

QUESTIONS AND ANSWERS ON THE CONCEPT OF INVESTMENT SERVICE OF INVESTMENT ADVICE

References: Article D. 321-1 of the Monetary and Financial Code and Article 9 of the Commission Delegated Regulation (EU) 2017/565 of 25 April 2016

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Scope of application

This document is addressed to all participants providing or wishing to provide “investment advice” services, and in particular:

- Investment service providers [“ISP”] including portfolio management companies providing (or wishing to provide) investment advice services, including their tied agents;
- Financial investment advisers [“FIA”].

By convention, these market participants are referred to as "service providers" in this document.

It is also addressed to all participants who are considering the characterisation of such a service in the context of their activities.

The AMF points out that “investment advice” is an investment service that requires regulated status if it is to be provided as a regular profession¹.

This document discusses the main features of the service of investment advice provided for by the MIF 2 directive² [“MiFID II”], whether provided to professional or retail clients.

However, it does not discuss:

- requirements arising from the provision of an investment advice service³, e.g. the requirement to assess the suitability, or the requirement, where applicable, to inform the client about the independent provision of the service,
- other MiFID II provisions, such as the requirement to provide fair, clear and not misleading information,
- the boundary between investment advice and the related service of business consulting on capital structuring, industrial strategy, and corporate mergers and acquisitions, clarified in AMF Position DOC-2018-03⁴,
- advice on structured deposits (as defined in Article L. 511-105 of the Monetary and Financial Code), as these fall within the scope of the ACPR,
- investment recommendations as understood in paragraph 35 of Article 3.1 of MAR⁵.

¹ Subject to the provisions of Article L. 531 and L. 541-1 III of the Monetary and Financial Code.

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

³ On this subject, refer in particular to position DOC-2019-03 and ESMA's Q&A on investor protection under MiFID 2/ MiFIR (ESMA35-43-349)

⁴ Position DOC-2018-03 Non-guaranteed placement, investment advice and business consulting regarding the capital structure, industrial strategy, and corporate mergers and acquisitions.

⁵ Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

General points

All of the elements of policy within this document are based on an AMF Position.

A number of these elements are taken from the Supervisory briefing on understanding the definition of advice under MiFID II⁶, which the ESMA has published not only for the use of national competent authorities in their supervisory activities, but also to provide guidelines for the service providers concerned.

⁶ ESMA Supervisory briefing on understanding the definition of advice under MiFID II, 11 July 2023 (ESMA35-43-3861) – hereinafter “ESMA’s Supervisory briefing”.

1. GENERAL INFORMATION ON THE INVESTMENT ADVICE SERVICE

Question 1.1. What is an investment advice service?

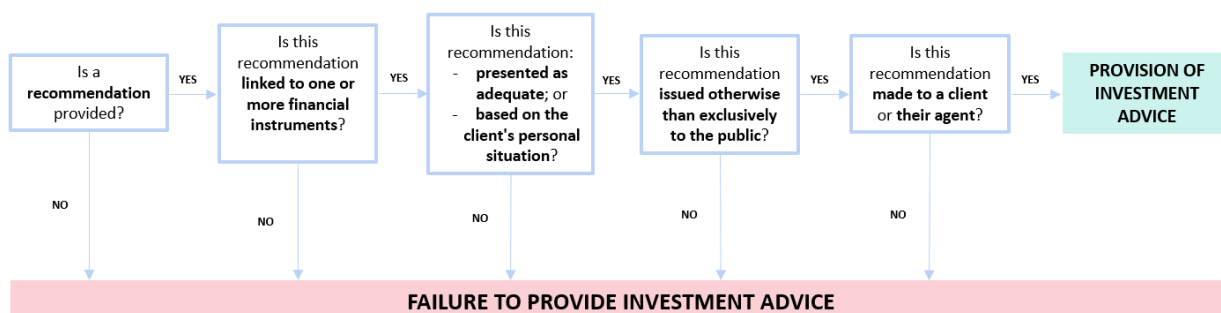
In accordance with Article D. 321-1 of the Monetary and Financial Code transposing the provisions of MiFID II,⁷ investment advice is an investment service defined as the provision of personalised recommendations to a third party (in particular a client)⁸, either at his request or on the initiative of the service provider which provides the advice, on one or more transactions in financial instruments.⁹

The definition of investment advice, and therefore its qualification, is indifferent to whether:

- the service is provided on an independent or non-independent basis,
- the service is provided via an automated tool.

Investment advice therefore qualifies when the following conditions are cumulatively met:

- a recommendation is provided,
- the recommendation relates to one or more financial instruments,
- the recommendation is based on the client's personal situation, or is presented as being suitable for the client,
- the recommendation is issued otherwise than exclusively to the public, and
- the recommendation is made to a client or its agent.



