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Consultation on rules for passporting for investment firms

Q1: Do you believe that newly added point (c) of Article 3 of the RTS and Part 3 (Overview) of Annex I of the ITS are missing any information?

In our opinion, there is enough information on Annex 3, it is perfectly understandable for professionals.

Q2: Do you agree that investment firms should notify their home NCA in case of any change to the list of host Member States where they actively target retail clients and/or professional clients under Annex II of MiFID II?

It does seem necessary. This is particularly the case in France where insurance, banking transaction or payment service brokers must notify ORIAS (national register), and in other Member States which, without going through the register, inform their NCA directly, to obtain their European passport. It would therefore be consistent for the financial professions to have a comparable system.

Q3: Do you believe that newly added point (d) of Article 3 of the RTS and Part 4 (Marketing means) of Annex I of the ITS are missing any information?

In our opinion, the information appearing in point d of article 3 as well as that appearing in part 4 of appendix I of the ITS is sufficient.

Q4: Do you believe that newly added point (e) of Article 3 of the RTS and Part 5 (Complaints) of Annex I of the ITS are missing any information?

The elements requested in point e) of article 3 and part 5 of appendix 5 if TSI are sufficient in our opinion.
However, we note that the European Union has imposed a mediation system since 2016. Professionals wishing to implement a cross-border activity should provide proof that the mediation system which applies to it will, if necessary, deal with the case of clients in all the Member States in which they will be active or, failing that, that they have indeed obtained, from a competent mediator in the Member State in question, that a local mediator will deal with requests for mediation from individuals.

Q5: Do you believe that newly added point (f) of Article 3 of the RTS and Part 6 (Internal organisation in relation to the cross-border activities of the investment firm) of Annex I of the ITS are missing any information?

To our opinion, the explanations given in point F of article 3 of the RTS as well as part 6 of the TSIs are sufficient and sufficiently clear.
We recommend, however, that the term “complaint” (or “complaints”) should be clarified: it should refer to cases coming before the courts and mediators.

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Q6: Do you agree that investment firms should notify their home NCA in case of any change to the internal organisation of the investment firm in relation to cross-border activities?

Yes, we fully agree. NCAs must be aware of the consequences that the exercise of a cross-border activity will have on the organization of society and how it will respond to this challenge.

Q7: Do you believe that any other information should be requested within the scope of the RTS/ITS?

If the objective is to avoid curbing cross-border activity, the procedure should not be excessively cumbersome.
We believe that the information requested under Article 3 and Annex I is sufficient to justify not only undertaking cross-border activity but also to explain how it will take place.

Q8: Do you have any comments on the changes made to Article 4 of the RTS and Annex III of the ITS?

We have no comment to make on this point, as the changes are very clear.

Q9: Do you have any other comment or input on the draft RTS and/or ITS?

It would seem to us reasonable and necessary to allow companies subject to similar regimes, which today cannot act as of right in another Member State, to do so.
Their number is large and they often cover a large part of the populace.
It is consistent to prevent them, for example, from recommending products of the "AIFM fund" type not authorized in their Member State of origin and this, in this Member State and on clients with no culture or no assets in the other Member State, because one can assume that these "national" products are poorly mastered by them. The same goes for their right to mediate them.
However, after 16 years of this regime, this constraint appears disproportionate and a real obstacle to the single market. A company's right to support a client who changes Member State or lives in several States should be recognized even if, initially, recognizing it only in terms of advice would be sufficient.

Q10. What level of resources (financial and other) would be required to implement and comply with the amendments made to the RTS and ITS? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

It is likely that the cost is quite reasonable except for the handling of complaints and mediations and on the condition that the NCA of the State in which the passport is activated does not charge a regulatory cost in addition to that of the state of origin.

The probable additional cost is explained by the fact that these companies were already supposed to put themselves in a position to be able to take into account the realities and constraints of the host State. In the future, it is only a question of an administrative formatting of the means normally already committed and of the activities already considered.
Admittedly, local councils in compliance will then be used more often. But they should have already been used.
Mediation, on the other hand, is a serious subject that can become costly and complicated to settle. Indeed, if in some States mediation is free, in others this is not the case and few national mediators accept cross-border mediation. Moreover, in cases where it is chargeable, it is then up to the professional and the professional alone to pay, even if the consumer is wrong to complain.
In addition to the fact that cross-border cases will inevitably be charged very expensively by paying mediators, some mediators charge a basic annual fee in addition to the fee per file. These basic annual fees are likely to be inherently high for cases that will remain “rare” and “atypical”, at least for a few years.