

Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (repealed)

TITLE IV

COMPETENT AUTHORITIES

CHAPTER II

COOPERATION BETWEEN COMPETENT AUTHORITIES OF DIFFERENT MEMBER STATES

Article 56

Obligation to cooperate

1 Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive, making use of their powers whether set out in this Directive or in national law.

Competent authorities shall render assistance to competent authorities of the other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities.

In order to facilitate and accelerate cooperation, and more particularly exchange of information, Member States shall designate one single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph.

2 When, taking into account the situation of the securities markets in the host Member State, the operations of a regulated market that has established arrangements in a host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the home and host competent authorities of the regulated market shall establish proportionate cooperation arrangements.

3 Member States shall take the necessary administrative and organisational measures to facilitate the assistance provided for in paragraph 1.

Competent authorities may use their powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in that Member State.

4 Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify this in as specific a manner as possible to the competent authority of the other Member State. The latter authority shall take appropriate action. It shall inform the notifying competent authority of the outcome

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of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the competent authority that has forwarded the information.

5 In order to ensure the uniform application of paragraph 2 the Commission may adopt, in accordance with the procedure referred to in Article 64(2), implementing measures to establish the criteria under which the operations of a regulated market in a host Member State could be considered as of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.

Article 57

Cooperation in supervisory activities, on-the-spot verifications or in investigations

A competent authority of one Member State may request the cooperation of the competent authority of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation. In the case of investment firms that are remote members of a regulated market the competent authority of the regulated market may choose to address them directly, in which case it shall inform the competent authority of the home Member State of the remote member accordingly.

Where a competent authority receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers:

- (a) carry out the verifications or investigations itself; or
- (b) allow the requesting authority to carry out the verification or investigation; or
- (c) allow auditors or experts to carry out the verification or investigation.

Article 58

Exchange of information

1 Competent authorities of Member States having been designated as contact points for the purposes of this Directive in accordance with Article 56(1) shall immediately supply one another with the information required for the purposes of carrying out the duties of the competent authorities, designated in accordance to Article 48(1), set out in the provisions adopted pursuant to this Directive.

Competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.

2 The competent authority having been designated as the contact point may transmit the information received under paragraph 1 and Articles 55 and 63 to the authorities referred to in Article 49. They shall not transmit it to other bodies or natural or legal persons without the express agreement of the competent authorities which disclosed it and solely for the purposes for which those authorities gave their agreement, except in duly justified circumstances. In this last case, the contact point shall immediately inform the contact point that sent the information.

3 Authorities as referred to in Article 49 as well as other bodies or natural and legal persons receiving confidential information under paragraph 1 of this Article or under Articles 55 and 63 may use it only in the course of their duties, in particular:

- a to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed by Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms;
- b to monitor the proper functioning of trading venues;
- c to impose sanctions;
- d in administrative appeals against decisions by the competent authorities;
- e in court proceedings initiated under Article 52; or
- f in the extra-judicial mechanism for investors' complaints provided for in Article 53.

4 The Commission may adopt, in accordance with the procedure referred to in Article 64(2), implementing measures concerning procedures for the exchange of information between competent authorities.

5 Articles 54, 58 and 63 shall not prevent a competent authority from transmitting to central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive.

Article 59

Refusal to cooperate

A competent authority may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification or supervisory activity as provided for in Article 57 or to exchange information as provided for in Article 58 only where:

- (a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of the State addressed;
- (b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed;
- (c) final judgment has already been delivered in the Member State addressed in respect of the same persons and the same actions.

In the case of such a refusal, the competent authority shall notify the requesting competent authority accordingly, providing as detailed information as possible.

Article 60

Inter-authority consultation prior to authorisation

1 The competent authorities of the other Member State involved shall be consulted prior to granting authorisation to an investment firm which is:

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- a a subsidiary of an investment firm or credit institution authorised in another Member State; or
 - b a subsidiary of the parent undertaking of an investment firm or credit institution authorised in another Member State; or
 - c controlled by the same natural or legal persons as control an investment firm or credit institution authorised in another Member State.
- 2 The competent authority of the Member State responsible for the supervision of credit institutions or insurance undertakings shall be consulted prior to granting an authorisation to an investment firm which is:
- a a subsidiary of a credit institution or insurance undertaking authorised in the Community; or
 - b a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the Community; or
 - c controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in the Community.
- 3 The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business involved in the management of another entity of the same group. They shall exchange all information regarding the suitability of shareholders or members and the reputation and experience of persons who effectively direct the business that is of relevance to the other competent authorities involved, for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

Article 61

Powers for host Member States

- 1 Host Member States may, for statistical purposes, require all investment firms with branches within their territories to report to them periodically on the activities of those branches.
- 2 In discharging their responsibilities under this Directive, host Member States may require branches of investment firms to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them for the cases provided for in Article 32(7). Those requirements may not be more stringent than those which the same Member State imposes on established firms for the monitoring of their compliance with the same standards.

Article 62

Precautionary measures to be taken by host Member States

- 1 Where the competent authority of the host Member State has clear and demonstrable grounds for believing that an investment firm acting within its territory under the freedom to provide services is in breach of the obligations arising from the provisions adopted pursuant to this Directive or that an investment firm that has a branch within its territory is in breach of the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authority of the host Member State, it shall refer those findings to the competent authority of the home Member State.

If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. This shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories. The Commission shall be informed of such measures without delay.

2 Where the competent authorities of a host Member State ascertain that an investment firm that has a branch within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the investment firm concerned to put an end to its irregular situation.

If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall take all appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State.

If, despite the measures taken by the host Member State, the investment firm persists in breaching the legal or regulatory provisions referred to in the first subparagraph in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, in so far as necessary, to prevent that investment firm from initiating any further transactions within its territory. The Commission shall be informed of such measures without delay.

3 Where the competent authority of the host Member State of a regulated market or an MTF has clear and demonstrable grounds for believing that such regulated market or MTF is in breach of the obligations arising from the provisions adopted pursuant to this Directive, it shall refer those findings to the competent authority of the home Member State of the regulated market or the MTF.

If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the said regulated market or the MTF persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. This shall include the possibility of preventing the said regulated market or the MTF from making their arrangements available to remote members or participants established in the host Member State. The Commission shall be informed of such measures without delay.

4 Any measure adopted pursuant to paragraphs 1, 2 or 3 involving sanctions or restrictions on the activities of an investment firm or of a regulated market shall be properly justified and communicated to the investment firm or to the regulated market concerned.