

PRESS RELEASE

ESMA issues principles on supervisory approach to relocations from the UK

The European Securities and Markets Authority (ESMA) has published an [Opinion](#) setting out general principles aimed at fostering consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the United Kingdom. The opinion is addressed to national competent authorities (NCAs), in particular of the 27 Member States that will remain in the EU (EU27).

The opinion is a practical tool to support supervisory convergence in the context of increased requests from UK financial market participants seeking to relocate to the EU27. It covers all legislation referred to in the ESMA Regulation, in particular the AIFMD, the UCITS Directive, MiFID I and MiFID II.

Steven Maijoor, Chair, said:

“The UK plays a prominent role in EU financial markets and the relocation of entities, activities and functions to the EU27 creates a unique situation requiring a common effort, at EU level, to safeguard investor protection, the orderly functioning of financial markets and financial stability.

“The EU27 have a shared interest in building a common approach to dealing with relocating firms that wish to continue to benefit from access to EU financial markets. Firms need to be subject to the same standards of authorisation and ongoing supervision across the EU27 in order to avoid competition on regulatory and supervisory practices between Member States. Effective and efficient supervision are essential to support the Capital Markets Union.”

Supporting Supervisory Convergence

In the course of the UK withdrawing from the EU, UK-based market participants may seek to relocate entities, activities or functions to the EU27 in order to maintain access to EU financial markets. These may seek to minimise the transfer of the effective performance of those activities or functions in the EU27, i.e. by relying on the outsourcing or delegation of certain

activities or functions to UK-based entities, including affiliates. It is therefore necessary to ensure that the conditions for authorisation as well as for outsourcing and delegation do not generate supervisory arbitrage risks.

New authorisations must be granted in full compliance with Union law and in a coherent manner across the EU27. Any outsourcing or delegation arrangement from entities authorised in the EU27 to third country entities should be strictly framed and consistently supervised. Outsourcing or delegation arrangements, under which entities confer either a substantial degree of activities or critical functions to other entities, should not result in those entities becoming letterbox entities nor in creating obstacles to effective and efficient supervision and enforcement.

EU27 NCAs need to prepare for an increase in activities related to authorisation and supervision. ESMA will establish a forum – the Supervisory Coordination Network – to allow NCAs to report on and discuss cases of relocating UK market participants. This will help to promote consistent decisions by NCAs. ESMA is prepared to take further measures to support supervisory convergence, including issuing Q&As, providing additional opinions to NCAs, and conducting peer reviews.

The opinion sets out nine principles:

1. No automatic recognition of existing authorisations;
2. Authorisations granted by EU27 NCAs should be rigorous and efficient;
3. NCAs should be able to verify the objective reasons for relocation;
4. Special attention should be granted to avoid letter-box entities in the EU27;
5. Outsourcing and delegation to third countries is only possible under strict conditions;
6. NCAs should ensure that substance requirements are met;
7. NCAs should ensure sound governance of EU entities;
8. NCAs must be in a position to effectively supervise and enforce Union law; and
9. Coordination to ensure effective monitoring by ESMA.

Next Steps

ESMA intends to develop further guidance in areas such as asset managers, investment firms and secondary markets to provide sector specific details on the aspects described in the



general opinion.

Notes for editors

1. [ESMA42-110-433 General Principles to support supervisory convergence in the context of the UK withdrawing from the EU](#)
2. [Directive 2011/61/EU](#) of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, (OJ L 174, 1.7.2011, p. 1–73).
3. [Directive 2009/65/EC](#) of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), (OJ L 302, 17.11.2009, p. 32–96).
4. [Directive 2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, (OJ L 145, 30.4.2004, p. 1–44).
5. [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, (OJ L 173, 12.6.2014, p. 349–496).
6. [Regulation \(EU\) No 1095/2010](#) of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
7. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.
8. It achieves these objectives through four activities:
 - a. assessing risks to investors, markets and financial stability;
 - b. completing a single rulebook for EU financial markets;
 - c. promoting supervisory convergence; and
 - d. directly supervising specific financial entities.
9. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board, and with national authorities with competencies in securities markets (NCAs).

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