



AUTORITÉ
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Full effect of Brexit on 1 January 2021: impact on the asset management sector

As the transition period following the exit of the United Kingdom from the European Union draws to a close, the Autorité des Marchés Financiers (AMF) is providing support to asset management companies to help them prepare for the consequences of this exit.

Third-country status of the United Kingdom as of 1 January 2021

The transition period resulting from the agreement concluded between the United Kingdom and the European Union on 31 January 2020 ends on 31 December 2020. During this transition period, the United Kingdom, although it is now a third country, has continued to apply EU law and all references to Member States in EU law have been understood as including the United Kingdom. This will no longer be the case as from 1 January 2021 when the United Kingdom's status as a third country will take full effect.

Transitional measures

Article 59 of Law No. 2020-734 of 17 June 2020 on the various provisions related to the health crisis as well as the withdrawal of the UK from the European Union authorises the French Government to proceed with the publication of decrees in order to "introduce appropriate rules for the management of undertakings for collective investment and equity savings plans, the assets or use of which comply with investment ratios or rules in European entities."

On this basis, Order n° 2020-1595 of 16th Decembre 2020, specified by Decree of 22 Decembre 2020, provides for a series of transitional measures concerning capital investment funds, equity savings plans (PEA) and equity savings plans intended for the financing of SMEs and mid-tier enterprises (PME-ETI PEA).

The purpose of these measures is to help market participants who are exposed to regulatory risk after 31 December 2020 carry out their transition without undue haste and in the best interests of investors. The time limits provided should thus allow management companies to adjust their investment strategy and assets under management, where necessary, in order to avoid the risk of non-compliance at the end of the transition period.

These transitional measures are similar to those that had been adopted in the event of a no-deal withdrawal of the UK from the European Union, by Order No. 2019-75 of 6 February 2019 and the decree of 22 March 2019, which have lapsed, and will apply as of 1 January 2021. They only concern the requirements for assets eligible for private equity funds and PEAs and PME-ETI PEAs. They do not deal with the applicable taxation, which will be explained in particular in the Public Finance - Tax Official Gazette (BOFIP).

Regarding PEA and PME-ETI PEAs: securities eligibility and disclosure requirements

The transitional measures concern securities registered in PEAs and PME-ETI PEAs as well as securities eligible for inclusion in the assets of collective investment undertakings (CIU) that may be registered in these plans. They benefit from a nine-month transition period defined in Article 3 of Order n° 2020-1595 of 16th Decembre 2020, and completed by Article 1 of the decree, i.e. up to 30 September 2021.

Until this date, the following securities continue to be eligible:

- securities issued by UK companies that have been regularly subscribed or acquired before 31 December 2020;
- securities issued by UK companies within the quota of 75% of CIUs, provided that these CIUs were eligible as at 31 December 2020; and
- Units or shares of UK UCITS regularly subscribed or acquired before 31 December 2020.

Information campaigns are planned for savers whose PEAs and PME-ETI PEAs are affected by the end of the transition period with the United Kingdom:

- management companies that manage CIUs that are eligible for the PEA or PME-ETI PEA should inform the account-keepers of these plans of their intention to comply or not comply with the eligibility rules at the end of the above-mentioned 9-month transition period. This information should be given before 28 February 2021, i.e. within two months, whatever the decision taken by the management company;
- only in the event of the loss of eligibility of a security or CIU may the PEA and PME-ETI PEA account-keepers inform each plan holder concerned before 30 April 2021, i.e. within 4 months.

These information requirements aim to enable investors to understand the impact that the end of the transition period with the UK will have on their plan and enable them, if they so wish, to make changes to their investments without rushing.

Regarding private equity funds

Article 3 of the order, completed by Article 2 of the decree, provides for transitional measures for certain private equity funds, i.e. retail private equity investment funds (FCPR), retail venture capital funds (FCPI) and retail local investment funds (FIP).

These measures are aimed at protecting the interests of investors who have invested in these funds which are often composed of illiquid assets, the disposal of which could be detrimental to them if this is done in haste:

- for retail private equity investment funds (FCPR): a transition period of 12 months, i.e. until 31 December 2021, during which securities admitted for trading on a UK market and issued by companies with a market capitalisation of under €150 million, subscribed or acquired before 31 December 2020, remain eligible for inclusion in the assets of these funds under the conditions defined in paragraph III of Article L. 214-28 of the Monetary and Financial Code, i.e. within the limit of 20% of the 50% quota of unlisted securities;
- for retail venture capital and retail local investment funds (FCPI): a grandfather clause for securities issued by UK companies held, directly or indirectly, by the above funds as at 31 December 2020. The securities of these companies will continue to be eligible, without a time limit, for inclusion into the assets of retail venture capital and retail local investment funds under the 70% quota. This grandfather clause extends to securities issued by UK companies that the above investment funds are obliged to acquire under an agreement concluded with other shareholders or with the issuer before 31 December 2020. These provisions also apply to overdraft facilities.

These transitional measures will also apply to professional private equity investment funds.

Situations to be anticipated

The AMF reminds the participants concerned of the following consequences, which are not exhaustive.

Effects on investments

Management companies must verify to what extent UK securities and funds will continue to be eligible for inclusion in the assets of UCITS, AIFs or the individual portfolios that they manage, as from the end of the transition period. If necessary, the priority objective of management companies should be to regularise the situation, taking into account the interests of investors.

The transformation of UK UCITS into third-country AIFs could also have consequences for institutional investors regarding compliance with the relevant investment rules.

Cross-border management of UCITS and AIFs

The expiry of the UK's transition period will end the possibility (i) for asset management companies authorised in France to benefit from the passport system provided by the UCITS and AIFM directives to manage UCITS and AIFs based in the UK and (ii) for management companies authorised in the UK to benefit from the same passport system to manage UCITS and AIFs based in France.

However, French asset management companies will be able to delegate the management of their French UCITS and AIFs to UK institutions in accordance with a cooperation agreement concluded on 1 February 2019 between the supervisory authorities of EU member countries and the UK regulator, the FCA.

Marketing of products and services

Passports for marketing products and services linked to the UCITS and AIFM Directives will no longer be able to be used by the UK as of 31 December 2020.

This means that it will no longer be possible (i) for asset management companies authorised in France to benefit from the passport system provided by the UCITS and AIFM directives to provide investment services in the UK and (ii) for management companies authorised in the UK to benefit from the same passport system to provide investment services in France.

The end of the transition period also means that the current UK-based UCITS will become third-country AIFs on 1 January 2021, since an investment fund must, among other conditions, be established in the European Union or the European Economic Area (EEA) to qualify as a UCITS.

UK-based UCITS that have become third country AIFs will no longer be able to benefit from the European passport which was possible because of their UCITS status, and which in particular enabled their marketing to retail investors in the EEA. These funds may therefore no longer be the subject of marketing operations in France (advertising, direct marketing, advice, etc.) for example with retail investors with a view to encourage them to subscribe.


Investors who, before 31 December 2020, had invested in UK-based UCITS, which have become third country AIFs, will nevertheless be able to keep their units or shares, but will no longer benefit from the protective rules stemming from the UCITS directive, in particular as regards information.

UK AIFs or AIFs managed by UK managers will also no longer benefit from the marketing passport that enabled them to be marketed in France to professional investors. As with the former UK-based UCITS, investors existing as at 31 December 2020 may keep the units or shares of UK AIFs that have become third country AIFs. However, these AIFs will no longer be subject to the regulations derived from the AIFM Directive.

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