

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (Text with EEA relevance)

CHAPTER VI

RIGHTS OF EU AIFMs TO MARKET AND MANAGE EU AIFs IN THE UNION

Article 31

Marketing of units or shares of EU AIFs in the home Member State of the AIFM

1 Member States shall ensure that an authorised EU AIFM may market units or shares of any EU AIF that it manages to professional investors in the home Member State of the AIFM as soon as the conditions laid down in this Article are met.

Where the EU AIF is a feeder AIF the right to market referred to in the first subparagraph is subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.

2 The AIFM shall submit a notification to the competent authorities of its home Member State in respect of each EU AIF that it intends to market.

That notification shall comprise the documentation and information set out in Annex III.

3 Within 20 working days following receipt of a complete notification file pursuant to paragraph 2, the competent authorities of the home Member State of the AIFM shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in paragraph 2. The competent authorities of the home Member State of the AIFM shall prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with this Directive or the AIFM otherwise does not or will not comply with this Directive. In the case of a positive decision, the AIFM may start marketing the AIF in its home Member State from the date of the notification by the competent authorities to that effect.

In so far as they are different, the competent authorities of the home Member State of the AIFM shall also inform the competent authorities of the AIF that the AIFM may start marketing units or shares of the AIF.

4 In the event of a material change to any of the particulars communicated in accordance with paragraph 2, the AIFM shall give written notice of that change to the competent authorities of its home Member State at least 1 month before implementing the change as regards any changes planned by the AIFM, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the relevant competent authorities shall inform the AIFM without undue delay that it is not to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this Directive or the AIFM otherwise no longer

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complies with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46, including, if necessary, the express prohibition of marketing of the AIF.

5 In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine:

- a the form and content of a model for the notification letter referred to in paragraph 2; and
- b the form of the written notice referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

6 Without prejudice to Article 43(1), Member States shall require that AIFs managed and marketed by AIFMs be marketed only to professional investors.

Article 32

Marketing of units or shares of EU AIFs in Member States other than in the home Member State of the AIFM

1 Member States shall ensure that an authorised EU AIFM may market units or shares of an EU AIF that it manages to professional investors in another Member State than the home Member State of the AIFM as soon as the conditions laid down in this Article are met.

Where the EU AIF is a feeder AIF the right to market referred to in the first subparagraph is subject to the condition that the master AIF is also an EU AIF and is managed by an authorised EU AIFM.

2 The AIFM shall submit a notification to the competent authorities of its home Member State in respect of each EU AIF that it intends to market.

That notification shall comprise the documentation and information set out in Annex IV.

3 The competent authorities of the home Member State of the AIFM shall, no later than 20 working days after the date of receipt of the complete notification file referred to in paragraph 2, transmit the complete notification file to the competent authorities of the Member States where it is intended that the AIF be marketed. Such transmission shall occur only if the AIFM's management of the AIF complies with and will continue to comply with this Directive and if the AIFM otherwise complies with this Directive.

The competent authorities of the home Member State of the AIFM shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

4 Upon transmission of the notification file, the competent authorities of the home Member State of the AIFM shall, without delay, notify the AIFM about the transmission. The AIFM may start marketing the AIF in the host Member State of the AIFM as of the date of that notification.

In so far as they are different, the competent authorities of the home Member State of the AIFM shall also inform the competent authorities of the AIF that the AIFM may start marketing the units or shares of the AIF in the host Member State of the AIFM.

5 Arrangements referred to in point (h) of Annex IV shall be subject to the laws and supervision of the host Member State of the AIFM.

6 Member States shall ensure that the notification letter by the AIFM referred to in paragraph 2 and the statement referred to in paragraph 3 are provided in a language customary in the sphere of international finance.

Member States shall ensure that electronic transmission and filing of the documents referred to in paragraph 3 are accepted by their competent authorities.

7 In the event of a material change to any of the particulars communicated in accordance with paragraph 2, the AIFM shall give written notice of that change to the competent authorities of its home Member State at least 1 month before implementing a planned change, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the relevant competent authorities shall inform the AIFM without undue delay that it is not to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Directive or the AIFM otherwise would no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46, including, if necessary, the express prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this Directive, or the compliance by the AIFM with this Directive otherwise, the competent authorities of the home Member State of the AIFM shall, without delay, inform the competent authorities of the host Member State of the AIFM of those changes.

8 In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine:

- a the form and content of a model for the notification letter referred to in paragraph 2;
- b the form and content of a model for the statement referred to in paragraph 3;
- c the form of the transmission referred to in paragraph 3; and
- d the form of the written notice referred to in paragraph 7.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

9 Without prejudice to Article 43(1), Member States shall require that the AIFs managed and marketed by the AIFM be marketed only to professional investors.

Article 33

Conditions for managing EU AIFs established in other Member States

1 Member States shall ensure that an authorised EU AIFM may manage EU AIFs established in another Member State either directly or by establishing a branch, provided that the AIFM is authorised to manage that type of AIF.

2 An AIFM intending to manage EU AIFs established in another Member State for the first time shall communicate the following information to the competent authorities of its home Member State:

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- a the Member State in which it intends to manage AIFs directly or establish a branch;
- b a programme of operations stating in particular the services which it intends to perform and identifying the AIFs it intends to manage.

3 If the AIFM intends to establish a branch, it shall provide the following information in addition to that referred to in paragraph 2:

- a the organisational structure of the branch;
- b the address in the home Member State of the AIF from which documents may be obtained;
- c the names and contact details of the persons responsible for the management of the branch.

4 The competent authorities of the home Member State of the AIFM shall, within 1 month of receiving the complete documentation in accordance with paragraph 2 or within 2 months of receiving the complete documentation in accordance with paragraph 3, transmit the complete documentation to the competent authorities of the host Member State of the AIFM. Such transmission shall occur only if the AIFM's management of the AIF complies, and will continue to comply, with this Directive and the AIFM otherwise complies with this Directive.

The competent authorities of the home Member State of the AIFM shall enclose a statement to the effect that the AIFM concerned is authorised by them.

The competent authorities of the home Member State of the AIFM shall immediately notify the AIFM about the transmission.

Upon receipt of the transmission notification the AIFM may start to provide its services in its host Member State.

5 The host Member State of the AIFM shall not impose any additional requirements on the AIFM concerned in respect of the matters covered by this Directive.

6 In the event of a change to any of the information communicated in accordance with paragraph 2, and, where relevant, paragraph 3, an AIFM shall give written notice of that change to the competent authorities of its home Member State at least 1 month before implementing planned changes, or immediately after an unplanned change has occurred.

If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this Directive or the AIFM would otherwise no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall inform the AIFM without undue delay that it is not to implement the change.

If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this Directive or the AIFM otherwise would no longer comply with this Directive, the competent authorities of the home Member State of the AIFM shall take all due measures in accordance with Article 46.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this Directive, or the compliance by the AIFM with this Directive otherwise, the competent authorities of the home Member State of the AIFM shall, without undue delay, inform the competent authorities of the host Member States of the AIFM of those changes.

7 In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2 and 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8 In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2 and 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.