Question 1.2. Can investment advice given to a prospective client qualify as an investment advice service?

Yes, the investment advice service could be qualified even if it is provided to a prospective client and not to an existing client of the service provider.

It is for this reason that the term "client" used in this document refers to both an existing and a potential client of the provider.

⁷ Article 4, paragraph 1, point 4) of MiFID II.

⁸ It should be noted that the use of the term "client" in this position refers both to the provider's current clients and potential clients (see Q&A 1.2).

⁹ Or units mentioned in Article L. 229-7 of the Environment Code, in accordance with 5 of Article D. 321-1 of the Monetary and Financial Code. Methodically, in this Position the expression "financial instruments" refers to financial instruments within the meaning of Article L. 211-1 of the Monetary and Financial Code and the units mentioned in Article L. 229-7 of the Environment Code.

Question 1.3. Does qualification of an investment advice service depend on the categorisation of the client to which the service is provided?

No. The fact that clients are all “professional clients” within the meaning of MiFID II, including legal entities, does not disqualify the advice as investment advice. In other words, individuals, i.e. natural persons categorised as “retail” clients, are not the only ones that can benefit from an investment advice service.

Question 1.4. Does the investment advice service have to be provided at the initiative of the client?

No. In accordance with Article D. 321-1 of the Monetary and Financial Code, the person at whose initiative the investment advice service is provided (the client or the service provider) does not matter. The origin of the relationship – a service provided at the request of the client or at the initiative of the service provider – is not a criterion for qualifying or disqualifying an investment advice service.

Question 1.5. Does the use of the internet channel for the provision of advice prevent qualification of the investment advice service?

No. The investment advice service can be provided by any means, including via an internet site or by email (or any other technological means) when all of the cumulative conditions listed in Question & Answer 1.1 above are fulfilled.

Question 1.6. Can the way derivative products are structured lead service providers to provide an investment advice service?

Because sales of “customised” OTC derivatives to clients, are performed in a personalised context where the aim is to meet clients' needs as well as possible, such sales are in many cases an investment advice service, including where they are addressed to professional clients.

However, when the product is structured by complying exactly with the precise information provided by the professional client regarding the product's characteristics (for example, on the occasion of invitations to tender), the service of investment advice is not characterised, unless the service provider has expressed an opinion on the product's appropriateness for the client's profile.

2. QUALIFICATION OF A RECOMMENDATION

Question 2.1. What is a recommendation?

- Paragraphs 25 to 34 of the ESMA's supervisory briefing specify in relation to the qualification of a recommendation that: The recommendation may be explicit or may result from an opinion or a value judgement on the opportunity of the purchase, sale, subscription, exchange, reimbursement or firm participation of a particular financial instrument or exercising or not exercising the rights attaching thereto (see Question & Answer 3.1);
- A recommendation is not the simple provision of information at the request of the client.

The practical consequence of this is that, whenever the service provider does not guide the client towards an investment decision and therefore does not make a recommendation regarding appropriateness, then it is not providing investment advice.

Question 2.2. Can a service provider guide the client in his choice through a series of filtering questions related to the financial instruments it offers, without this being considered as a recommendation?

Yes, it is possible to guide the client through a series of filtering questions without this constituting a recommendation and therefore an investment advice service (provided the other conditions are also met - see Question & Answer 1.1), but this is not automatic.

As indicated in §37 of the ESMA's Supervisory briefing, several factors need to be taken into account when deciding whether a recommendation qualifies as an investment advice service, including:

- the information provided by the service provider, at the start of the questionnaire, on the service provided, although this information alone is not sufficient to disqualify the provision of a recommendation/investment advice service (see Question & Answer 8.2),
- the context in which these questions are asked,
- the possible provision of an opinion and the role played by the person/tool asking the questions,
- the type and content of the questions,
- the result of the questionnaire (highlighting of financial instruments, number, etc.),
- whether the questionnaire was drawn up and supplied by an independent third party.

Thus, when the client indicates to the service provider the essential characteristics he would like his financial instrument to include, and the service provider confines itself to providing him with a list of financial instruments that take these characteristics into account, it is unlikely that the provision of a recommendation is qualified.

Question 2.3. Can a service provider give a client access to a selection of "model portfolios" without this being considered a recommendation?

As explained in Question & Answer 2.2, it is in fact possible to give a client access to a selection of "model portfolios" without this constituting a recommendation and therefore an investment advice service, but this is not automatic. In fact, the presentation of a "model portfolio" to a client can also be considered as a recommendation.

Several factors need to be taken into account, and this analysis must be carried out on a case-by-case basis.

