MiFID II product governance requirements: the AMF applies the updated ESMA guidelines

The Autorité des Marchés Financiers (AMF) has published an update to its Position DOC-2018-04 to incorporate updates to the guidelines issued by the European Securities and Markets Authority (ESMA) on product governance requirements. The AMF also updates its Position-Recommendation DOC-2006-23 to extend the scope of these revised guidelines to financial investment advisers (FIAs). The updated positions will come into force on 3 October 2023.

Background

At the beginning of 2022, ESMA launched a project to update its guidelines on product governance requirements made necessary by the evolution of regulations requiring the consideration of any “sustainability related objectives” in target markets. These developments come as a reminder from Delegated Directive (EU) 2021/1269 of the European Commission of April 21, 2021 – transposed into French law within the general regulation of the AMF by the decree of July 25, 2022, which entered into force on August 2, 2022. These revised guidelines also take into account implementation issues identified in particular during the 2021 common supervisory action on this topic (target market of complex financial instruments, “clustering” approach, sales outside the positive target market, etc.).
ESMA’s final report on this update was published on 27 March 2023. The translated versions of the revised guidelines were published on 3 August 2023.

**Fostering greater convergence**

The AMF has incorporated the new version of the ESMA guidelines on MiFID II product governance requirements into its updated Position DOC-2018-04.

These revised guidelines will apply from 3 October 2023 and are designed to clarify the implementation of these requirements and foster greater convergence in their interpretation and supervision. They will accordingly strengthen investor protection.

Position DOC-2018-04 applies to investment firms, including management companies providing investment services.

**Focal point**

In Position DOC-2018-04, the AMF clarifies that when providing an investment service with an assessment of appropriateness (in particular when providing reception and transmission of orders or execution of orders services), investment service providers are required to verify at least the "type of clients" and "knowledge and experience" criteria of the target market.

**Scope extended to FIAs**

As FIAs operate under a French national regime, the ESMA guidelines do not apply directly to them. However, under the AMF General Regulation, they must comply with rules analogous to those that apply to investment services providers with regard to product governance requirements. In view of this, the AMF has decided to extend the scope of these updated guidelines to FIAs. The associated update of Position-Recommendation DOC-2006-23 containing the Questions and Answers relating to the regime applicable to Financial Investment Advisors has been the subject of an update including this point, and which will also apply from 3 October 2023.

En savoir plus
AMF Position DOC-2018-04: Guidelines on MIFID II product governance requirements (in French only)

AMF Position-recommendation DOC-2006-23: Questions and answers on the rules that apply to financial investment advisers (in French only)