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Additional Information

Level 1 Regulation
Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic
Product governance

Subject Matter
Product intervention

Question
Which national product intervention measures should a firm apply in case of cross-border provision of investment services?

ESMA Answer

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Original language

[ESMA35-43-439 Investor protection Product intervention Q&A 1]

National competent authorities (NCAs) may take product intervention measures in accordance with Article 42 of the Markets in Financial Instruments Regulation (EU) No 600/2014 (MiFIR) in or from their Member State. Where two NCAs adopt product intervention measures that both apply in and from their Member State and that are different from each other, it is important for investment firms to comply with the product intervention measures that apply from the Member State in which they are authorised in case of cross-border provision of investment services and also the product intervention measures applicable in a Member State where the client is located.

This holds that if Member State (MS) A adopts stricter measures than MS B, then firms from MS B still have to abide by the national product intervention measures of MS A in respect of any cross-border activity provided to clients in MS A that is within the scope of the national measures of MS A.

When product intervention measures in a Member State apply from that Member State, this implies that the product intervention measures apply to firms when marketing, distributing or selling MiFID financial instruments also to clients located in third country jurisdictions, without prejudice of any local legislation and/or regulation.

In order to determine the location of the client, firms could, for example, consider the habitual residence of the client based on information collected in their client-onboarding process as part of the know-your-customer assessment.

It is possible that national product intervention measures contain specific rules on the territorial scope of their application. Therefore, when providing cross-border investment services firms should ensure compliance with the applicable product intervention measures.