

MISP should support supervisory convergence, not differentiated regimes

Asset Management Association Switzerland (AMAS) and Swiss Finance Council (SFC) members include large global asset and wealth management firms, many of which have substantial activities and investments in the EU. Our members operate as investment product manufacturers, distributors, and advisors, serving EU clients from both within the EU and on a cross-border basis, and non-EU clients investing in the EU.

As such, deepening the Single Market is a priority we share with the European Commission (Commission). To succeed, the Market Integration and Supervision package (MISP) must be targeted - cutting through existing obstacles rather than creating new ones. Our members believe that minimizing complexity is the key to delivering efficiency for investors and growth for Europe.

AMAS and the SFC applaud the Commission's intention to avoid imposing disproportionate demands on delegation frameworks. Delegation is a cornerstone of international finance and a vital driver of efficiency within the EU's AIF and broader fund markets (UCITS). This model provides savers in the EU and beyond with global expertise and diverse investment options, all while upholding stringent EU standards of investor protection. Through it, our members offer diverse range of products in the EU, mobilising and providing long-term capital, which helps fund EU companies and projects, creating jobs and promoting sustainable economic growth.

Consequently, AMAS and the SFC strongly advise against implementing the Commission's proposal of an intra EU group derogation framework as is. Unless it is extended to intra-group arrangements with entities outside the EU, the proposed derogation framework would unlevel the playing field by not considering the international nature of asset management business models and operational setups across the industry.

Our Concerns

The existing EU delegation framework has proven to be robust, effective, and supportive of a globally integrated and competitive European asset management market. It has enabled cross-border business models while ensuring high standards of investor protection, regulatory oversight, and operational flexibility across jurisdictions.

AMAS and the SFC support the objectives of simplification and supervisory efficiency pursued by the Savings and Investments Union (SIU). However, these objectives should not be pursued through differentiated regulatory treatment that risk undermining the consistency of the existing delegation framework and the integrity of the Single Rulebook.

The proposed derogation would fail to deliver the desired outcomes for multiple reasons:

- The derogation would apply only to intra-group arrangements within the EU. However, asset management groups tend to adopt similar standards across the group whether or not it is established in the EU. The delegated function is therefore performed in the same way regardless of where the group delegate is located, which means that intra-group arrangements are not inherently riskier simply because they involve a group entity established outside the EU. The Commission argues that the derogation can be limited to intra-EU arrangements because the EU provides a level of oversight and supervisory cooperation that cannot be replicated for third-country entities. In practice, however, ESMA and NCAs already

maintain ongoing cooperation with a broad range of non-EU supervisory authorities through Memoranda of Understanding (MoUs), including the Multilateral MoUs negotiated by ESMA.¹

- Asset managers utilize a wide array of operational structures, delegating functions from core portfolio management to back-office administration through various branch or subsidiary setups. Because these arrangements are so distinct, applying a "one-size-fits-all" formal derogation would be impractical and reductive.
- Legal liability rests with the asset manager, National Competent Authorities (NCAs) may interpret internal delegation obligations inconsistently. This fragmentation creates a "double standard" between internal and external outsourcing, which actively undermines the EU's goal of regulatory simplification.
- Existing frameworks may cancel out the intended benefits of the derogation. Asset managers within larger banking groups must still adhere to EBA outsourcing guidelines. Non-annexed functions (like IT, HR, or Compliance) fall under different regimes like DORA or AML rules, forcing managers to juggle multiple, conflicting sets of outsourcing requirements. Finally, transfer pricing rules remain in force, requiring formal contracts and profit-allocation documentation regardless of the derogation.

Our Recommendations

For the avoidance of doubt, the treatment of asset managers delegating activities must not differ according to whether they are headquartered inside or outside the EU.

Our view remains that maintaining the current principles-based framework while providing greater supervisory clarity would better support regulatory consistency, supervisory convergence, and the long-term competitiveness of the European asset management industry:

- The objectives of simplification and operational efficiency can be achieved through clarification via a recital and/or Level 2 and Level 3 guidance, enabling National Competent Authorities (NCAs) to apply a proportionate and risk-based supervisory approach, including for intra-group operating models. In this context, factors such as group integration, shared systems and infrastructure, governance standards, regulatory environment, and proven supervisory track record should be explicitly recognised as relevant elements in the assessment of delegation arrangements.
- Ensure that other regulatory frameworks, such as the EBA guidelines on outsourcing and DORA, do not negate the benefits stemming from the UCITS/AIFMD risk-based approach.

However, if the derogation is to be further pursued, the legislators would need to ensure that:

- The derogation regime extends to intra-group arrangements with entities outside the EU provided MoUs exist between an EU NCA and its non-EU peers.

¹Under the AIFMD, EU competent authorities maintain dedicated cooperation arrangements with a broad range of third-country supervisors - including FINMA, the Swiss authority - that expressly extend to the cross-border supervision of delegates. Under the UCITS Directive, Article 13 requires that, where investment management is delegated to a third-country undertaking, cooperation between the supervisory authorities concerned be ensured, a condition met through the IOSCO Multilateral Memorandum of Understanding and the bilateral securities MoUs to which EU competent authorities and their third-country counterparts are party.

- The scope of the derogation regime is significantly expanded by deleting the ‘EU group’ definition. It would also apply to entities of a group not headquartered in the EU.
- The derogation applies to functions that do not require regulatory authorization including non-core functions (Annex II UCITS).
- Asset managers only comply with their sectoral outsourcing rules (UCITS/AIFMD) to ensure that the derogation achieves its simplification objectives by amending the CRD and IFD.
- The applicability of the proposed Articles 13(3) UCITSD and 20(6a) AIFMD is extended to distributors domiciled in non-EU countries that act on their own behalf.