With regard to the specific situation of "copy trading", in which the service provider enables the client to replicate the transactions carried out by a copied trader, the legal qualification of the investment service is more specifically detailed in the Supervisory Briefing published by the ESMA in March 2023 on this subject¹⁰. In a large number of cases, the provision of a portfolio management service on behalf of third parties – and not investment advice – could be qualified.

3. THE LINK WITH ONE OR MORE FINANCIAL INSTRUMENTS

Question 3.1. Which advised transactions in financial instruments are likely to constitute investment advice?

¹⁰ Supervisory briefing on supervisory expectations in relation to firms offering copy trading services, 30 March 2023 ([ESMA35-42-1428](#)).

The categories of transactions likely to be covered by the definition of a personal recommendation pursuant to Article 9 of DR MiFID II 2017/565 are the purchase, sale, subscription, exchange, redeeming, underwriting or holding of financial instruments or the exercise or non-exercise of a right attaching to a particular financial instrument to buy, sell, subscribe to, exchange or redeem a financial instrument. The term “hold” in the English version of DR MiFID II 2017/565 should be understood in the sense of “keep”, so that giving a client a personalised recommendation to keep a financial instrument constitutes an investment advice service.¹¹

It is also important to note that a recommendation "not to" buy, sell, subscribe, exchange, redeem, etc. a financial instrument may also lead to qualification as an investment advice service (subject to the other conditions being met).

According to MiFID II, the definition of a recommendation does not necessarily imply that the service provider examines a wide range of financial instruments. Thus, advice may be based, for example, on an examination of the provider's products alone, or of a restricted list of financial instruments¹².

Question 3.2. Does the personalised recommendation have to result in a transaction involving a financial instrument for the investment advice service to qualify?

No, an investment advice service can be qualified even if no transaction involving one (or more) financial instruments is carried out.

Question 3.3. Can a recommendation concerning several financial instruments (and not just one) constitute an investment advice service?

Yes, article D. 321-1, paragraph 5, of the MFC¹³ clearly states that the personalised recommendation must relate to “one **or more**” transactions involving financial instruments. This means that several financial instruments may be considered alternatively suitable, or that the personalised recommendation may concern an allocation relating to several financial instruments.

¹¹ Regarding this point, see also Recital 87 of the Delegated Regulation (EU) 2017/565 of 25 April 2016.

¹² § of the ESMA's Supervisory Briefing/

¹³ Implementing Article 4, paragraph 1, point 4) of MiFID II.

Question 3.4. Can “generic advice” constitute an investment advice service?

The notion of "generic advice" is understood here as the provision of advice that is not linked to a particular financial instrument, e.g. advice on a sector of activity or geographical area, or on a type of financial instrument (equities, bonds, collective investments, structured EMTNs, etc.).

As a matter of principle, the provision of such generic advice does not, by its very nature, constitute an investment advice service, as it does not relate to a specific financial instrument. Recital 15 of the DR MiFID II 2017/565 nevertheless points out that if such generic advice is presented as based on or tailored to the client's personal situation when it is not, the provider could be considered not to be complying with the provisions of Article 24.1 and 24.3 of MiFID II¹⁴ (obligation to act honestly, fairly and professionally in the best interests of the client and obligation to formulate clear, accurate and not misleading information).

For example, if the service provider recommends to a client investing in bonds rather than in equities to obtain a regular income, and if it proves in fact that this advice is neither appropriate for this client nor based on an examination of their personal situation, it could be held liable under its obligations to act in an honest, loyal and professional manner serving the interests of the client as well as possible, and under its obligations to provide clients with information that is clear, accurate and non-misleading.

Question 3.5. Can a recommendation to become a client of a specific service provider be considered as the provision of an investment advice service?

If the recommendation only relates to a specific service provider and involves neither directly nor indirectly one or more financial instruments, then the condition relating to the link with “one or more financial instruments” is not met, and the recommendation cannot therefore be qualified as investment advice.

Question 3.6. Can the discussions that occur between the investment service provider and the client in the phase prior to the signing or modification of a portfolio management mandate be considered a personalised recommendation?

Yes. Recital 89 of the DR MiFID II 2017/565 stipulates that *"A recommendation or request made, or advice given, by a portfolio manager to a client to the effect that the client should give or alter a mandate to the portfolio manager that defines the limits of the portfolio manager's discretion should be considered a recommendation within the meaning of Article 25, paragraph 2, of Directive 2014/65 /EU"*

4. THE PRESENTATION OF A RECOMMENDATION AS ADEQUATE AND/OR BASED ON THE PERSONAL SITUATION OF THE CLIENT

Question 4.1. What is a personalised recommendation?

According to Article 9 of DR MiFID II 2017/565, "**personalised**" recommendation means a recommendation:

¹⁴ Implemented in Articles L. 533-11 and L. 533-12 of the Monetary and Financial Code.

