Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

29 July 2024*

(Reference for a preliminary ruling – Approximation of laws – Directive 2011/61/EU – Alternative investment fund managers (AIFMs) – Operating conditions – Article 13 – AIFM remuneration policies and practices – Scope *ratione temporis* – Article 61 – Transitional provisions)

In Case C-174/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 15 March 2023, received at the Court on 21 March 2023, in the proceedings

HJ,

IK,

LM

v

Twenty First Capital SAS,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz, P.G. Xuereb (Rapporteur), A. Kumin and I. Ziemele, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– HJ, IK and LM, by R. Froger, avocat,

– Twenty First Capital SAS, by G. Perrot, avocat,

– the French Government, by B. Fodda, E. Leclerc, J.B. Merlin and S. Royon, acting as Agents,

* Language of the case: French.

– the European Commission, by C. Auvret, G. Goddin and H. Tserepa-Lacombe, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 February 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13 and Article 61(1) of 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 (OJ 2011 L 174, p. 1).

2 The request has been made in proceedings between HJ, IK and LM, on the one hand, and Twenty First Capital SAS, ('the company TFC'), on the other, concerning the enforcement of an agreement providing for remuneration to be paid by the latter company.

Legal context

European Union law

3 Recital 24 of Directive 2011/61 states:

'In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risk and control of risk-taking behaviour by individuals, there should be an express obligation for [alternative investment fund managers; 'AIFMs'] to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of AIFs they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should at least include senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.'

4 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive lays down the rules for the authorisation, ongoing operation and transparency of the managers … which manage and/or market [alternative investment funds; AIFs] in the [European] Union.'

5 Letter (b) of point 1 of Article 4 of that directive, entitled 'Definitions', provides that, for the purposes of that directive, the term 'AIFMs' means 'legal persons whose regular business is managing one or more AIFs'.

6 Article 6 of Directive 2011/61, entitled 'Conditions for taking up activities as AIFM' and contained in Chapter II of that directive, entitled 'Authorisation of AIFMs', provides, in paragraph 1 thereof:

'Member States shall ensure that no AIFMs manage AIFs unless they are authorised in accordance with this Directive.

AIFMs authorised in accordance with this Directive shall meet the conditions for authorisation established in this Directive at all times.'

7 Article 7 of that directive, entitled 'Application for authorisation', provides:

'1. Member States shall require that AIFMs apply for authorisation from the competent authorities of their home Member State.

2. Member States shall require that an AIFM applying for an authorisation shall provide the following information relating to the AIFM to the competent authorities of its home Member State:

…

(d) information on the remuneration policies and practices pursuant to Article 13;

…'

8 Article 8 of that directive, entitled 'Conditions for granting authorisation', provides, in paragraph 1 thereof:

'The competent authorities of the home Member State of the AIFM shall not grant authorisation unless:

(a) they are satisfied that the AIFM will be able to meet the conditions of this Directive;

…

Authorisation shall be valid for all Member States.'

9 Article 12 of Directive 2011/61, entitled 'General principles', provides, in paragraph 1 thereof:

'Member States shall ensure that, at all times, AIFMs:

(a) act honestly, with due skill, care and diligence and fairly in conducting their activities;

…

(e) comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;

…'

10 Article 13 of that directive, entitled 'Remuneration', which is contained in Chapter III thereof, entitled 'Operating conditions for AIFMs', provides:

'1. Member States shall require AIFMs to have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as

senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage, that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage.

The AIFMs shall determine the remuneration policies and practices in accordance with Annex II.

2. The [European Securities and Markets Authority (ESMA)] shall ensure the existence of guidelines on sound remuneration policies which comply with Annex II. …'

11 Article 61 of that directive, entitled 'Transitional provisions', provides in paragraph 1 thereof:

'AIFMs performing activities under this Directive before 22 July 2013 shall take all necessary measures to comply with national law stemming from this Directive and shall submit an application for authorisation within [one] year of that date.'

