

**Submission Date**

28/03/2023

# ESMA\_QA\_711

Status: Answer Published

## **Additional Information**

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### **Level 1 Regulation**

Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

### **Topic**

Cross-border distribution of funds

## **Subject Matter**

Notification upon establishment of a branch

## **Question**

When an AIFM sets up a branch in another Member State for the sole purpose of carrying out any activity referred to in point (2)(c) of Annex I to the AIFMD, such as real estate administration activities, does the establishment of the branch have to be notified by the AIFM to the competent authorities of its home Member State pursuant to Article 33 (2) and (3) of the AIFMD?

## ESMA Answer

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18-06-2024

Original language

Answer provided by the European Commission

No. Article 33 (1)(a), (2) and (3) AIFMD requires an EU-authorised AIFM to notify the competent authorities of its home Member State when it intends, either directly or by establishing a branch, to manage EU AIFs established in another Member State.

Point 1 of Annex I to AIFMD lists the investment management functions which an AIFM must at least perform when managing an AIF and which must be notified to the competent authorities of the AIFM's home Member State when they are carried out in another Member State either directly or through a branch.

The functions listed in point 2 of Annex I AIFMD may be additionally performed by an AIFM in the course of the collective management of an AIF. These functions are ancillary to the activities referred to in point 1 of Annex I to AIFMD and cannot be exercised independently from those.

Therefore, when an AIFM intends to carry out in another Member State solely the functions referred to in point 2 of Annex I to AIFMD either directly or through establishing a branch, a notification under Article 33(2) and (3) AIFMD is not required.

However, the AIFM may still need to provide information to the competent authorities of its home Member State under different legal bases (e.g. Article 7(2)(c) on the requirement to provide upon authorisation a program of activity setting out the organisational structure of the AIFM).

*The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities.*

*The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.*