

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 IX

COMPETENT AUTHORITIES

SECTION 2

Cooperation between different competent authorities

Article 54

Cooperation in supervisory activities

1 The competent authorities of one Member State may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation in the territory of the latter within the framework of their powers pursuant to this Directive.

Where the competent authorities receive a request with respect to an on-the-spot verification or an investigation, it shall perform one of the following:

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

2 In the case referred to in point (a) of paragraph 1 the competent authority of the Member State which has requested cooperation may ask that members of its own personnel assist the personnel carrying out the verification or investigation. The verification or investigation shall, however, be the subject of the overall control of the Member State on whose territory it is conducted.

In the case referred to in point (b) of paragraph 1 the competent authority of the Member State on whose territory the verification or investigation is carried out may request that members of its own personnel assist the personnel carrying out the verification or investigation.

3 Competent authorities may refuse to exchange information or to act on a request for cooperation in carrying out an investigation or on-the-spot verification only in the following cases:

- a the investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public order of the Member 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.

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The competent authorities shall inform the requesting competent authorities of any decision taken under the first subparagraph, stating the reasons therefor.

4 In order to ensure uniform application of this Article, ESMA may develop draft implementing technical standards to establish common procedures for competent authorities to cooperate in on-the-spot verifications and investigations.

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.