placed to advise businesses across all sectors on the possible implications of Brexit. Our international reach extends further through our network of excellent relationship firms, many which have contributed to this European Brexit tracker.

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Austria

Austria

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Austrian Financial Market Authority (FMA)?

Yes, but it applies only to credit institutions.

However, the FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FMA treat UK funds (UCITS funds and AIFs) that are currently passported in Austria under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Austria under the UCITS/AIFM Directive have to (re)register or make any notification with the FMA as a result of Brexit to continue marketing in Austria?

The position is not yet clear as no guidance is available yet.

Has the FMA introduced a streamlined process for setting up a management company or fund in Austria with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the FMA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is such a cooperation agreement in place between the FCA and the FMA, but it only applies to credit institutions, so in practice this is unlikely to assist fund managers with delegation

If a UK fund manager is currently providing services (e.g. MiFID services) in Austria, will these services be deemed to be carried out from the UK or from Austria after Brexit?

They will most likely to be deemed to be carried out from the UK.

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Belgian Financial Services and Markets Authority (FSMA)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators.

This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FSMA treat UK funds (UCITS funds and AIFs) that are currently passported in Belgium under the UCITS/AIFM Directive after Brexit?

After Brexit, UK funds will be treated as third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Belgium under the UCITS/AIFM Directive have to (re)register or make any notification with the FSMA as a result of Brexit to continue marketing in Belgium?

UCITS schemes with an establishment in the UK will no longer qualify as UCITS schemes, meaning that without any specific measures, the pre-Brexit-established UK UCITS will be considered as third-country AIFs and AIFMs. For the marketing of an AIF, there is a local article 42 AIFMD procedure, allowing private placement of units in an AIF by a third-country AIF manager in Belgium.

UK AIFM's who are managing and publicly marketing an AIF will be subject to local licensing provisions in accordance with the Belgian AIFM Act of 19 April 2014.

For third country investment firms, the FSMA requests notification if they are planning on continuing their activities in Belgium and method of operating in Belgium. Such notifications will only have legal effect from the moment the UK leaves the EU, provided there is no transitional period in which the UK funds continue to have a European (or similar) passport.

UK investment firms will have two means of operating in Belgium:

1. By establishing a branch

In accordance with article 13 Act 25 October 2016, UK investment firms that operate by means of a branch, will require a licence from the FSMA. Brokerage firms will instead need to apply for a licence at the Belgian National Bank (NBB).

2. Without establishing a branch

Provided the following conditions as set out in article 14 §1 Act 25 October 2016 are met, third country investment firms can operate in Belgium without establishing a branch:

The services and activities must also be carried out in the country of origin

Services may only be provided to the following categories of investors:

- (i) Eligible counterparties in accordance with article 3 of the Royal Decree of 19 December 2017

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- (ii) 'Per se' Professional clients (in accordance with Section I of Annex II to MiFID)
- (iii) foreign nationals resident in Belgium with the same nationality as the third country firm or of a State in which the third country firm has established a branch

Regardless of any agreement, the FSMA may prohibit the provision of investment services in Belgium by a third country firm governed by the law of a State which does not offer Belgian investment firms the same access to its market. The announcement by the British government on the FCA's website of a "temporary permissions regime for inbound passporting EEA firms" may be sufficient to meet this reciprocity condition for as long as such temporary arrangement is in force.

Those third country investment firms will have to notify the FSMA in advance of their planned activities in Belgium and the categories of investors to whom they intend to provide those services.

UK investment firms recognised by the FSMA will be removed from the list of recognised firms if they do not proceed with the notification under (1) or (2). As soon as they have been removed from the list, the investment firms will no longer be able to offer investment services or activities in Belgium and to continue to do so will incur criminal and/or administrative penalties.

The withdrawal of recognition could affect the continuity of current agreements and for that reason article 18 of the draft Belgian Brexit Act grants the King, upon recommendation by the FSMA and NBB, the power to take measures to safeguard the

performance of agreements entered into before UK investment firms are removed from the list. So far, no measures have been taken by the King.

If UK funds (UCITS funds and AIFs) currently passported in Belgium under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

Under current Belgian law, if a UCITS with 150 or more unit-holders wishes to stop marketing its units in Belgium:

- it must give unit-holders the opportunity to have their units repurchased without charge (with the exception of any applicable taxes), or to exchange, without charge (with the exception of any applicable taxes), their units for those of another open-ended UCI marketed in Belgium;
- the UCITS will, however, remain on the list of undertakings for collective investment governed by foreign law until it provides evidence that the UCITS has fewer than 150 unit-holders in Belgium. This means that the UCITS must retain its financial service provider, as described above, until such time as this evidence has been handed over; and
- once the UCITS falls below the threshold of 150 unit-holders in Belgium, the financial service provider will no longer be required. From that time on, the UCITS may also be removed from the list of undertakings for collective investment governed by foreign law.

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To contribute towards the 150 threshold, a unit holder must be a natural or legal person in Belgium who is not a professional client.

A UCITS with fewer than 150 unit-holders in Belgium must comply with the requirements outlined above, but there is no requirement to retain a financial provider as the fund is already below the threshold. Please note that a UCITS fund must meet further requirements during the de-registration process beyond those detailed here (including the submissions of dossiers to the FSMA and mandated press releases).

The FSMA has not set out the exact process for AIF, but almost all the same thresholds and requirements apply. However, the requirements for eligible unit-holders are slightly different: to contribute towards the 150 unit-holder threshold an investor must be a natural or legal person in Belgium who is not a professional client nor an eligible counterparty.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and “treat customers fairly, irrespective of where those customers are based”. Further information can be found [here](#).

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and “treat customers fairly, irrespective of where those customers are based”. Further information can be found [here](#).

Has the FSMA introduced a streamlined process for setting up a management company or fund in Belgium with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the FSMA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator.

If a UK fund manager is currently providing services (e.g. MiFID services) in Belgium, will these services be deemed to be carried out from the UK or from Belgium after Brexit?

The position is not yet clear.

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Bulgarian Financial Supervision Commission (FSC)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FSC treat UK funds (UCITS funds and AIFs) that are currently passported in Bulgaria under the UCITS/AIFM Directive after Brexit?

The position is not yet clear.

Will UK funds (UCITS funds and AIFs) currently passported in Bulgaria under the UCITS/AIFM Directive have to (re)register or make any notification with the FSC as a result of Brexit to continue marketing in Bulgaria?

The position is not yet clear.

If UK funds (UCITS funds and AIFs) currently passported in Bulgaria under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

Bulgarian legislation does not contain specific provisions requiring passported UCITS/AIFMs to move/redeem investors in order to de-register the fund, nor is there any existing regulatory practice on the subject.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the FSC introduced a streamlined process for setting up a management company or fund in Bulgaria with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

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Has the FSC published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- a prior approval of the FSC is required
- satisfaction of the requirements under the Bulgarian Law on the Activities of Collective Investment Schemes and Other Collective Investment Undertakings (Article 106 regarding UCITS management companies, and Article 222 regarding AIFMs), which are the same as these settled under Article 13 UCITS Directive 2009/65/EC and Article 20 AIFM Directive 2011/61/EU respectively is required

If a UK fund manager is currently providing services (e.g. MiFID services) in Bulgaria, will these services be deemed to be carried out from the UK or from Bulgaria after Brexit?

From Bulgaria. A local licence may be required.

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Croatian Financial Services Supervisory Agency (FSSA)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FSSA treat UK funds (UCITS funds and AIFs) that are currently passported in Croatia under the UCITS/AIFM Directive after Brexit?

Following Brexit, UK UCITS and UK AIFs will be regarded as non-EU funds in Croatia and lose their passporting rights.

Complying with the National Private Placement Regime (NPRR) would theoretically allow funds to continue to be marketed in Croatia. However, this is impossible in practice because the Republic of Croatia has not implemented Articles 36 and 42 of the Directive 2011/61/EU on AIFMs that govern NPRR. Consequently, Brexit will make it impossible to market UK AIFs and EU AIFs managed by UK AIFMs in Croatia.

Will UK funds (UCITS funds and AIFs) currently passported in Croatia under the UCITS/AIFM Directive have to (re)register or make any notification with the FSSA as a result of Brexit to continue marketing in Croatia?

