

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 50

Obligation to cooperate

1 The competent authorities of the Member States shall cooperate with each other and with ESMA and the ESRB whenever necessary for the purpose of carrying out their duties under this Directive or of exercising their powers under this Directive or under national law.

2 Member States shall facilitate the cooperation provided for in this Section.

3 Competent authorities shall 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 their own Member State.

4 The competent authorities of the Member States shall immediately supply one another and ESMA with the information required for the purposes of carrying out their duties under this Directive.

The competent authorities of the home Member State shall forward a copy of the relevant cooperation arrangements entered into by them in accordance with Article 35, 37 and/or 40 to the host Member States of the AIFM concerned. The competent authorities of the home Member State shall, in accordance with procedures relating to the applicable regulatory technical standards referred to in Article 35(14), Article 37(17) or Article 40(14), forward the information received from third-country supervisory authorities in accordance with cooperation arrangements with such supervisory authorities in respect of an AIFM, or, where relevant, pursuant to Article 45(6) or (7), to the competent authorities of host Member State of the AIFM concerned.

Where a competent authority of a host Member State considers that the contents of the cooperation arrangement entered into by the home Member State of the AIFM concerned in accordance with Article 35, 37 and/or 40 does not comply with what is required pursuant to the applicable regulatory technical standards, the competent authorities concerned may refer the matter to the ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

5 Where the competent authorities of one Member State have clear and demonstrable grounds to suspect that acts contrary to this Directive are being or have been carried out by an AIFM not subject to supervision of those competent authorities, they shall notify ESMA and

the competent authorities of the home and host Member States of the AIFM concerned thereof in as specific a manner as possible. The recipient authorities shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the notifying competent authority.

6 In order to ensure uniform application of this Directive concerning the exchange of information, ESMA may develop draft implementing technical standards to determine the conditions of application with regard to the procedures for exchange of information between competent authorities and between the competent authorities and ESMA.

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.

Article 51

Transfer and retention of personal data

1 With regard to transfer of personal data between competent authorities, competent authorities shall apply Directive 95/46/EC. With regard to transfer of personal data by ESMA to the competent authorities of a Member State or of a third country, ESMA shall comply with Regulation (EC) No 45/2001.

2 Data shall be retained for a maximum period of 5 years.

Article 52

Disclosure of information to third countries

1 The competent authority of a Member State may transfer to a third country data and the analysis of data on a case-by-case basis where the conditions laid down in Article 25 or 26 of Directive 95/46/EC are met and where the competent authority of the Member State is satisfied that the transfer is necessary for the purpose of this Directive. The third country shall not transfer the data to another third country without the express written authorisation of the competent authority of the Member State.

2 The competent authority of a Member State shall only disclose information received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.

Article 53

Exchange of information relating to the potential systemic consequences of AIFM activity

1 The competent authorities of the Member States responsible for the authorisation and/or supervision of AIFMs under this Directive shall communicate information to the competent authorities of other Member States where this is relevant for monitoring and responding to the potential implications of the activities of individual AIFMs or AIFMs collectively for the

stability of systemically relevant financial institutions and the orderly functioning of markets on which AIFMs are active. ESMA and the ESRB shall also be informed and shall forward this information to the competent authorities of the other Member States.

2 Subject to the conditions laid down in Article 35 of Regulation (EU) No 1095/2010, aggregated information relating to the activities of AIFMs under their responsibility shall be communicated by the competent authorities of the AIFM to ESMA and the ESRB.

3 The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the content of the information to be exchanged pursuant to paragraph 1.

4 The Commission shall adopt implementing acts specifying the modalities and frequency of the information to be exchanged pursuant to paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 59(2).

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.

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.

Article 55

Dispute settlement

In case of disagreement between competent authorities of Member States on an assessment, action or omission of one competent authority in areas where this Directive requires cooperation or coordination between competent authorities from more than one Member State, competent authorities may refer the matter to the ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.