12 Article 66 of that directive, headed 'Transposition', provides:

'1. By 22 July 2013, Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the [European] Commission the text of those provisions and a correlation table between those provisions and this Directive.

2. Member States shall apply the laws, regulations and administrative provisions referred to in paragraph 1 from 22 July 2013.

…'

13 In accordance with Article 70 thereof, Directive 2011/61 entered into force on the twentieth day following that of its publication in the *Official Journal of the European Union*, which took place on 1 July 2011.

French law

14 Directive 2011/61 was transposed into French law by Ordonnance n° 2013-676, du 25 juillet 2013, modifiant le cadre juridique de la gestion d'actifs (Order No 2013-676 of 25 July 2013 amending the legal framework for asset management) (JORF of 27 July 2013, text No 9), which entered into force on 28 July 2013 and which, inter alia, inserted into the Code monétaire et financier (French Monetary and Financial Code) Article L. 533-22-2, reproducing the provisions of Article 13 of that directive.

15 Article 33(I) of Order No 2013-676 contains a transitional provision worded as follows:

'Management companies performing, on the date of publication of this order, activities as provided for in the provisions contained herein shall apply for authorisation as asset management companies as defined in Article L. 532-9 of the French Monetary and Financial Code, in the version resulting from that order, by 22 July 2014.'

16 The explanatory note to Décret nº 2013-687 du 25 juillet 2013, pris pour l'application de l'ordonnance nº 2013-676, du 25 juillet 2013, modifiant le cadre juridique de la gestion d'actifs (Decree No 2013-687 of 25 July 2013 implementing Order No 2013-676 of 25 July 2013 amending the legal framework for asset management (JORF of 30 July 2013, text No 3) includes the following statement: 'Entry into force: management companies performing activities as provided for in the provisions referred to in the present decree on the date of its publication shall take all the necessary measures to comply with its provisions and shall submit an appropriate application for authorisation by no later than 22 July 2014 …'

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 In March 2014, R Participations, a company established by HJ with LM and IK as partners, sold three collective investment undertakings dedicated to investments in emerging markets to Company T by way of a transfer of business. HJ became an employee of Company T.

18 With a view to organising the takeover of that business by the company TFC, HJ entered into an agreement with that company, on 5 June 2014, under the terms of which the company TFC promised to recruit HJ and, on 27 June 2014, a partnership agreement providing for various remunerations for HJ, IK and LM ('the partnership agreement').

19 On 24 October 2014, Company T transferred to the company TFC a part of its business comprising the three collective investment undertakings dedicated to investment in the emerging markets referred to in paragraph 16 of the present judgment.

20 On 11 December 2014, HJ joined the company TFC as a board member, managing director and second-most-senior manager of that company.

21 On 24 December 2015 and 6 January 2016, HJ and IK sued the company TFC for enforcement of the partnership agreement and the payment of damages. LM intervened voluntarily in those proceedings. By a counterclaim, the company TFC sought a declaration as to the nullity of that agreement.

22 By judgment of 10 January 2019, the tribunal de grande instance de Paris (Regional Court, Paris, France) annulled the partnership agreement on the ground that the remuneration provided for in that agreement infringed the provisions of Article L. 533-22-2 of the French Monetary and Financial Code, after finding that the company TFC managed at least one AIF, and rejected the applications of HJ, IK and LM seeking performance of that agreement and the payment of damages in connection with the non-performance of that agreement.

23 By a judgment delivered on 8 February 2021, the cour d'appel de Paris (Court of Appeal, Paris, France) upheld that judgment.

24 HJ, IK and LM brought an appeal on a point of law against that judgment before the Cour de cassation (Court of Cassation, France), which is the referring court.