As Croatia has not implemented any Brexit transitional regime in case of a no-deal Brexit, it will not be possible to offer units of AIFs from third countries (the UK), or units of AIFs managed by non-EU AIFMs (the UK) in Croatia without a passport. In addition, in the case of a no-deal Brexit, UK UCITS will be regarded as non-EU AIFs and their distribution will no longer be allowed without a passport.

If UK funds (UCITS funds and AIFs) currently passported in Croatia under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

Under applicable Croatian laws, fund de-registration is treated as a liquidation of the fund. Therefore, UK AIFs and UCITS wishing to de-register will have to undertake all the prescribed liquidation steps pursuant to the applicable FSSA Ordinance(s) on liquidation and dissolution of AIFs or UCITS funds respectively. Consequently, all investors would have to be redeemed in liquidation proceedings prior to formal de-registration.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

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Has the FSSA introduced a streamlined process for setting up a management company or fund in Croatia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the FSSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- an approval of or a notification to the FSSA is required
- tasks including managing the UCITS fund assets or risk management may be delegated only to those third persons who have obtained a license from a competent authority and are subject to supervision in accordance with the provisions of the applicable law

If a UK fund manager is currently providing services (e.g. MiFID services) in Croatia, will these services be deemed to be carried out from the UK or from Croatia after Brexit?

From the UK, but a Croatian licence will be required.

In a no-deal Brexit, UK investment firms will be prohibited from providing investment services directly to Croatian professional and retail investors. Those wishing to continue providing services in Croatia must either establish a branch (and obtain a licence from FSSA in accordance with the Croatian Capital Market Act), or provide services exclusively in response to requests from clients (known as “reverse solicitation”).

Firms operating solely under the principle of reverse solicitation will not be able to solicit potential clients or promote and advertise their investment services in Croatia.

Existing branches of UK investment firms will be required to cease their operations or obtain a licence from the FSSA as a third country (non-EU) investment firm branch. In order to provide investment services directly to professional investors in Croatia, investment firms from the UK must be registered with ESMA as third country (non-EU) entities.

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Cyprus Securities and Exchange Commission (CySEC)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the CySEC treat UK funds (UCITS funds and AIFs) that are currently passported in Cyprus under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds. Both UCITS and AIFMs would have to comply with Cyprus' private placement regime to market units, and where applicable manage funds (pending the implementation of the third-country regime under the AIFMD) in Cyprus.

Will UK funds (UCITS funds and AIFs) currently passported in Cyprus under the UCITS/AIFM Directive have to (re)register or make any notification with the CySEC as a result of Brexit to continue marketing in Cyprus?

It is not yet clear.

If UK funds (UCITS funds and AIFs) currently passported in Cyprus under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The position is unclear. CySEC has not made any announcements or issued any specific guidelines addressing this issue.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the CySEC introduced a streamlined process for setting up a management company or fund in Cyprus with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

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Has the CySEC published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Cyprus, will these services be deemed to be carried out from the UK or from Cyprus after Brexit?

There is no Cyprus-specific regulatory guidance as to when such investment services would be deemed to be carried out from the UK or from Cyprus. If the services are deemed to be carried out from Cyprus, the relevant manager must comply with the Cyprus regulatory requirements for the provision of investment services and activities by third country nationals.

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Czech National Bank (CNB)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the CNB treat UK funds (UCITS funds and AIFs) that are currently passported in Czech Republic under the UCITS/AIFM Directive after Brexit?

The Czech Brexit Act, which will be applicable in the event of a no-deal Brexit, will be approved by the Czech Parliament at the end of February 2019. It will permit all types of UK-based financial services providers with existing passporting rights to run off contracts and services provided before Brexit until 31 December 2020. The CNB will supervise these providers as if the Czech Republic were their home Member State. They will not be allowed to enter into new contracts or to amend the content of existing contracts.

Will UK funds (UCITS funds and AIFs) currently passported in the Czech Republic under the UCITS/AIFM Directive have to (re)register or make any notification with the CNB as a result of Brexit to continue marketing in the Czech Republic?

The CNB has unofficially indicated that, following a no-deal Brexit, existing UK funds will need to re-register as a non-EU funds with the CNB in order to market in the Czech Republic.

If UK funds (UCITS funds and AIFs) currently passported in the Czech Republic under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The CNB will de-register UK funds automatically as they will cease to meet legal requirements for passporting after a no-deal Brexit. Accordingly, UK funds will probably not need to move/redeem all investors for de-registration to take place. Affected funds may be required to notify their Czech investors and enable voluntary redemption. A CNB announcement on this subject is anticipated in the near future.

Has the CNB introduced a streamlined process for setting up a management company or fund in Czech Republic with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Czech Republic

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Sweden



Has the CNB published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Czech Republic, will these services be deemed to be carried out from the UK or from Czech Republic after Brexit?

Under the Czech Brexit Act these services will be deemed to be provided from another EU Member State. However, the CNB will supervise providers as though they were established in the Czech Republic.

Denmark

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Danish Financial Supervisory Authority (FSA)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the Danish FSA treat UK funds (UCITS funds and AIFs) that are currently passported in Denmark under the UCITS/AIFM Directive after Brexit?

If the UK leaves the EU without a withdrawal agreement the UK will be deemed a third country with respect to EU Member States, including Denmark. The automatic right for financial undertakings in the UK to set up and do business in the Member States, as a result of the EU's single market, will lapse.

It means that UK funds will be treated as third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Denmark under the UCITS/AIFM Directive have to (re)register or make any notification with the FSA as a result of Brexit to continue marketing in Denmark?

UK funds will not be able to offer financial services in Denmark without securing new permission from the Danish authorities.

UK investment firms planning to continue offering financial services in Denmark after a no-deal Brexit have a number of choices:

- UK funds can apply for permission to set up a financial undertaking in Denmark;
- UK funds can set up a financial undertaking in another EU member state and then invoke the right to set up a Danish subsidiary or offer cross-border services into Denmark; or
- undertakings offering investment services and activities can apply for permission to continue providing cross-border activities directly from the UK under Danish third country rules (as set out in section 33 of the Danish Financial Business Act)

Firms hoping to rely on Danish third country rules should note that such permission only grants the right to carry out cross-border investment services and activities in Denmark for approved counterparties or professional customers. Furthermore, the permission does not extend to activities carried out in Member States other than Denmark.

Denmark (Cont)

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



In the case of a “no-deal Brexit”, permission to operate on a third country basis will only be granted under the following circumstances:

- The UK becomes a third country as defined under MiFID II, Article 4(1), no. 57;
- The EU has not entered into an agreement to create a financial area with the UK;
- The Commission has not adopted an equivalence decision for the United Kingdom in accordance with MiFIR, Article 47(1), or such a decision ceases to be valid;
- UK financial regulation and supervision of investment firms remains essentially equivalent to EU and Danish regulation and supervision
- any investment services and activities, ancillary services or instruments applied for by the UK firm are covered by the applicant’s license and comply with both MiFID II and the Danish Financial Business Act;
- there have been no changes to EU or Danish third country regime regulations that might affect the firm’s application; and
- the Danish FCA and the corresponding competent authority/authorities in the United Kingdom have signed the same relevant agreement concerning consultation and cooperation and the exchange of information (e.g. IOSCO, MMoU)

Owing to the extraordinary circumstances surrounding Brexit, any license granted by the Danish FCA under the conditions outlined above will only be valid for a 12 month period.

If UK funds (UCITS funds and AIFs) currently passported in Denmark under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

If an alternative investment fund manager ceases to market their alternative investment fund (and its sub-funds) in Denmark, the manager must notify all Danish investors and the Danish FSA, setting a date of cessation. Notifications must be made no later than 14 days after the decision was taken. The same will apply if an investment undertaking (or a compartment of such) ceases to market its units investment fund in Denmark. The process will apply whether marketing is directed at professional or retail investors.

As a result, the redemption of all units will not be necessary if a UK fund wishes to cease marketing its units/shares in Denmark.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and “treat customers fairly, irrespective of where those customers are based”. Further information can be found [here](#).

Denmark (Cont)

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Has the Danish FSA introduced a streamlined process for setting up a management company or fund in Denmark with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the Danish FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Denmark, will these services be deemed to be carried out from the UK or from Denmark after Brexit?

