



Reply to ESMA's draft technical advice on Alternative Investment Fund Managers Directive in relation to supervision and third countries

The Federation of the Dutch Pension Funds on behalf of its members, representing the Dutch pension funds, wishes to thank you for the opportunity to respond to the ESMA's draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive in relation to supervision and third countries (ESMA/2011/270). Please note that our response is only relevant if, and / or in as far, pension pooling funds are subject to the AIFM directive. From our point of view we would like to respond to the first question that was raised in the underlying technical advice as this is an important issue to our industry.

Q1. Do you agree with the above proposal? If not, please give reasons.

Under article 20 (1) (d) of the AIFMD the cooperation between the competent authorities of the home Member State of the AIFM and the supervisory authority of the undertaking should be ensured. From paragraph 1 of Box 1 we can learn that in order to fulfill this requirement ESMA proposes a written co-operation agreement between the two authorities. Under 6 of the explanatory text it is mentioned that the right of the competent authorities should be well-grounded and *based on arrangements in place before the delegation starts*.

This last remark in italics is of great concern to us. There is no transposition rule and therefore this requirement will become effective as of July 2013. Currently portfolio managements activities are delegated to undertakings in various countries globally spread, as these undertakings have the specialized knowledge of the local markets. In practice most of the third party undertakings who are providing portfolio management services to us will meet the conditions of article 20 (1) (c) AIFMD. It is probable that the other requirements of article 20 (1) can also be met, however whether or not the authorities of the home Member State will have concluded the co-operation agreements with all the (globally spread) relevant authorities before July 2013 is uncertain and lies outside of our sphere of influence. We will also not know in advance whether this particular requirement of the delegation provisions will be met. In our view this uncertainty is detrimental to the market and the currently existing delegation contracts. We would therefore urge ESMA to reconsider this and provide for an alternative until such time as all co-operations agreements are in place. We suggest that an alternative could be found in the form of a prior approval that could be obtained from the home Member State authorities in the absence of written co-operation agreements.

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