25 The referring court states that the appellants in the main proceedings submit that it follows from Article 33(I) of Order No 2013-676, as interpreted in the light of Article 61(1) of Directive 2011/61, that managers had a period of one year from 22 July 2013, the deadline for transposition of that directive, to comply with the rules on remuneration practices for AIFs laid down in

national legislation and to submit an application for authorisation. Stating that the company TFC had obtained its authorisation only on 18 August 2014, the appellants take the view that those rules were not applicable to that company on the date on which the partnership agreement was concluded, on 27 June 2014, and applied only to the variable remunerations paid by the company TFC in 2016, in respect of 2015. They submit, in the alternative, that those rules were not, in any event, binding on the date on which the partnership agreement was concluded.

26 The referring court states that, in support of their analysis, the appellants in the main proceedings rely on three documents.

27 First, the appellants in the main proceedings rely on a document drawn up by the Commission, in English, entitled 'AIFMD Q&As from the European Commission', from which it is apparent that 'during the one year transitional period, AIFMs are expected to comply, on a best efforts basis, with the requirements of the national law transposing [Directive 2011/61]. The AIFM's obligation to seek an authorisation … is legally binding, but only needs to be complied with within a year of the entry into force of the Directive. In respect of other requirements contained in [Directive 2011/61] (such as … remuneration …), an AIFM that exists at the date of entry into force of [Directive 2011/61], shall – already during the transitional period – take all necessary measures (i.e., expend its best efforts) to comply with [Directive 2011/61] in respect of all relevant activities undertaken subsequent to the entry into force of [that directive] (22 July 2013). After the transitional period, all of the obligations arising under [Directive 2011/61] are legally binding.'

28 Second, the appellants in the main proceedings rely on a list of 'Questions and Answers – Application of [Directive 2011/61]', published by ESMA, in which it is stated:

'… Once a firm becomes authorised under [Directive 2011/61], it becomes subject to the [Directive 2011/61] remuneration rules and the Remuneration Guidelines. Therefore, the relevant rules should start applying as of the date of authorisation.

However, as for the rules on variable remuneration … AIFMs should apply them for the calculation of payments relating to new awards of variable remuneration to their *identified staff* (as defined in the Remuneration Guidelines) for performance periods following that in which they become authorised. So the [Directive 2011/61] regime on variable remuneration should apply only to full performance periods and should first apply to the first full performance period after the AIFM becomes authorised.

For example: … for an existing AIFM whose accounting period ends on 31 December which submits an application for authorisation by 22 July 2014 and obtains an authorisation after that date (including when the authorisation is obtained after 31 December 2014), [Directive 2011/61] rules on variable remuneration should apply to the calculation of payments relating to the 2015 accounting period.'

29 Third, the appellants in the main proceedings rely on the *Guide AIFM – Rémunération* (AIFM Guide – Remuneration), published by the Autorité des marchés financiers (AMF) (Financial Markets Authority, France), the French authority responsible for ensuring the protection of savings invested in financial products, informing investors and ensuring the proper functioning of the markets. That guide provides:

'Pursuant to Article 61[1] of [Directive 2011/61], management companies in existence on 22 July 2013 will have a period of one year until 22 July 2014 to comply with the obligations under [Directive 2011/61] and to apply for authorisation from their competent authority.

Thus, there are three possible scenarios:

– management companies obtaining their AIFM authorisation between 22 July 2013 and 31 December 2013: the measures provided for by the position on AIFM remunerations concerning remuneration will apply to the 2014 accounting year (for the variable remuneration paid in 2015);

– management companies obtaining their AIFM authorisation between 1 January 2014 and 22 July 2014: the measures provided for by the position on AIFM remunerations concerning remuneration will apply to the 2015 accounting year for variable remuneration paid in 2016;

– thereafter, new management companies obtaining their AIFM authorisation in year N, after 22 July 2014, will have the same logic applied: the first accounting year to be taken into account for the application of the measures provided for by the position on AIFM remunerations will be year N+1 for the variable remuneration paid in N+2.'