The position is not yet clear, but it is likely that such services will be deemed to be carried out from the UK, since the UK fund manager will use its UK license when providing these services.

Estonia

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Estonian Financial Supervision Authority (FSA)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FSA treat UK funds (UCITS funds and AIFs) that are currently passported in Estonia under the UCITS/AIFM Directive after Brexit?

The position is not yet clear.

Will UK funds (UCITS funds and AIFs) currently passported in Estonia under the UCITS/AIFM Directive have to (re)register or make any notification with the FSA as a result of Brexit to continue marketing in Estonia?

The position is not yet clear.

Has the FSA introduced a streamlined process for setting up a management company or fund in Estonia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- Art. 364 and 365 of the Investment Fund Act would apply
- a written delegation agreement would be required

As of today, the FSA and the FCA are both members of the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information.

If a UK fund manager is currently providing services (e.g. MiFID services) in Estonia, will these services be deemed to be carried out from the UK or from Estonia after Brexit?

The position is not yet clear.

Finland

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Finnish Financial Supervisory Authority (FIN-FSA)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FIN-FSA treat UK funds (UCITS funds and AIFs) that are currently passported in Finland under the UCITS/AIFM Directive after Brexit?

The FIN-FSA has made no official announcement on the issue. However, the regulator has unofficially indicated that in case of no-deal Brexit, UK funds will be treated as third-country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Finland under the UCITS/AIFM Directive have to (re)register or make any notification with the FIN-FSA as a result of Brexit to continue marketing in Finland?

FIN-FSA has indicated that it will not allow funds to register under AIFMD Article 42 before the Exit date. Consequently, funds that wish to continue operating after a no-deal exit will have to file for notification immediately following Britain's departure from the EU.

If UK funds (UCITS funds and AIFs) currently passported in Finland under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

There is no need to move or redeem investors if marketing is discontinued in Finland. However, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the FIN-FSA introduced a streamlined process for setting up a management company or fund in Finland with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the FIN-FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

Finland (Cont)

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



If a UK fund manager is currently providing services (e.g. MiFID services) in Finland, will these services be deemed to be carried out from the UK or from Finland after Brexit?

The position is not yet clear, but probably from the UK.

The regulator's MiFID position is that the grandfathering of passported services/activities will only occur if the UK MiFID entity files a license application to the FIN-FSA before Brexit takes place. There will be no transition period.

It should be noted that the Finnish position differs from many comparable jurisdictions.

France

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the French Financial Markets Authority (AMF)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the AMF treat UK funds (UCITS funds and AIFs) that are currently passported in France under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in France under the UCITS/AIFM Directive have to (re)register or make any notification with the AMF as a result of Brexit to continue marketing in France?

The position is not yet clear.

If UK funds (UCITS funds and AIFs) currently passported in France under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The position is unclear. There are no specific regulations applicable to the de-registration of UK funds (UCITS funds/AIFMs) in the context of Brexit.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the AMF introduced a streamlined process for setting up a management company or fund in France with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

Yes, the AMF has implemented a fast track pre-approval process for management companies supervised by the UK FCA that wish to set up in France. After filing and sending a "2WeekTicket" form to the AMF, the UK management company will receive a pre-authorisation via e-mail within 2 weeks. As soon as the UK management company receives this pre-authorisation, it will benefit from the advice of a dedicated English-speaking AMF coach who will assist the UK management company and answer its queries during the full authorisation process with the view to facilitate its domiciliation in France. The AMF indicated that full authorisation ordinarily should be granted within two months after obtaining the pre-authorisation, provided that the application is duly completed.

France (Cont)

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Has the AMF published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No, however, the AMF has said that it would follow the principles set out in ESMA's opinion "to support supervisory convergence in the area of investment management in the context of the United Kingdom withdrawing from the European Union". To read the opinion, [click here](#).

The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- a certificate attesting that the delegate is duly authorised to manage collective investments or to provide portfolio management services to third parties in its country of origin would be required

If a UK fund manager is currently providing services (e.g. MiFID services) in France, will these services be deemed to be carried out from the UK or from France after Brexit?

No specific guidance has been published, but French courts will analyse each situation on a case-by-case basis using the normal criteria derived from case law including:

- the law applicable to the contract governing the investment service
- the currency used
- the place of residence or of the registered office of the client
- the place of execution and performance of the agreement
- the solicitation of clients by any means conducted in France

If the investment services provided by the UK fund manager are deemed to be carried out in France on a regular basis, the UK fund manager will have to obtain a French license.

Germany

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
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Greece
Hungary
Ireland
Italy
Latvia
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Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the German Federal Financial Supervisory Authority (BaFin)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will BaFin treat UK funds (UCITS funds and AIFs) that are currently passported in Germany under the UCITS/AIFM Directive after Brexit?

BaFin has declared that UK funds (UCITS and AIFs) will be treated as third-country funds from the day of a no-deal Brexit. UK UCITS will be regarded as AIFs after Brexit.

Managers of UK funds currently passported in Germany wishing to continue operations will have to notify BaFin, setting out how the fund in question can be marketed in accordance with the specific requirements for the notification of third country AIFs as set out in the German Capital Investment Code (Kapitalanlagegesetzbuch, the "KAGB"). Please note that KAGB requirements will vary depending on the type of investor permitted to invest in the fund (retail or (semi-) professional investor).

Will UK funds (UCITS funds and AIFs) currently passported in Germany under the UCITS/AIFM Directive have to (re)register or make any notification with the BaFin as a result of Brexit to continue marketing in Germany?

BaFin has confirmed that following a no-deal Brexit all UK funds currently passported in Germany will have to (re-)notify with BaFin as third-country AIFs to continue operating in Germany. These funds will be subject to the specific legal requirements that come with third-country status.

To prevent marketing disruption BaFin is currently accepting notification applications from UK fund managers. These notifications will be considered in spite of ongoing uncertainty surrounding the final outcome of Brexit negotiations.

Has BaFin introduced a streamlined process for setting up a management company or fund in Germany with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Germany (Cont)

Austria
Belgium
Bulgaria
Croatia
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Denmark
Estonia
Finland
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Germany
Greece
Hungary
Ireland
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Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Has BaFin published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No, however, BaFin has published a German language FAQ guide to delegation that is of general application. To read the FAQ, click [here](#).

- The current position is as follows:
- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Germany, will these services be deemed to be carried out from the UK or from Germany after Brexit?
Deemed to be carried out from the UK.

Greece

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Hellenic Capital Market Commission (HCMC)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the HCMC treat UK funds (UCITS funds and AIFs) that are currently passported in Greece under the UCITS/AIFM Directive after Brexit?

The HCMC has not yet made any announcement and the position is not clear.

Will UK funds (UCITS funds and AIFs) currently passported in Greece under the UCITS/AIFM Directive have to (re)register or make any notification with the HCMC as a result of Brexit to continue marketing in Greece?

The HCMC has not issued any guidance on this issue. However, in general non-EEA funds – which will include UK funds post-Brexit – can only be marketed in Greece after obtaining a HCMC license.

If UK funds (UCITS funds and AIFs) currently passported in Greece under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

EU UCITS may request deregistration from the HCMC only if the number of investors is less than or equal to 100. However, the approval of the HCMC is not required when foreign UCITS cease to exist because of liquidation or restructuring. In such cases, UCITS are only required to notify the HCMC upon deregistration. UK funds will be obliged to terminate their activities in Greece after Brexit, so the exemption for liquidation/restructuring is likely to apply.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Greece (Cont)

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Has the HCMC introduced a streamlined process for setting up a management company or fund in Greece with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the HCMC published any guidance around delegation, including delegation of portfolio management, from a local management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- delegation of portfolio management or risk management to non-EEA entities by a local AIFM is possible if such entities are authorised or registered for the purpose of asset management and are subject to supervision or where that condition cannot be met a prior approval by the HCMC is required
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Greece, will these services be deemed to be carried out from the UK or from Greece after Brexit?

Yes, such services will be in principle deemed to be carried out from Greece and a license from the HCMC will be required.

Hungary

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Magyar Nemzeti Bank (MNB)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the MNB treat UK funds (UCITS funds and AIFs) that are currently passported in Hungary under the UCITS/AIFM Directive after Brexit?

