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A statement from the European Securities and Markets Authority (ESMA) emphasised that if a company from a third country wants to provide investment services to clients established or located in the European Union, it has to follow the MiFID II requirements.

If a retail client or a professional client established or located in the European Union initiates by themselves the provision of investment services or activities by a firm from a third country, the MiFID II requirements will not apply to that firm, meaning that it will not have to establish a branch (see Article 42 of MiFID II for details).

As the transition period for the United Kingdom has come to an end though, market practices have been noted where companies market investment products and services to clients based or located in the European Union while trying to avoid complying with the MiFID II requirements. Companies have added terms to their general conditions or use a pop-up browser window marked “I agree”, where the client states that any transaction made with the company is only at the sole initiative of the client.

ESMA issued the reminder that if companies from third countries target clients or potential clients established or located in the European Union or advertise their investment services and activities to them together with ancillary services, then this may not be considered a service that is provided only at the sole initiative of the client.

Please note:

- Providing investment services in the European Union without the correct authorisation may leave the service provider open to administrative or criminal proceedings or to sanctions.
- Clients who use investment services from service providers that do not have the correct authorisation may lose their legal protection in the European Union.

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