30 The referring court states that the company TFC takes the view that the provisions of Article L. 533-22-2 of the French Monetary and Financial Code were applicable on 27 June 2014, the day on which the partnership agreement was concluded, to the extent that, while Order No 2013-676 which introduced that provision provides for a deferred entry into force of certain transposition provisions, that is not the case for those provisions requiring operators to establish for directors of AIFMs remuneration policies and practices that are 'consistent with sound and effective risk management'. The company TFC further argues that, even if AIFMs are given a period of time to comply with the new provisions resulting from the transposition of Directive 2011/61, they cannot, during that period, enter into any agreement providing for remuneration contrary to Article 13 of that directive, as Article 61(1) of the directive requires them to 'take all necessary measures to comply with national law stemming from this Directive'.

31 That court observes that the Commission document referred to in paragraph 26 of the present judgment appears to state that there is a transitional period of one year, ending on 21 July 2014; that, before that date, AIFMs were merely expected to expend their best efforts in order to comply with the requirements of the national law transposing Directive 2011/61; and that it was only after that date that all the obligations arising from that directive became legally binding. According to that analysis, neither the date of application for authorisation nor the date on which such authorisation is obtained is relevant.

32 According to that court, it seems, on the other hand, that the ESMA and AMF analyses show that an AIFM is subject to the rules on remuneration practices in Directive 2011/61 only from the date on which it obtained authorisation, whereas, before that authorisation, it is not subject to those rules. According to those analyses, furthermore, those rules only apply from the beginning of the financial year following the authorisation.

33 The referring court considers that, on a reading of Article 61(1) of Directive 2011/61, none of the proposed interpretations is 'self-evident', particularly since another interpretation is possible, in which a distinction is made according to whether the remuneration was agreed before or after the transposition of Directive 2011/61 into national law. In the first scenario, it could be accepted that it is difficult to ask the AIFM to challenge immediately a remuneration that did not infringe any rule when it was adopted and that it could, at most, be required, during a transitional period, to expend its best efforts to comply with the new remuneration requirements. In the second scenario, it is possible that the entry into force of the national legislation transposing Directive 2011/61 would immediately prohibit the AIFM from agreeing, for the future, on remuneration which would be contrary to the rules laid down in that directive, which had already entered into force.

34 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Are [Article 13 and Article] 61(1) of [Directive 2011/61] to be interpreted as meaning that managers performing activities under the [d]irective before 22 July 2013 are required to comply with the obligations relating to remuneration policies and practices:

(i) at the expiry of the period for transposition of that directive[;]

(ii) at the date of entry into force of the provisions transposing the [d]irective into national law[;]

(iii) from the expiry of the period of one year, expiring on 21 July 2014, referred to in Article 61(1); or

(iv) from the time of obtaining authorisation as manager under the [d]irective?

(b) Does the answer to this question depend on whether the remuneration paid by the AIFM to an employee or a director was agreed before or after:
(i) the expiry of the period for transposition of [Directive 2011/61];
(ii) the date of entry into force of the provisions transposing [Directive 2011/61] into national law;
(iii) the expiry on 21 July 2014 of the period laid down in Article 61(1) of [Directive 2011/61];
(iv) the date on which the AIFM obtained its authorisation?

(2) If it follows from the answer to Question (1) that, following the transposition of [Directive 2011/61] into national law, an AIFM is, for a certain period of time, only obliged to make its best efforts to comply with the national legislation resulting from [that directive], does it fulfil that obligation if, during that period, it hires an employee or appoints a director on terms of remuneration which do not comply with the requirements of the national provision transposing Article 13 of [Directive 2011/61]?'

Admissibility of the request for a preliminary ruling

35 In their written observations, the appellants in the main proceedings call into question, albeit implicitly, the admissibility of the request for a preliminary ruling, submitting that the dispute in the main proceedings does not fall, *ratione materiae*, within the scope of Directive 2011/61.