Will UK funds (UCITS funds and AIFs) currently passported in Hungary under the UCITS/AIFM Directive have to (re)register or make any notification with the MNB as a result of Brexit to continue marketing in Hungary?

The MNB's position on these questions remains unclear.

Has the MNB introduced a streamlined process for setting up a management company or fund in Hungary with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the MNB published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Austria, will these services be deemed to be carried out from the UK or from Hungary after Brexit?

This is likely to be a cross-border service from the UK.

Ireland

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Central Bank of Ireland (CBI)?

Yes. The CBI signed an MoU with the FCA in July 1998; however this will need to be revisited to address Brexit issues.

However, the FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the CBI treat UK funds (UCITS funds and AIFs) that are currently passported in Ireland under the UCITS/AIFM Directive after Brexit?

Both UCITS and AIFs will be treated as non-Funds and lose their ability to market into Ireland. It is possible that they may have to cease marketing immediately. There are no clear guidelines for handling this process, but firms should have arrangements in place to ensure that they are not in breach of the relevant marketing requirements.

Will UK funds (UCITS funds and AIFs) currently passported in Ireland under the UCITS/AIFM Directive have to (re)register or make any notification with the CBI as a result of Brexit to continue marketing in Ireland?

Both UCITS and AIFs will be treated as non-Funds and lose their ability to market into Ireland. It is possible that they may have to cease marketing immediately. There are no clear guidelines for handling this process, but firms should have arrangements in place to ensure that they are not in breach of the marketing requirements.

If UK funds (UCITS funds and AIFs) currently passported in Ireland under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

It is likely that deregistration will be permitted. However, there is currently no relevant guidance on this point.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Ireland (Cont)

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Denmark
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Has the CBI introduced a streamlined process for setting up a management company or fund in Ireland with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

Pre-Brexit: Yes. In a bid to try to clear the high volume of applications before the 29 March deadline, the CBI is looking for all new applicants seeking a licence in Ireland before this deadline to meet with the CBI before they submit an application. The meeting is quite informative and the CBI will provide managers with a clear indication of whether their proposed model will work at a very early stage in the process. It also provides UK managers with a better sense of the substance that will be required. As a result of this new process, managers are a lot clearer at the start as to what substance they will need to have in Ireland and within the EU, the proposed timelines and the CBI's expectations. This is assisting applications to move quicker, and in some instances can be processed in as quickly as 12 weeks from the date a complete application is submitted.

Post-Brexit: No. The CBI has unequivocally stated that there will be no fast-track process for UK entities. All UK entities seeking to establish in Ireland will be treated as de novo applicants and will be subject to the same scrutiny as any other application for authorisation (or otherwise) to the CBI.

Has the CBI published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

Please refer to the CBI Brexit FAQs under the following link:

<https://www.centralbank.ie/regulation/how-we-regulate/brexit-faq>

The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- delegation would have to be in line with general regulatory requirements
- the client's consent may be necessary to hold assets outside the EEA

The process for Irish Domiciled Funds and local UCITS management companies or AIFMs to delegate portfolio management to non EEA countries is a well-established and straightforward process in Ireland.

Ireland (Cont)

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If a UK fund manager is currently providing services (e.g. MiFID services) in Ireland, will these services be deemed to be carried out from the UK or from Ireland after Brexit?

Investment services being provided from the UK post-Brexit will be treated in the same way as such services being provided from any other third country.

Certain exemptions, such as 'safe harbour', should be considered in respect of MIFID services.

Italy

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Commissione Nazionale per le Società e la Borsa (CONSOB)?

Yes. To read it, [please click](#) here. However, the FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the CONSOB treat UK funds (UCITS funds and AIFs) that are currently passported in Italy under the UCITS/AIFM Directive after Brexit?

The Italian Ministry of Economy and Finance (MEF) has drawn up measures to ensure the full continuity of markets and intermediaries in the event of a no-deal Brexit. There will be a transition period during which financial, banking and insurance intermediaries will be permitted to continue to operate in Italy under the regulations currently in force. The MEF has announced that during the transition period Italian pension schemes (which are subject to specific investment restrictions) will be permitted to retain their investments in UK UCITS and AIFs.

The Italian CONSOB has announced an 18 month transition period for UK investment funds which market to institutional investors and operate (i) on a cross border basis regime or (ii) through a local permanent establishment. Investment funds which wish to continue operating in Italy after the transition period must request authorisation at least three days before Britain leaves the EU and

provide any information required for authorisation within 15 days of exit day, or establish an Italian intermediary company. The relevant documentation can be found [here](#). No such transition period will be put in place for UK investment funds operating on a cross border basis regime which market to retail customers (or professional clients on request). These funds will have to cease all their activities in the case of a no-deal Brexit and must inform their clients, relevant counterparties and CONSOB within 15 days of exit, setting out what actions will be taken to resolve all existing clients relationships with clients within six months of Britain's departure from the EU.

CONSOB has indicated that if an affected fund does not wish to transfer existing clients to an EU structure, the AIFM must within 15 days of exit day notify:

all clients, outlining:

- (i) the consequences of the no-deal Brexit for activities in Italy (in particular the service provided) and on the future of the relationship;
- (ii) measures that will be taken to cease activities in Italy; and
- (iii) the impact no-deal Brexit will have on the relationship (including the timing expected for the resolution of the contracts); and

CONSOB, outlining:

- (i) measures that will be taken to cease activities in Italy;
- (ii) all relationships which have been impacted by the no-deal Brexit (if any); and
- (iii) the information requested as per an ad hoc form provided by CONSOB.

Italy (Cont)

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Will UK funds (UCITS funds and AIFs) currently passported in Italy under the UCITS/AIFM Directive have to (re)register or make any notification with the CONSOB as a result of Brexit to continue marketing in Italy?

As provided for under the Consob' communication no. 10 of 1 August, 2019 (the "**Communication**"), UK funds that wish to continue their marketing activity in Italy vis-a-vis eligible counterparties and professional clients during the interim period after Brexit, shall forward to Consob – within 3 working days prior to the date of withdrawal (i.e., 28 October 2019, save any new postponements) – a notification in the form provided for under Annex 1 (in case of activities carried out under the freedom to provide services regime) or Annex 2 (in case of activities carried out under the right of establishment regime) of the Communication.

Where UK funds are intending to continue their activities after the termination of the interim period, those acting on (i) the freedom to provide services regime vis-a-vis eligible counterparties and professional clients, (ii) the right of establishment vis-a-vis retail clients, professional clients and eligible counterparties, shall submit to Consob – within 6 months from the date of start of the interim period – the application for authorisation to practice their activities pursuant to Article 28, Paragraphs 1 and 6 of the Legislative Decree no. 58/1998 (the Consolidated Financial Act).

If UK funds (UCITS funds and AIFs) currently passported in Italy under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

Any UK fund which fails to send an interim period notification to Consob will be required to carry out all necessary operations for the orderly termination of existing contracts within 6 months of the date of withdrawal.

It will not be necessary to move or redeem all investors to de-register, provided the UK fund carries out the procedures described above.

You can find the English version of the Communication [here](#).

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the CONSOB introduced a streamlined process for setting up a management company or fund in Italy with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Italy (Cont)

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Has the CONSOB published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Italy, will these services be deemed to be carried out from the UK or from Italy after Brexit?

In light of the MEF announcement, we would expect this to be covered by the measures regarding the transitional period.

Latvia

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Latvian Financial and Capital Market Commission (FCMC)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FCMC treat UK funds (UCITS funds and AIFs) that are currently passported in Latvia under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Latvia under the UCITS/AIFM Directive have to (re)register or make any notification with the FCMC as a result of Brexit to continue marketing in Latvia?

The position is not yet clear.

Has the FCMC introduced a streamlined process for setting up a management company or fund in Latvia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the FCMC published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- delegation from a local UCITS management company is allowed only to another investment management company licenced in Latvia or to a provider of management services that has received a licence in another EU member state
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Latvia, will these services be deemed to be carried out from the UK or from Latvia after Brexit?

The position is not yet clear.

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Bank of Lithuania?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the Bank of Lithuania treat UK funds (UCITS funds and AIFs) that are currently passported in Lithuania under the UCITS/AIFM Directive after Brexit?

The position is not yet clear.

