

## PRESS RELEASE

### ESMA issues sector-specific principles on relocations from the UK to the EU27

The European Securities and Markets Authority (ESMA) has published three Opinions setting out sector-specific principles in the areas of [investment firms](#), [investment management](#) and [secondary markets](#), aimed at fostering consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the United Kingdom .

The opinions, building on the general opinion issued in May, are practical tools to support supervisory convergence in the context of requests from UK financial market participants seeking to relocate to the EU27. They are addressed to national competent authorities (NCAs) and are relevant for market participants considering relocating.

They provide guidance to NCAs aimed at ensuring a consistent interpretation of the requirements relating to authorisation, supervision and enforcement in order to avoid the development of regulatory and supervisory arbitrage risks.

Steven Maijoor, Chair, said:

“These sector-specific opinions, on investment firms, asset management and secondary markets, build on the general cross-sectoral opinion issued in May and set out the standards to be observed by national authorities when considering relocation requests from the UK.

“The opinions do not apply new, or different, standards or requirements, but rather apply existing legislative and supervisory practices to the specific case of the UK withdrawing from the EU.

“ESMA in developing these opinions is conscious of the fundamentals of the Single Market, including the freedom to locate, a cornerstone of the Capital Market Union, however it also needs to ensure that firms are treated in a convergent manner and do not select a location just for reasons of regulatory or supervisory arbitrage.”

## **Supporting Supervisory Convergence**

The UK plays a prominent role in EU financial markets and the possible 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.

The opinions assume that the UK will become a third country after its withdrawal from the EU and are without prejudice to any specific arrangements that may be agreed between the EU27 and the UK and to any future ESMA opinions or other convergence tools.

### **Opinion on investment management**

The opinion addresses regulatory and supervisory arbitrage risks related to any relocation activities of UCITS management companies, self-managed investment companies and authorised AIFMs. The opinion provides further clarity on the interpretation of the delegation requirements and the common supervisory focus in this respect.

This opinion sets out principles based on the objectives and provisions of the UCITS Directive and AIFMD and addresses regulatory and supervisory risks in relation to:

- authorisation;
- governance and internal control;
- delegation; and
- effective supervision.

### **Opinion on Investment Firms**

The opinion addresses regulatory and supervisory arbitrage risks related to the relocation of investment firms activities. It is based on the MiFID framework (MiFID I/MiFID II) for investment firms.

The opinion emphasises that, in performing their role, NCAs should mitigate the risk of letter-box entities and ensure that any relocation is effective and investment firms comply with the MiFID framework from day one and on an on-going basis.

The principles supplement those of the cross-sectoral opinion by addressing regulatory and supervisory risks in the area of investment firms in particular in relation to:

- authorisation;
- substance requirements including governance, outsourcing and non-EU branches; and
- effective supervision.

### **Opinion on secondary markets**

The opinion addresses regulatory and supervisory arbitrage risks stemming from trading venues relocating to the EU27 and seeking to outsource activities to their jurisdiction of origin. It is addressed to NCAs and all types of trading venues, i.e. regulated markets, multilateral trading facilities (MTFs) and, under MiFID II/MiFIR, organised trading facilities (OTFs).

The principles included in the opinion focus on the outsourcing of activities by trading venues relating in particular to:

- clarifying outsourcing arrangements;
- due diligence;
- substance of outsourcing of key and important activities to third countries;
- performance of key and important activities in the EU27;
- non-EU branches; and
- effective supervision of outsourcing arrangements with third-country service providers.

### **Next Steps**

ESMA, through the recently established Supervisory Coordination Network, is providing a forum for reporting and discussions among NCAs regarding market participants seeking to relocate entities, activities or functions to the EU27. The forum's objective is to promote consistency of supervisory decision-making by NCAs.

## Notes for editors

1. [ESMA35-43-762 Opinion to support supervisory convergence in the area of investment firms in the context of the United Kingdom withdrawing from the European Union](#)
2. [ESMA35-45-344 Opinion to support supervisory convergence in the area of investment management in the context of the United Kingdom withdrawing from the European Union.](#)
3. [ESMA70-154-270 Opinion to support supervisory convergence in the area of secondary markets in the context of the United Kingdom withdrawing from the European Union.](#)
4. [ESMA42-110-433 General Principles to support supervisory convergence in the context of the UK withdrawing from the EU.](#)
5. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.
6. 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.
7. 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).

Further information:

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