36 In that regard, it must be borne in mind that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgments of 14 July 2022, *Volkswagen*, C-134/20, EU:C:2022:571, paragraph 56 and the case-law cited, and of 11 January 2024, *Nárokuj*, C-755/22, EU:C:2024:10, paragraph 17).

37 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices)*, C-100/21, EU:C:2023:229, paragraph 53 and the case-law cited).

38 In the present case, the questions submitted concern the interpretation of Directive 2011/61. In addition, it is apparent from the order for reference that the facts of the dispute in the main proceedings, which facts are contested by the appellants in the main proceedings, were established at first instance and on appeal, and the referring court states that a response to those questions is necessary in order to enable it to make its decision. Finally, the decision to refer contains all the factual and legal material necessary to give a useful answer to those questions.

39 It follows that the request for a preliminary ruling is admissible.

Consideration of the questions referred

The first question

40 By its first question, the referring court seeks to ascertain, in essence, from what point in time Member States were required to call for AIFMs performing activities under Directive 2011/61 before 22 July 2013 to comply with the obligations relating to remuneration policies and practices stemming from Article 13 of that directive.

41 In that regard, it should be recalled that Article 13(1) of Directive 2011/61 places the Member States under an obligation to require that AIFMs have remuneration policies and practices, for certain categories of staff, that are consistent with and promote sound and effective risk management and that do not encourage risk-taking inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage.

42 Article 66 of that directive provides that Member States are to adopt and publish, by 22 July 2013, the laws, regulations and administrative provisions necessary to comply with that directive and that they are to apply those provisions from that date.

43 Article 61 of Directive 2011/61, entitled 'Transitional provisions', provides, in paragraph 1 thereof, that AIFMs performing their activities before 22 July 2013 'shall take all necessary measures to comply with national law stemming from this Directive and shall submit an application for authorisation within [one] year of that date'.

44 It is apparent from the wording of that provision that Directive 2011/61 does not impose an obligation on the Member States to require that that category of AIFMs comply with the provisions of Article 13(1) of that directive from 22 July 2013.

45 However, the wording of Article 61(1) of Directive 2011/61 does not, in itself, make it possible to determine the date on which the obligations laid down in Article 13(1) of that directive, as transposed into national law, became binding for those AIFMs, since it follows from that wording that that date could be either the date of expiry of the period of one year from 22 July 2013 that that provision lays down, or the date on which the authorisation as an AIFM to which it refers was obtained.

46 That being so, it should be borne in mind that, according to settled case-law, the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context and the objectives and purpose pursued by the act of which it forms part (judgment of 7 March 2024, *IAB Europe*, C-604/22, EU:C:2024:214, paragraph 34 and the case-law cited).

47 As regards the context of which Article 61(1) of Directive 2011/61 forms part, it is necessary, given that that provision lays down a period of one year from 22 July 2013 for the AIFMs concerned to submit an application for authorisation, to take into account, inter alia, the provisions of that directive which refer to the authorisation set out, in particular, in Articles 6 to 8 of that directive.

48 Article 6(1) of Directive 2011/61 provides, first, that Member States are to ensure that no AIFMs manage AIFs unless they are authorised in accordance with that directive and, second, that AIFMs authorised in accordance with that directive are to meet the conditions for authorisation established in that directive.

49 Article 7(2)(d) of Directive 2011/61 provides that the information that AIFMs are required to provide to the competent authorities to obtain their authorisation is to include information on remuneration policies and practices pursuant to Article 13 of that directive.

50 Finally, it is apparent from Article 8(1)(a) of Directive 2011/61 that the authorisation applied for is not to be granted unless the competent authorities are satisfied that the relevant AIFM will be able to meet the conditions of that directive.

51 It follows from those provisions that (i) authorisation is necessary in order to perform the activities of an AIFM, (ii) authorisation is not to be granted unless the competent authorities are satisfied, having regard to the information provided to them by the relevant AIFM in its application for authorisation, that that AIFM is in a position to fulfil the obligations laid down in Directive 2011/61, and (iii) once authorisation has been granted, that AIFM is required to fulfil those obligations on an ongoing basis, including those arising from Article 13 of that directive. It follows that, in the context of Directive 2011/61, the date of authorisation is of central importance.