Will UK funds (UCITS funds and AIFs) currently passported in Lithuania under the UCITS/AIFM Directive have to (re)register or make any notification with the Bank of Lithuania as a result of Brexit to continue marketing in Lithuania?

The position is not yet clear.

Has the Bank of Lithuania introduced a streamlined process for setting up a management company or fund in Lithuania with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the Bank of Lithuania published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- a firm to which investment management is delegated must be licenced by a reference state regulator (i.e. a competent authority of the EU member state)
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Lithuania, will these services be deemed to be carried out from the UK or from Lithuania after Brexit?

The position is not yet clear.

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Luxembourg Financial Sector Supervisory Commission (CSSF)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the CSSF treat UK funds (UCITS funds and AIFs) that are currently passported in Luxembourg under the UCITS/AIFM Directive after Brexit?

After Brexit, UK funds should be considered as third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Luxembourg under the UCITS/AIFM Directive have to (re) register or make any notification with the CSSF as a result of Brexit to continue marketing in Luxembourg?

A new law of 8 April 2019 was passed in the Luxembourg parliament and relates to the United Kingdom's withdrawal from the European Union. Although this law was published in the Official Journal, it will only enter into force on the day the United Kingdom leaves the European Union in accordance with Article 50(3) of the Treaty on European Union.

According to this law, UCITS authorised by the authorities of the United Kingdom will lose the benefit of the European passport after the United Kingdom withdraws from the European Union. In order for them to continue to market units to retail investors in Luxembourg, British UCITS should in principle first apply to the CSSF for a marketing authorisation on the basis of either the Luxembourg law of 17 December 2010 relating to undertakings for collective investment or the Luxembourg law of 12 July 2013 on alternative investment fund managers. The choice depends on whether the management of the UCITS concerned is carried out by a UCITS management company authorised by the United Kingdom authorities or by a competent authority of a Member State other than the United Kingdom.

In order to ensure the continuity of the activities of British UCITS in Luxembourg and thus safeguard the interests of their investors, these UCITS will automatically be authorised to market to retail investors in Luxembourg for a maximum period of 12 months from the date that the UK leaves the EU. During this 12-month period UCITS affected may take the necessary steps with the CSSF for them to continue to market units in Luxembourg after the lapse of that period.

The CSSF has confirmed that in the event of a no-deal Brexit, UK UCITS and AIFs will be considered as "third party entities" and lose their passporting rights following Britain's departure. UK funds impacted by this change in status must notify the CSSF of their planned response, including how they intend to continue providing services in Luxembourg. A dedicated notification portal was opened on the CSSF website on 2 August

Luxembourg (Cont)

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2019 and notifications must be submitted by 15 September. The corresponding application for authorisation, or information detailing an alternate course of action, should be submitted to the CSSF as soon as possible, but no later than 31 October.

On the basis of the information submitted, the CSSF may allow impacted funds to continue activities in Luxembourg for a limited period of time after a no-deal Brexit. Decisions will be made on a case-by-case basis and the CSSF will provide a response within 10 business days of submission.

If UK funds (UCITS funds and AIFs) currently passported in Luxembourg under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The CSSF has informally confirmed that even if there are still investor(s), UCITS established in another Member States and AIF passported according to Article 32 of the AIFMD can be de-registered for distribution in Luxembourg provided that the following conditions are met:

- The relevant department at the CSSF is duly informed of this de-registration;
- Information on the number and percentage of Luxembourg investor(s) is provided to the CSSF;
- Confirmation that the UCITS or AIFM will continue to comply with the relevant legal provisions: for UCITS especially with respect to the paying agent whose name must be confirmed to the CSSF; and for AIFMs especially with respect to its information obligations resulting from Article 23 of the AIFMD.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and “treat customers fairly, irrespective of where those customers are based”. Further information can be found [here](#).

Has the CSSF introduced a streamlined process for setting up a management company or fund in Luxembourg with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

Although there is no official process for a UK manager wishing to relocate to Luxembourg, the CSSF is really keen to welcome UK managers and has proved to be very helpful to those who have applied, who have been handled by the CSSF’s dedicated Brexit team.

Based on a public statement issued by ESMA on 12 July 2018 requesting the timely submission of requests for authorisation in the context of the United Kingdom withdrawing from the European Union, the CSSF has confirmed that any investment fund managers (alternative investment fund manager or UCITS fund manager) wishing to relocate business in Luxembourg in the context of Brexit will need to be authorised by the CSSF. For the avoidance of doubt, the CSSF highlights that existing entities already authorised by the CSSF, but wishing to receive additional licenses or substantially changing operational models to cope with Brexit-related aspects shall also apply for authorisation (please refer to the CSSF Press Release 18/25 “Brexit-related applications by fund management companies – [click here](#)).

Luxembourg (Cont)

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As per CSSF Press Release 18/25:

“As per 30 March 2019, the United Kingdom intends to leave the European Union. In a worst-case scenario, no transition period will be agreed upon and the United Kingdom will consequently need to be considered as a third country as from 30 March 2019. Based on the current state of negotiations, entities need to consider the scenario where a hard Brexit would take place on 30 March 2019.”

“The CSSF consequently wishes to urge investment fund managers addressed by this press release to submit their applications to the CSSF as soon as possible.”

Has the CSSF published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

As per the CSSF Press Release 19/05:

“The CSSF would like to remind that legal provisions in Luxembourg fund legislation permit the delegation of investment management/portfolio management and/or risk management activities to undertakings in countries outside the European Union (“third countries”) under specific conditions.

In the particular context of a “no deal” Brexit, the applicable legislation allows for such delegations to undertakings in the United Kingdom, which would gain the status of a third country in case of a “no deal” Brexit, provided that

- (i) these undertakings are authorised or registered for the purpose of asset management,
- (ii) are subject to prudential supervision and that

- (iii) cooperation between the UK FCA as supervisory authority of these undertakings and the CSSF is ensured.

The CSSF endeavours that the required cooperation between the UK FCA and the CSSF shall be in place on 29 March 2019 in the event of a “no deal” Brexit. On this basis, delegation of investment management/portfolio management and/or risk management to UK undertakings shall continue to be possible without any disruption post-Brexit, under the condition that the UK delegate continues to fulfil all applicable requirements.”

Please find a copy of the press release [here](#).

If a UK fund manager is currently providing services (e.g. MiFID services) in Luxembourg, will these services be deemed to be carried out from the UK or from Luxembourg after Brexit?

For EU regulatory services to be provided by UK fund manager, it should be considered as rendered from a non-EEA country post Brexit (please refer to the second question above). For any other services, the position is not yet clear this will depend on the services which are provided by UK fund managers.

A second law of 8 April 2019 was adopted by the Luxembourg Parliament related to Brexit. This law deals with the measures to be taken in relation to the financial sector in the event that the UK withdraws from the European Union in a manner that would facilitate an orderly transition. According to this bill the Luxembourg law on undertakings for collective investments and the law on alternative investment fund managers would be amended in such a way that the CSSF would be authorised (under certain conditions and for a maximum of 21 months) to continue to apply the same rules to UK management companies that it would to management companies authorised under the AIFM or UCITS Directive from other Member States.

Malta

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Spain
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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Malta Financial Services Authority (MFSA)?

es. However, the FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#)

How will the MFSA treat UK funds (UCITS funds and AIFs) that are currently passported in Malta under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds.

In the event of a no-deal Brexit, the MFSA will grant temporary permission to UK licensed investment funds currently passporting to Malta, valid up to the 31 March 2020, to enable them to (i) obtain the necessary authorisation until 31 March 2020; and/or (ii) terminate existing contracts in an orderly manner; and/or (iii) proceed with the assignment of the contracts in an orderly manner. They will not be allowed to offer their services to new investors/clients in Malta post-Brexit unless and until they obtain the necessary authorisation as third country funds.

UK funds that intend to avail themselves of the temporary permission regime, are required to fill in a TPR Notification Form provided by the MFSA at the earliest time possible and in any case no later than three weeks after a no-deal Brexit. This temporary regime will be designed to ensure the continuation of business with minimal disruption.

Will UK funds (UCITS funds and AIFs) currently passported in Malta under the UCITS/AIFM Directive have to (re)register or make any notification with the MFSA as a result of Brexit to continue marketing in Malta?

