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Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

Level 2 Regulation
Regulation 2017/565 - MiFID II Delegated Regulation

Topic
Recording of telephone conversations and electronic communications

Subject Matter
Scope of the record keeping obligation of telephone conversations and electronic communications

Question

Are electronic communications or telephone conversations limited to the provision of information about different investment alternatives subject to the record keeping obligation under article 16(7) of MiFID II when there is no possibility to enter into a trade during that interaction?

ESMA Answer

18-06-2025

Original language

Yes, when the conversations and communications are intended to result in a transaction. Subparagraph 2 of Article 16(7) of MiFID II stipulates that telephone conversations or electronic communications that are intended to result in the conclusion of transactions must be recorded, even if those conversations or communications do not result in the conclusion of transactions.

Subparagraph 2 should be understood as applying to all telephone conversations and electronic communications that are intended to and may ultimately result in a transaction, even if the order itself may only be formally placed through a different channel, as such communications may still be relevant to the transaction and the client order. Therefore, if the discussion is expected to refer to investment options that in essence may lead to a transaction, although the order is not formally placed during such telephone conversation or electronic communications, investment firms should record them.

For guidance on the type of communications that are relevant for Article 16(7), please refer to ESMA Q&A 3.11 and 3.13 available here.