

FSMA_2020_16 of 17/11/2020

Regime applicable to UK asset managers and UK funds after Brexit

In this document:

- “**Brexit**” refers to the withdrawal of the UK from the EU regarding the provision of collective management activities and investment services.
- “**UK**” refers to the United Kingdom of Great Britain, Northern Ireland and to Gibraltar.
- “**Asset manager**” refers to UCITS management companies and AIF managers.
- “**AIFM Law**” refers to the Belgian Law of 19 April 2014 on AIFs and their managers.

I. Do you perform collective management activities in Belgium, as a UK appointed asset manager of Belgian UCITS or AIFs?

If so, after the date Brexit takes effect, you will have to stop conducting the collective investment activities you perform in Belgium as appointed manager under the EEA Passport regime.

Collective management activities include:

UCITS management companies	AIF managers
a) Management of the investment portfolio of the undertaking for collective investment	a) Management of the AIFs investment portfolio
	b) Risk management
b) Administration of the undertaking for collective investment	c) Administration of the AIF
c) Marketing securities of the undertakings for collective investment	d) Marketing units of AIFs

Any illegal performance of these activities in Belgium will be punishable by administrative and/or criminal sanctions.

II. Are you a UK asset manager providing investment services in Belgium?

If so, after the date Brexit takes effect, you will have to stop providing investment services in Belgium under the EEA UCITS/AIF Passport regime¹.

Investment services are the following:

UCITS management companies	AIF managers
a) Individual portfolio management	a) Individual portfolio management
b) Investment advice concerning one or more of the financial instruments listed in Annex 1, section C of Directive 2014/65/EU	b) Investment advice concerning one or more of the financial instruments listed in Annex 1, section C of Directive 2014/65/EU
	c) Reception and transmission of orders in relation to financial instruments

Any illegal performance of these activities in Belgium will be punishable by administrative and/or criminal sanctions.

III. Are you a UK AIF manager marketing AIFs in Belgium?

If so, after the date Brexit takes effect, you will become a third-country AIF manager.

Your notification made as an EEA AIF manager of EEA AIFs² will no longer allow you to continue to market AIFs in Belgium. However, there will be no impact on existing investors, who can remain in the fund or request redemption.

You may continue³ to market AIFs in Belgium as a third-country AIF manager, provided that:

- you send the appropriate [Third-country AIFM Notification Form](#) to e-notification.passporting@fsma.be, and
- your offer does not constitute a public offer within the meaning of the Belgian AIFM Law (the relevant criteria are detailed in the aforementioned form).

These funds may only be marketed to the public in Belgium under the conditions set out in question VI.

¹ Subject to the adoption by the King of transitional measures related to the continuity of existing contracts at the date Brexit takes effect, in accordance with article 20 of the Law of 3 April 2019 on the withdrawal of the United Kingdom from the European Union.

² In accordance with Articles 32 or 33 of the AIFM Directive and Articles 114 to 116 and 124 to 126 of the AIFM Law.

³ In accordance with Article 42 of the AIFM Directive and Articles 497 to 499 of the AIFM Law.

IV. Are you an EEA AIF manager - other than a UK AIF manager - marketing UK AIFs in Belgium?

If so, after the date Brexit takes effect, the UK AIFs you market will become third-country AIFs.

Your notification made as an EEA AIF manager of EEA AIFs⁴ will no longer allow you to continue to market UK AIFs in Belgium. However, there will be no impact on existing investors, who can remain in the fund or request redemption.

You may continue⁵ to market UK AIFs in Belgium, provided that:

- you send the appropriate [Third-country AIF Notification Form](#) to e-notification.passporting@fsma.be, and
- your offer does not constitute a public offer within the meaning of the Belgian AIFM Law (the relevant criteria are detailed in the aforementioned form).

These funds may only be marketed to the public in Belgium under the conditions set out in question V.

V. Are you an EEA UCITS management company - other than a UK UCITS management company - marketing UK UCITS in Belgium?

After the date Brexit takes effect, the UK UCITS you market will automatically be considered as third-country AIFs.

It is up to you to take any measure that you deem appropriate to mitigate the impact of the new AIF status and to inform investors appropriately of this status and of the consequences for investors, in terms of procedure and costs, if they request redemption.

You may continue to market these funds, henceforth classified as AIFs, providing that:

- you send the [Third-country AIF Notification Form](#) to e-notification.passporting@fsma.be, and
- your offer does not constitute a public offer within the meaning of the Belgian AIFM Law (the relevant criteria are detailed in the aforementioned form).

Third-country AIFs may only be marketed to the public in Belgium if⁶ (a) these funds comply with legal requirements applicable to foreign public AIFs, (b) appropriate cooperation arrangements between the FSMA and the UK supervisory authorities and the competent authorities of your home Member State are in place and (c) you have appointed a depositary for these funds.⁷

⁴ In accordance with Article 32 or 33 of the AIFM Directive and Articles 114 to 116 and 124 to 126 of the AIFM Law.

⁵ In accordance with Article 36 of the AIFM Directive and 494 to 496 of the AIFM Law.

⁶ In accordance with Article 503 of the AIFM Law.

⁷ In accordance with Article 21 of the AIFM Directive.

VI. Are you a UK UCITS management company marketing UK UCITS in Belgium?

After the date Brexit takes effect, the UK UCITS you market will automatically be considered as third-country AIFs.

It is up to you to take any measure that you deem appropriate to mitigate the impact of the new AIF status and to inform investors appropriately of this status and of the consequences for the investors, in terms of procedure and costs, if they request redemption.

You may continue to market these funds, henceforth classified as AIFs, providing that:

- you send the [Third-country AIFM Notification Form](#) to e-notification.passporting@fsma.be, and
- your offer does not constitute a public offer within the meaning of the Belgian AIFM Law (the relevant criteria are detailed in the aforementioned form).

Third-country AIFs may only be marketed to the public in Belgium if⁸ (a) these funds comply with legal requirements applicable to foreign public AIFs, (b) appropriate cooperation arrangements between the FSMA and the UK supervisory authorities are in place and (c) you are subject to a regime at least equivalent to Belgian AIF managers offering public AIFs.

VII. What about timing?

You can already send the relevant form before the date Brexit takes effect.

However, your notification will only have legal effect after the date Brexit takes effect. You may not start marketing the AIFs until you have received our confirmation that you may do so. We will send you an email to that effect.

⁸ As set out in article 504 of the AIFM Law.