52 Given that Article 61(1) of Directive 2011/61 expressly provides that AIFMs performing activities under that directive before 22 July 2013 are to submit an application for authorisation within one year of that date, it must therefore be held that that provision, read in the light of Articles 6 to 8 of that directive, must be interpreted as meaning that those AIFMs were required to comply fully with the obligations laid down by that directive, in particular as regards their remuneration policies and practices, as transposed into national law, only from the date on which they obtained their authorisation, provided that they had submitted an application for authorisation within one year from 22 July 2013.

53 That interpretation is borne out by the objectives pursued by Directive 2011/61.

54 It is clear from the case-law that those objectives consist, as is confirmed in recital 24 of Directive 2011/61, in (i) the protection of investors, in particular where their interests may conflict with those of AIFMs as regards both risk and durability of investment decisions, and (ii) ensuring the stability of the financial system. More specifically, the remuneration policies and practices governed by Directive 2011/61 are intended, in that context, to promote sound and effective risk management and not to encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs (see, to that effect, judgment of 1 August 2022, *HOLD Alapkezelő*, C-352/20, EU:C:2022:606, paragraphs 52 and 54).

55 While it is true that those objectives apply to the activities of all AIFMs, it must also be borne in mind that, as regards AIFMs that were already active before 22 July 2013, Directive 2011/61 expressly provides for a transitional period, the purpose of which is to grant additional time to those AIFMs to enable them to comply with the requirements introduced by that directive, by taking 'all necessary measures to comply with national law stemming from [that] directive'.

56 As regards the possible relevance of the date on which the remuneration was agreed, it is clear from the case-law of the Court that a new rule of law applies from the entry into force of the act introducing it and, while it does not apply to legal situations that have arisen and become definitive under the old law, it does apply to their future effects, and to new legal situations. It is otherwise, subject to the principle of the non-retroactivity of legal acts, only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application (judgment of 13 July 2023, *Banco Santander (Reference to an official index)*, C-265/22, EU:C:2023:578, paragraph 37 and the case-law cited).

57 In the present case, first, the new rule is accompanied by special provisions which specifically lay down the conditions for its temporal application, namely Article 61(1) of Directive 2011/61. Second, since the partnership agreement was concluded on 27 June 2014 and, in so far as on the date on which the company TFC obtained its authorisation, namely 18 August 2014, that agreement was still in force and provided for various forms of remuneration for HJ, IK and LM, it appears, subject to the verifications which are for the referring court to carry out, that the legal situation was not established and continued to produce effects.

58 It follows that the date on which the remuneration under that agreement was agreed upon is irrelevant to the answer to be given to the first question, particularly since, by the transitional period provided for in Article 61(1) of Directive 2011/61, the EU legislature specifically provided for the possibility, for the AIFMs performing activities under that directive before 22 July 2013, of adjusting gradually to the requirements of that directive.

59 Contrary to what the appellants in the main proceedings argue in their written observations, that interpretation is also consistent with the principle of legal certainty which, according to the case-law, precludes a new legal rule from applying retroactively, namely to a situation established prior to its entry into force, and which requires that any factual situation should normally, in the absence of any express contrary provision, be examined in the light of the legal rules existing at the time when the situation obtained (see, to that effect, judgment of 25 January 2022, *VYSOČINA WIND* (C-181/20, EU:C:2022:51, paragraph 47 and the case-law cited). Furthermore, as the Advocate General observes in point 77 of his Opinion, that interpretation corresponds to that of ESMA, which, under Article 13(2) of Directive 2011/61, ensures the existence of guidelines on sound remuneration policies which comply with Annex II to that directive and which expressly stated, in the information made available to the public by that authority, referred to in paragraph 28 of the present judgment, that the rules of that directive on remuneration and the related guidelines apply to AIFMs from the date of their authorisation.