UK funds will have to register or make notifications or seek specific authorisation as non-EEA funds after Brexit.

However in the event of a no-deal Brexit, UK funds may avail themselves of the temporary permission regime outlined above. UK funds that intend to operate under said regime are to submit, no later than three weeks after a no-deal Brexit, relevant notification as mentioned above. UK funds may be subject to such further legislation in the future.

Malta (Cont)

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If UK funds (UCITS funds and AIFs) currently passported in Malta under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

In the event UK funds (UCITS funds and AIFs) wish to de-register, they will need to avail themselves of the temporary permission regime which will give them until 31 March 2020 to terminate their existing contracts and/or proceed with the assignment of the contracts in an orderly manner.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and “treat customers fairly, irrespective of where those customers are based”. Further information can be found [here](#).

Has the MFSA introduced a streamlined process for setting up a management company or fund in Malta with a view to making it attractive for UK managers and/or UK funds to set up in/redomicile?

No.

Has the MFSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

It will very much depend on the nature and frequency of the service being provided. A service provided on a one-off basis may be deemed to be carried out from the UK. Also, if the services are initiated by and at the request of a Maltese client, the provision of services may be deemed not to have been delivered in Malta (reverse solicitation). Otherwise services carried out in or from Malta will need to adhere to local regulations on licensing.

Entities providing cross-border services from the UK to Malta under the current passporting arrangements must submit a TPR Notification Form no later than three weeks after a no-deal Brexit to be admitted to the temporary permission regime. While under this regime, firms will need to obtain the necessary authorisation if they wish to continue operating following 31 March 2020. Otherwise, during such period up to the 31 March 2020, firms will be expected to terminate existing contracts and proceed with the assignment of contracts in an orderly manner. Following Brexit, funds will be unable to offer services to new clients unless and until they align themselves with local requirements as third country service providers.

Malta (Cont)

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Sweden



If a UK fund manager is currently providing services (e.g. MiFID services) in Malta, will these services be deemed to be carried out from the UK or from Malta after Brexit?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. There is a cooperation agreement in place between the FCA and the MFSA
- delegation of other functions is allowed provided these are delegated to qualified service providers of good repute and experience, and who have sufficient resources to provide the services

Delegation of portfolio management will not be impacted by a no-deal Brexit if these services are initiated by and at the request of a Maltese client and so fall under the definition of 'reverse solicitation'.

Netherlands

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Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Dutch Authority for the Financial Markets (AFM)?

Yes, the UK's Financial Conduct Authority ("FCA") and the Dutch Authority for the Financial Markets ("AFM") agreed to work more closely to protect and enhance the integrity and stability of their financial systems. On 3 June 2019, the FCA and the AFM signed a joint agreement to formalise this partnership.

As well as information sharing, the FCA and AFM will also best practice approaches, explore the scope for secondments between the regulators and shared expert training opportunities. This agreement will apply whether or not the UK reaches a deal with the EU, and will accompany the [Multilateral Memorandum of Understanding \("MMoU"\)](#) between the FCA and EU regulators, announced in February 2019. Please find the press release [here](#).

How will the AFM treat UK funds (UCITS funds and AIFs) that are currently passported in the Netherlands under the UCITS/AIFM Directive after Brexit?

The AFM has not yet published any specific guidance on how it will deal with UK funds that are currently passported into the Netherlands under the UCITS/AIFM Directive after Brexit.

However, it seems that UK funds will be treated as non-EEA funds since the AFM recommends that UK-based financial institutions relocate (a part of) their activities and apply for a licence in a timely fashion, so that they will be allowed to continue their operations in the European Union post-Brexit. For further guidance, please consult the FAQ of the AFM regarding the Brexit [\(which can be found here\)](#).

Will UK funds (UCITS funds and AIFs) currently passported in the Netherlands under the UCITS/AIFM Directive have to (re) register or make any notification with the AFM as a result of Brexit to continue marketing in the Netherlands?

This depends on whether the EU and the UK agree on a deal.

If the UK leaves the EU with a deal, a transitional period will come into force until 31 December 2020. During this time fund managers may use the European passport, offer units in the Netherlands to professional investors (and non-professional investors subject to additional restrictions), or manage Dutch AIFs.

If the UK leaves the EU without a deal, then there will be no transitional period. In this scenario, fund managers may continue to offer units to professional investors in the Netherlands and manage Dutch AIFs subject to the national private placement restrictions (Article 42 AIFMD). Notifications for private placement can be submitted now.

Has the AFM introduced a streamlined process for setting up a management company or fund in the Netherlands with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

There is no specific process for UK managers and/or UK funds. The fact however that such applicants are already licensed by the FCA and all relevant persons qualify as so called approved persons will make sure that the process will be faster than a "new" process. All documentation can be submitted in English.

Netherlands (Cont)

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Has the AFM published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No.

Delegation to an AIFM established in a non-EEA country ("Non-EEA AIFM") is permitted if the following conditions are met:

AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies

- the delegating AIFM must ensure that the Non-EEA AIFM complies with the rules applicable under the Dutch Financial Supervision Act (Wet op het financieel toezicht, the "AFS") with regard to the delegated activities
- the delegating AIFM must be able to justify its entire delegation structure on objective reasons
- the delegating AIFM must dispose of sufficient resources to perform the respective task and the persons who effectively conduct the business of the delegating AIFM must be of sufficiently good repute and sufficiently experienced; the Non-EEA AIFM is authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, subject to prior approval by the AFM
- there has to be cooperation between the AFM and the supervisory authority of the non-EEA AIFM

- the delegation must not prevent the effectiveness of supervision of the delegating AIFM, and, in particular, must not prevent the AIFM from acting, or the AIF from being managed, in the best interest of its investors
- the delegating AIFM must be able to demonstrate that the Non-EEA AIFM is qualified and capable of undertaking the portfolio management, that is was selected with due care and that the delegating AIFM is in a position to monitor effectively at any time the portfolio management, to give at any time further instructions to the Non-EEA AIFM and to withdraw the delegation with immediate effect when this is in the interest of investors

Delegation to an UCITS management company established in a non-EEA country ("Non-EEA UCITS Management Company") is permitted if the following conditions are met:

- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- the delegating UCITS management company must ensure that the Non-EEA UCITS Management company complies with the rules applicable under the AFS with regard to the delegated activities
- the delegating UCITS management company has to inform the AFM of its intention to delegate the portfolio management to a Non-EEA UCITS Management Company

Netherlands (Cont)

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- the delegations of the portfolio management may only be given to a management company which is authorised or registered for the purpose of asset management and subject to prudential supervision
- there has to be cooperation between the AFM and the supervisory authority of the Non-EEA UCITS Management Company
- the interest of the Non-EEA UCITS Management Company may not be incompatible with the interest of the delegating UCITS management company, the depository of the UCITS and the members of the UCITS
- the delegation does not prevent acting in the best interest of the members of the UCITS
- the delegating UCITS management company retains the necessary expertise to exercise effective control over the portfolio management
- the delegating UCITS management company possesses the necessary expertise and observes the necessary care and vigilance when concluding, managing or terminating agreements with third parties

If a UK fund manager is currently providing services (e.g. MiFID services) in the Netherlands, will these services be deemed to be carried out from the UK or from the Netherlands after Brexit?

A UK fund manager who (i) provides services (e.g. MiFID services) from the UK to the Netherlands or (ii) offers AIFs or UCITS in the Netherlands, other than through a branch office or local agents in the Netherlands, will be considered to be carrying out these services from the UK and will only be permitted to do so in respect of professional or retail clients based in the Netherlands on the basis of reverse solicitation by those clients.

Please note that an exemption applies if an investment firm is offering MiFID services:

If the UK leaves the EU with a deal then a transitional regime will come into force. During this time, investment firms will probably be able to continue business using their current registration. In the case of a no-deal Brexit, investment firms may have to apply for a license. However, firms which provides services exclusively for professional clients, eligible counterparties, or deal on their own account, are eligible for a temporary exemption. This scheme will continue until 1 January 2021.

To be clear, this is not a general exemption. Investment firm will still be regulated by the AFM. However, those eligible will enjoy a licensing exemption and may be exempted from some ongoing capital and organisational requirements. Of course, other business conduct requirements, on cost transparency for example, will still apply.

