1. Background

→ **Article 4**
   Directive 2006/73
   
   MS may exceptionally retain or impose additional requirements where objectively justified and proportionate to address specific risks to investor protection or market integrity if:
   
   - risks are of importance in market structure of MS, or
   - risks become evident afterwards and not otherwise regulated

→ **MS shall:**
   
   - notify EC
   - 1 month in advance
   - justify

→ **Article 24.12**
   MIFID 2
   
   Same requirements, but limited to Article 24 and 2 months of prior notice, instead of 1

→ MS may retain additional requirements that were notified to the EC in accordance with Article 4 of Directive 2006/73/EC before 2 July 2014 provided that the conditions laid down in that Article are met

→ **PURPOSE of both Articles**

→ Level playing field

→ Disclosure and approval of any requirement that could impair level playing field
## 2. The Spanish Case

### Origin
- “Participaciones preferentes” (preference shares) sold to retail investors by banks in trouble

### Amendment of Spanish Securities Markets Law (Nov 2012)
- For complex instruments, hand writing statement by the client representing that, if such is the case:
  - Instrument is not appropriate
  - It was not possible to evaluate appropriateness
- Test to be made in writing and given to the client
- Register of non-appropriate product per client

### Circular 3/2013 of CNMV (July 2013)
- For retail and professional clients (afterwards limited to non-direct professional)
- Where non-investment advise service is provided in relation to a complex product, and a notice of “non advice” is in the document
- Hand written statement:
  
  “I have not been advised in this transaction”
3. Recent CNMV Consultation for Classification of Complex Products and Identification of Specially Complex Products

3.1. Classification of Complex Products

Low Risk

- **A**
  - Complex financial instrument.
  - May be difficult to understand.

- **B**
  - Specially complex financial instrument.
  - Purchase non appropriate for non-professional clients.

- **C**
  - Principal guaranteed (xx%) only at maturity. Early redemption may cause losses.

- **D**
  - Early redemption is not possible or could result in relevant losses.

- **E**
  - Principal guaranteed (xx%) only at maturity. Early redemption is not possible or could result in relevant losses.

High Risk
### 3.1. Classification of Complex Products (II)

<table>
<thead>
<tr>
<th>Class</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Class A</strong></td>
<td>Euro financial instruments with a compromise of capital return in an equal or inferior period of 3 years. The issuer has a minimum rating as of the Kingdom of Spain.</td>
</tr>
<tr>
<td><strong>Class B</strong></td>
<td>Class A financial instruments with a period up to 10 years (inclusive) and a minimum rate of investment grade. Class A FX financial instruments in an equal or inferior period of 3 years and a minimum rate of investment grade.</td>
</tr>
<tr>
<td><strong>Class C</strong></td>
<td>Euro financial instruments with a compromise of capital return equal or superior to its 90% in an equal or inferior period of 3 years. The issuer has a minimum rating of investment grade. Financial instruments with a compromise of currency capital return in a period superior to 3 years. The issuer has a minimum rating of investment grade.</td>
</tr>
<tr>
<td><strong>Class D</strong></td>
<td>Other instruments except those of class E.</td>
</tr>
<tr>
<td><strong>Class E</strong></td>
<td>Derivatives.</td>
</tr>
</tbody>
</table>
4. Other cases in other Member States

<table>
<thead>
<tr>
<th>Country</th>
<th>Notifications</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands</td>
<td>2</td>
<td>2 notifications, one banning inducements in relation to the provision of services to retail, and the other one in Dutch.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>7</td>
<td>7 notifications: • banning platforms from receiving rebates • use of dealing commissions • client assets • safe custody asset</td>
</tr>
<tr>
<td>France</td>
<td>3</td>
<td>3 notifications (in French).</td>
</tr>
<tr>
<td>Germany</td>
<td>1</td>
<td>1 notification (in German).</td>
</tr>
<tr>
<td>Ireland</td>
<td>5</td>
<td>5 notifications (mainly in requirements regarding client money rules).</td>
</tr>
<tr>
<td>Denmark</td>
<td>Executive Order on Risk-Labelling of Investment Products (15.04.2011)</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>Risk Label for Financial Products. (12.06.2014)</td>
<td></td>
</tr>
</tbody>
</table>
5. Conclusion

1. Disparity at national legislation level
2. Unlevel-playing field
3. Lack of legal certainty
4. Lack of common financial market