60 In the light of all of the foregoing, the answer to the first question referred for a preliminary ruling is that Article 61(1) of Directive 2011/61 must be interpreted as meaning that the Member States were under an obligation to require AIFMs performing activities under that directive before 22 July 2013 to comply fully with the obligations relating to remuneration policies and practices stemming from Article 13(1) of that directive from the date on which their authorisation was obtained, provided that they had submitted an application for authorisation within one year from 22 July 2013.

The second question

61 In the light of the answer given to the first question, it must be considered that, by its second question, the referring court asks, in essence, whether an AIFM which, during the period from 22 July 2013 until the date on which authorisation is obtained, hires an employee or appoints a director on remuneration terms which do not comply with the requirements of the national provision transposing Article 13 of Directive 2011/61 into national law, may be regarded as taking all the measures necessary to comply with the national legislation stemming from that directive within the meaning of Article 61 thereof.

62 The referring court therefore seeks to ascertain, in essence, the scope of the phrase used in Article 61(1) of Directive 2011/61, according to which, during the transitional period referred to in that provision, those AIFMs 'shall take all necessary measures to comply with national law stemming from this Directive', as regards the remuneration policies and practices referred to in Article 13 of that directive.

63 First, as has been noted in paragraph 51 of the present judgment, authorisation is not granted unless the competent authorities are satisfied, having regard to the information provided to them by the AIFM concerned in its application for authorisation, that that AIFM is in a position to fulfil the obligations laid down in Directive 2011/61. On the date of authorisation, those AIFMs must have remuneration policies and practices that comply with the obligations provided for in Article 13(1) of that directive, as transposed into national law. In addition, that AIFM is required, once authorisation has been granted, to satisfy those obligations on an ongoing basis, including those stemming from Article 13 of that directive.

64 Second, it follows from paragraph 58 of the present judgment that the purpose of the transitional period referred to in Article 61 of Directive 2011/61 is to enable the AIFMs concerned to adjust gradually to the requirements stemming from Directive 2011/61.

65 In order to safeguard the effectiveness of Directive 2011/61, it must be held that although, during the transitional period of one year referred to in Article 61(1) of that directive, the Member States must ensure that AIFMs performing activities under that directive before 22 July 2013 take all the measures necessary to comply with the national legislation stemming from that directive, the fact remains that those Member States must also ensure that those AIFMs refrain from taking any measures liable to seriously compromise the attainment of the result prescribed by that directive.

66 It must therefore be held that the phrase 'shall take all measures necessary to comply with national law stemming from this Directive', within the meaning of that provision, must be interpreted as requiring that AIFMs performing activities before 22 July 2013 refrain from taking measures which are liable seriously to compromise the achievement of the objective of Directive 2011/61.

67 In the light of all of the foregoing, the answer to the second question referred for a preliminary ruling is that Article 61(1) of Directive 2011/61 must be interpreted as meaning that the phrase 'shall take all necessary measures to comply with national law stemming from this Directive' requires that AIFMs performing activities before 22 July 2013 refrain from taking measures which are liable seriously to compromise the achievement of the objective of Directive 2011/61.

Costs

68 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 61(1) of 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**

   must be interpreted as meaning that:

   – **the Member States were under an obligation to require alternative investment fund managers (AIFMs) performing activities under that directive before 22 July 2013 to comply fully with the obligations relating to remuneration policies and practices stemming from Article 13(1) of that directive from the date on which their authorisation was obtained, provided that they had submitted an application for authorisation within one year from 22 July 2013.**

2. **Article 61(1) of Directive 2011/61**

   must be interpreted as meaning that:

   – **the phrase 'shall take all necessary measures to comply with national law stemming from this Directive' requires that AIFMs performing activities before 22 July 2013 refrain from taking measures which are liable seriously to compromise the achievement of the objective of Directive 2011/61.**

[Signatures]