Please find more information on the exemption [here](#).

Norway

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Financial Supervisory Authority of Norway (FSU)?

The FCA has agreed a multilateral memorandum of understanding ('**MMoU**') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

Norway is party to the MMoU, and the FSU is expected to follow ESMA recommendations and guidelines.

The Norwegian parliament has passed an act that will allow the UK to be treated as a member state with respect to acts and regulations. However, this act is not yet in force.

How will the FSU treat UK funds (UCITS funds and AIFs) that are currently passported in Norway under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Norway under the UCITS/AIFM Directive have to (re)register or make any notification with the FSU as a result of Brexit to continue marketing in Norway?

Following Britain's departure from the EU the FSU will automatically deregister UK funds registered under the AIFMD and UCITS directives, UK funds will then have to apply for a FSU licence. However, the FSU has indicated that simplified procedures for the "conversion" of certain funds/managers will be made available. More information can be found [here](#).

If UK funds (UCITS funds and AIFs) currently passported in Norway under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

As marketing is a restricted business, there are no guidelines for de-registration when there are remaining investors in the fund. It should be noted that marketing that will be illegal post de-registration.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the FSU introduced a streamlined process for setting up a management company or fund in Norway with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

The FSU has indicated that a simplified conversion process will be available for certain funds/managers. More information can be found [here](#).

Norway (Cont)

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Has the FSU published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If such a cooperation agreement were in place between the FCA and the FSU, the position would be as follows:

- the content of an outsourcing agreement would have to comply with Norwegian law
- a management company would have to be subject to supervision in its home state
- the FSU would have to be notified of the outsourcing agreement

If a UK fund manager is currently providing services (e.g. MiFID services) in Norway, will these services be deemed to be carried out from the UK or from Norway after Brexit?

From the UK and, unless “first approach” exemption applies, the UK fund manager will require a licence from the FSU.

Poland

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Spain
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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Polish Financial Supervision Authority (KNF)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

On 12 August 2019 the Polish government announced an act implementing a transition period if Britain leaves the EU with a deal. Assuming this comes into effect, Britain will be treated as a member state until 21 December 2019. There will be no transition arrangements in the event of a no-deal Brexit.

How will the KNF treat UK funds (UCITS funds and AIFs) that are currently passported in Poland under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Poland under the UCITS/AIFM Directive have to (re)register or make any notification with the KNF as a result of Brexit to continue marketing in Poland?

Currently, the only way UK funds will be able to operate in Poland after Brexit is by opening a management company and fund in Poland licenced by the KNF.

In theory certain AIFs from non-EEA countries can obtain very limited licenses for operation in Poland but this is unlikely to be sufficient for UK AIFs in practice.

Has the KNF introduced a streamlined process for setting up a management company or fund in Poland with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Poland (Cont)

Austria
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Has the KNF published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- a licence or permission from the KNF is required for any delegation

If a UK fund manager is currently providing services (e.g. MiFID services) in Poland, will these services be deemed to be carried out from the UK or from Poland after Brexit?

The answer will depend upon the factual circumstances.

Providing fund management activity in Poland will require a KNF licence. The provision of fund management services from the UK into Poland is permitted only in compliance with outsourcing regulations.

Portugal

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Portuguese Securities Markets Commission (CMVM)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the CMVM treat UK funds (UCITS funds and AIFs) that are currently passported in Portugal under the UCITS/AIFM Directive after Brexit?

UK funds will be able to market their units in Portugal until 31 December, 2020, without the need to apply for a new authorisation request, provided that the

(i) before the UK leaves the EU, the UK fund must contact the UK competent authority (FCA), asking them to submit a formal notification to the CMVM, stating the intention of the fund to market its units in Portugal; and

(ii) within 3 months of the UK's departure from the EU, the UK fund in question submits a direct notification to CMVM (in accordance with annex III of the Decree-Law no 147/2019, of 30 September) to the following address: brexite@cmvm.pt.

Will UK funds (UCITS funds and AIFs) currently passported in Portugal under the UCITS/AIFM Directive have to (re)register or make any notification with the CMVM as a result of Brexit to continue marketing in Portugal?

Provided they comply with the notification process outlined above, a UK fund currently marketing in Portugal will be able to continue without re-registering after Brexit.

After 31 December 2020, UK funds will need to re-register with the CMVM.

If UK funds (UCITS funds and AIFs) currently passported in Portugal under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

If UK funds (UCITS funds and AIFs) currently passported in Portugal under the UCITS/AIFM Directive wish to de-register the fund and have still investors left in the fund, they should notify the Portuguese sub-distributors. The Portuguese sub-distributors will notify the CMVM of their intention to de-register.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Portugal (Cont)

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Has the CMVM introduced a streamlined process for setting up a management company or fund in Portugal with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

The CMVM has created the following guide: “Welcoming Collective Investment Management Companies”. While not specifically stated to be targeted at UK firms, this guide provides:

- English CMVM guidance and support for the application
- authorisation within 3 months of application
- a single point of contact
- consideration of equivalent documents on suitability and conduct of business approved by other NCAs

To read the CMVM guide “Welcoming Collective Investment Management Companies”, [click here](#).

Has the CMVM published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

Yes. the CMVM is on record saying in respect of delegating functions or activities:

“the proportionality principle will be considered provided that the management company does not become a letterbox entity and the delegation arrangements comply with relevant regulations and guidelines.”

The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- a service provider would be authorised to provide such services
- a service provider would be subject to prudential supervision in its home country

If a UK fund manager is currently providing services (e.g. MiFID services) in Portugal, will these services be deemed to be carried out from the UK or from Portugal after Brexit?

It is not yet clear.

Romania

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Romanian Financial Supervisory Authority (FSA)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FSA treat UK funds (UCITS funds and AIFs) that are currently passported in Romania under the UCITS/AIFM Directive after Brexit?

In the event of a no-deal Brexit, the FSA has indicated that UK funds will be treated as third country funds, i.e. non-EEA funds. The FSA has not made clear what will happen if a deal is reached.

The FSA has asked UK funds affected by a no-deal Brexit to begin implementing measures ensuring the continuity of services and consumer rights protection. To this end, funds must provide clear information to clients whose contracts may be affected, covering at least: the impact of the UK's withdrawal from the EU on the respective contract; the actions which such entity will take to minimize a potential negative impact; the risks and contractual rights of the consumers; and contact details for additional information

Will UK funds (UCITS funds and AIFs) currently passported in Romania under the UCITS/AIFM Directive have to (re)register or make any notification with the FSA as a result of Brexit to continue marketing in Romania?

In the event of a no-deal Brexit they will have to reregister with the FSA as third country funds. The FSA has published no guidance on its position in the event of a deal being reached.

If UK funds (UCITS funds and AIFs) currently passported in Lithuania under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The position is not yet clear.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the FSA introduced a streamlined process for setting up a management company or fund in Romania with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Romania (Cont)

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Has the FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Romania, will these services be deemed to be carried out from the UK or from Romania after Brexit?

No guidance has been published by the FSA and the position is not yet clear.

Slovakia

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Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the National Bank of Slovakia (NBS)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the NBS treat UK funds (UCITS funds and AIFs) that are currently passported in Slovakia under the UCITS/AIFM Directive after Brexit?

In the event of a no-deal Brexit, UK-based financial services providers currently operating in Slovakia based on either freedom of establishment or freedom to provide services will no longer be allowed to do so unless they establish either a branch in Slovakia or another EEA state from which they can passport into Slovakia.

Will UK funds (UCITS funds and AIFs) currently passported in Slovakia under the UCITS/AIFM Directive have to (re)register or make any notification with the NBS as a result of Brexit to continue marketing in Slovakia?

The NBS's April press release confirmed that all financial market participants which are incorporated in the UK and operate in Slovakia on the basis of the freedom of establishment, or the freedom to provide services (passporting), will not be authorised to operate in Slovakia after a no-deal Brexit. Existing UK funds will need to register as non-EU funds with the NBS to market in Slovakia.

If UK funds (UCITS funds and AIFs) currently passported in the Czech Republic under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

UK funds will be automatically deregistered in the event of a no-deal Brexit. The NBS has not specified what will happen to current investors. However, the NBS has announced that in general all applicable ESMA rules will apply. This harmonisation aims to "ensure the uninterrupted provision of services to the investors in the Slovak financial market".

