

The post-Brexit impact on asset management



By **Arthur Carabia** and **Irene Rey**

1 What has been the impact of UK withdrawal from the Single Market on asset management?

At the end of the post-Brexit transition period, many asset managers were well placed, given existing substantial fund businesses, to service EU and global fund clients from Luxembourg and Dublin domiciled fund ranges. Where managers did not already have such operations (ie they serviced EU clients with UK domiciled UCITS ranges), they had to prepare in time for the UK's withdrawal from the Single Market by setting up subsidiaries in EU financial hubs to ensure that they could continue to serve their EU clients by creating EU domiciled funds that mirror previously passported UK UCITS funds.

Asset managers operating discretionary investment management businesses for EU clients from the UK faced a different issue owing to the fact that EU clients were generally serviced by EU branches of UK MiFID entities using the MiFID Single Market passport. These managers prepared for the UK's withdrawal by setting up specific MiFID entities domiciled in the EU, or by extending existing UCITS/AIFMD licences where possible (since such licences allow certain ancillary MiFID activities to be undertaken). In both cases managers stepped up their EU presence.

2 What has been the impact on the regulatory framework for asset management?

In relation to fund business, [MOUs](#) signed by ESMA, the FCA and EU NCAs in February 2019 (and later confirmed in July 2020) enabled portfolio management activity to continue to be delegated to the UK in compliance with the UCITS Directive and AIFMD.

There has been ongoing discussion about what is meant by "substance", the avoidance of letter box entities, and the oversight of delegated activities particularly in the area of fund business, an issue which preceded Brexit, but which Brexit brought into sharper focus. In 2017, following the

announcement in 2016 that the UK intended to leave the EU, ESMA issued an opinion on the supervisory approach it wished national competent authorities to follow regarding relocations of business to the EU from the UK. This has resulted in further guidance from competent authorities, including:

- In Luxembourg, the CSSF published a circular in August 2018 detailing its expectations for UCITS and AIFs management companies. This builds on the expectations set out in ESMA's opinion, and in some cases goes beyond them, such as requiring all mancos to have at least three full-time equivalent staff, including two senior managers based in Luxembourg or a location that in principle allows them to travel to Luxembourg every day. The CSSF rules cap the limits of fund mandates that board directors may hold and must not have time commitments of more than 1,920 hours annually (around 40 hours a week), unless they can justify how they manage their responsibilities, including through technical and administrative support.
- In Ireland, the Central Bank of Ireland (CBI) has updated its authorisation process for UCITS and AIFMD firms to ensure that it has all the information needed to document the assessments described in ESMA's opinion. The new information requirements include the rationale for the geographical distribution of planned activities, the objective justification for delegation arrangements in relation to critical functions and details of the due diligence undertaken during the selection process.

3 What further changes are expected in the period ahead?

The regulatory framework continues to evolve post-Brexit and changes may still occur locally or at European level:

- *Local development:* In October 2020, the CBI [published](#) a thematic review of fund management companies where they found that some firms were not able to demonstrate that they had carried out an appropriate level of due

diligence on their delegates and group policies. Affected asset managers have been updating their governance and oversight to ensure that they have all the necessary resources on the ground with the required autonomy, seniority and skillsets.

- *European development:* The EU is currently reviewing the AIFMD and is expected to publish its legislative proposal at some point in Q3 2021. In August 2020, ESMA sent a [letter](#) to the European Commission proposing significant changes to the current delegation model (though the letter also addressed a number of issues unrelated to post-Brexit as well). Some of the points made by ESMA were raised in the form of questions in the AIFMD review consultation paper. It remains to be seen whether the European Commission will include them in its final proposal and whether these will also extend to UCITS.



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