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the NBS introduced a streamlined process for setting up a management company or fund in Slovakia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Slovakia (Cont)

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Has the NBS published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- the NBS must be informed in writing of any delegation

If a UK fund manager is currently providing services (e.g. MiFID services) in Slovakia, will these services be deemed to be carried out from the UK or from Slovakia after Brexit?

Deemed to be carried out from the UK.

Slovenia

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Slovenian Securities Market Agency (SMA)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the SMA treat UK funds (UCITS funds and AIFs) that are currently passported in Slovenia under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Slovenia under the UCITS/AIFM Directive have to (re)register or make any notification with the SMA as a result of Brexit to continue marketing in Slovenia?

After Brexit UK funds will be treated as third country (i.e. non-EEA) funds and without the appropriate cooperation agreement between the EU member state regulator (the SMA) and the non-EEA member state regulator (the FCA) they will not be able to continue marketing in Slovenia. If the appropriate cooperation agreement's exists, they will have to apply to the SMA for authorisation.

The SMA has indicated that all UK UCITS will be considered AIFs following Brexit. Third country AIFs are not allowed to market in Slovenia and so UK UCITS will be deregistered/denotified, however, as no UK UCITS have been registered in Slovenia this is of no practical impact.

Slovenia (Cont)

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



If UK funds (UCITS funds and AIFs) currently passported in Slovenia under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The SMA has stated that de-registration is possible and that the existence of investors currently plays no role in de-registration procedures. It is also worth mentioning that in its “Guidance Notice on marketing of units of AIFs to non-professional investors in the Republic of Slovenia” the SMA explicitly states that when an AIF ceases to market units in the Republic of Slovenia, or when an umbrella AIF ceases to market some compartments, the AIF manager must inform the Agency in writing and by [e-mail](#). The SMA did not set out any further conditions.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and “treat customers fairly, irrespective of where those customers are based”. Further information can be found [here](#).

Has the SMA introduced a streamlined process for setting up a management company or fund in Slovenia with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No.

Has the SMA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- UCITS - an authorisation from the SMA is required for the complete delegation of management
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator. However, there is no such cooperation agreement in place between the FCA and the SMA

If a UK fund manager is currently providing services (e.g. MiFID services) in Slovenia, will these services be deemed to be carried out from the UK or from Slovenia after Brexit?

Deemed to be carried out from the UK. SMA authorisation will be required to provide services from a third country.

Spain

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Spanish National Securities Market Commission (CNMV)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the CNMV treat UK funds (UCITS funds and AIFs) that are currently passported in Spain under the UCITS/AIFM Directive after Brexit?

The position is not yet clear should a deal be agreed. However, in the event of a no-deal Brexit, Spain has enacted specific legislation, the Royal Decree-Law 5/2019, for the adoption of contingency measures regarding the UK's withdrawal from the EU.

The Royal Decree-Law is designed to support contractual continuity. It permits contracts entered into by UK regulated funds prior to Exit Day for the provision of any financial services in Spain to remain in force.

UK regulated funds will additionally become subject to Spain's third country authorisation regime and will need to obtain a new licence under certain circumstances. If licensing requirements are not triggered, then a UK regulated entity's existing licence will be recognised for a period of 9 months.

Will UK funds (UCITS funds and AIFs) currently passported in Spain under the UCITS/AIFM Directive have to (re)register or make any notification with the CNMV as a result of Brexit to continue marketing in Spain?

There is no formal guidance from the CNMV, however, it is expected that funds will have to reregister.

If UK funds (UCITS funds and AIFs) currently passported in Spain under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The position is unclear. Neither the Spanish Stock Market nor the legislator have foreseen or implemented any measures regarding the de-registration of UK funds. The current political situation – and the upcoming elections in particular – have delayed legislative activity for the foreseeable future.

Aside from complying with national rules, UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Spain (Cont)

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Has the CNMV introduced a streamlined process for setting up a management company or fund in Spain with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

Yes, the CNMV is determined to make Spain the most appealing destination for investment firms considering a move from the UK to another EU country. Its Welcome Programme, permits UK-based firms currently supervised by the FCA and PRA planning to relocate their business to Spain to opt for a streamlined authorisation process:

- standardised application forms provided in English with detailed instructions on the CNMV website
- electronic submission of application forms
- a pre-authorisation period of two weeks followed by formal authorisation within 2 months
- re-use of existing documents whenever possible, the CNMV will accept pre-existing English language documents that have already been filed with and approved by the FCA or PRA (or another competent authority in the EU) and subject proper consideration rely on previous decisions by such authorities

To read the CNMV's "Welcome Programme" publication, [click here](#).

Has the CNMV published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM - Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS - Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator
- the delegating firm would have to retain the ultimate responsibility for the activity delegated
- reasonable control over delegated functions would have to be established
- all the information should be accessible to the CNMV as a supervisor

If a UK fund manager is currently providing services (e.g. MiFID services) in Spain, will these services be deemed to be carried out from the UK or from Spain after Brexit?

This will depend upon the circumstances. If services are deemed to be carried out in Spain, a licence from the CNMV would be required.

Sweden

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
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Greece
Hungary
Ireland
Italy
Latvia
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Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Is there an existing Cooperation Agreement or Memorandum of Understanding in place between the UK's Financial Conduct Authority (FCA) and the Swedish Financial Supervisory Authority (FSA)?

The FCA has agreed a multilateral memorandum of understanding ('MMoU') with the European Securities and Markets Authority (ESMA) and EU/EEA securities regulators. This MMoU covers supervisory cooperation, enforcement and information exchange between EU/EEA regulators and the FCA. It will allow them to share information relating to (among other things) market surveillance, investment services and asset management activities. This MMoU will only come into effect in the event of a no-deal Brexit. Please find the press release [here](#).

How will the FSA treat UK funds (UCITS funds and AIFs) that are currently passported in Sweden under the UCITS/AIFM Directive after Brexit?

As third country funds, i.e. non-EEA funds.

Will UK funds (UCITS funds and AIFs) currently passported in Sweden under the UCITS/AIFM Directive have to (re)register or make any notification with the FSA as a result of Brexit to continue marketing in Sweden?

In the case of a no-deal Brexit, UK funds will be treated as third country funds and will have to (re)register accordingly. UK UCITS must be re-registered as third country AIFs.

If UK funds (UCITS funds and AIFs) currently passported in Sweden under the UCITS/AIFM Directive wish to de-register the fund, will they be able to do so if there are still investors left in the fund – or would they first need to move/redeem all investors in order to de-register?

The applicable regulation of the fund's home state will govern the process of moving/redeeming existing investors left in the fund. UK funds considering de-registration must ensure they comply with FCA guidance and "treat customers fairly, irrespective of where those customers are based". Further information can be found [here](#).

Has the FSA introduced a streamlined process for setting up a management company or fund in Sweden with a view to making it attractive for UK managers and/or UK funds to set up in/re-domicile?

No, all AIFMs are treated in accordance with the principle of equal treatment.



Sweden (Cont)

Austria
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Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
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Germany
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Ireland
Italy
Latvia
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Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden



Has the FSA published any guidance around delegation, including delegation of portfolio management, from a local UCITS management company or AIFM back to a UK based entity? If not, what is the current position on delegation from a local UCITS management company or AIFM to a non-EEA country?

No. The current position is as follows:

- AIFM – Art. 20 AIFM Directive 2011/61/EU and Delegated Regulation (EU) No 231/2013 applies
- UCITS – Art. 13 UCITS Directive 2009/65/EC and Directive 2010/43/EU applies
- in order for delegation to be permitted under AIFM Directive or UCITS Directive, a cooperation agreement must be in place between the EU member state regulator and the non-EEA member state regulator

If a UK fund manager is currently providing services (e.g. MiFID services) in Sweden, will these services be deemed to be carried out from the UK or from Sweden after Brexit?

UK funds will most likely be dealt with under existing Swedish regulations for non-EEA AIFMs. If a UK fund is considered to have a branch in Sweden then an FSA licence will be required.

Contacts

Austria
Belgium
Bulgaria
Croatia
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Czech Republic
Denmark
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France
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Greece
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