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- "*addressed to a person in their capacity as investor or potential investor, or in their capacity as representative of an investor or potential investor*"; and
 - which "*is presented as being adapted for that person or based on an examination of the specific circumstances of that person*".

These clarifications are intended to distinguish a personalised recommendation, which is investment advice and may only be dispensed after assessing that it is suitable for the client's profile, from a general recommendation¹⁵ which is addressed to the public or to a broader group or category of clients or potential clients and does not in principle take into account the personal situation of the clients to which it is addressed.

²⁸ See Recital 17 of DR MiFID II 2017/565.

Question 4.2. Practical examples of situations which are not personalised recommendations

Pursuant to the last paragraph of Article 9 of DR MiFID II 2017/565, recommendations addressed exclusively to the public are not personalised recommendations either. This category includes general recommendations disseminated impersonally in a newspaper, a magazine or any other publication intended for the general public (including via internet) or as part of a television or radio programme. However, using, for example, email correspondence to provide personalised recommendations to a specific person, rather than to send information to the general public "*could be considered as investment advice*"¹⁶.

The mere act of providing information to the client at his request is not normally in itself investment advice. Practical examples of information that may be communicated to clients without in principle incurring the qualification of personalised recommendation include:

- information about how to complete a form,
- company news or announcements,
- the risks and advantages of one or more given financial instruments, without any other information,
- an explanation of the terms and conditions of an investment,
- listings of share and unit prices as long as they are presented in a general form and have no direct reference to an individual client,
- alerts, including software-generated alerts, linked to the occurrence of certain events (for example, when the price of a financial instrument meets a certain threshold),
- financial instrument performance ranking tables for comparison with published reference indicators,
- Information on transactions conducted by directors on the companies' shares.

However, it should be borne in mind that when a person provides a client with selective information,¹⁷ for example by comparing one financial instrument with another and giving an opinion on which of these products is preferable, or when a client has indicated what he expects of the investment and a particular financial instrument is then recommended to him, this could constitute a "personalised" recommendation and thus fall within the scope of investment advice within the meaning of MiFID II.

When a service provider supplies a client, at their request, with the result of investment research, a financial analysis or any other form of general recommendation concerning transactions in financial instruments, this does not constitute a service of investment advice. However, it would be different if the general recommendation was presented as being appropriate for the client (see Question & Answer 6.3).

Question 4.3. Can the investment advice service be qualified solely on the basis of the client's impression of the "personalised" nature of the recommendation provided?

Article 9 of the MiFID II DR 2017/565 states that advice can be qualified when the recommendation is "presented" as suitable to the client, without the need for it to actually be so. Also, §16 of the ESMA's Supervisory briefing recalls that if the client can believe¹⁸, given the wording, that the recommendation addressed to him is based on his personal situation, investment advice could be qualified (subject to the fulfilment of the 4 other conditions) even if this recommendation is not really based on the client's personal situation.

²⁹ Recital 14 of DR MiFID II 2017/565.

³⁰ §32 of the ESMA's Supervisory Briefing.

¹⁸ §18 of the ESMA's Supervisory Briefing also indicates that service providers may also rely on the capacity of professional clients to understand whether or not they are receiving investment advice.

Indeed, the ESMA points out in §63 of its Supervisory Briefing that in such a situation, the service provider providing the recommendation would be considered as providing unsuitable investment advice, and would therefore not be acting in compliance with MIF II requirements in this area.

Question 4.4. Does the recommendation have to be explicitly presented as suitable or appropriate to the client’s situation for the investment advice service to qualify?

No, a recommendation that implicitly suggests that it is suitable or appropriate to the client’s situation could also qualify as an investment advice service (provided that the 4 other conditions are also met - see Question & Answer 1.1). As indicated in §61 and 62 of the ESMA's Supervisory Briefing, this could be the case when the communication addressed to the client incites him to perform an action in relation to a financial instrument (notably the purchase, sale, subscription, exchange, redemption, holding or firm participation of this financial instrument, or the exercise or non-exercise of the rights attached to it - see Question & Answer 3.1).

For example, a recommendation could be considered to be “presented” as suitable to the client or based on his personal situation when several financial instruments are presented and one of them is particularly highlighted, using the phrase “people like you tend to buy this product”.

Question 4.5. What is meant by “based on the client’s personal situation”?

In line with what is described in §67 et seq. of the ESMA's Supervisory Briefing, the client’s personal situation may include factual elements (age, marital status, etc.) as well as more subjective information on his objectives and needs (risk tolerance, investment horizon, sustainability preferences, hedging needs, etc.). All such information can be considered part of the client’s personal situation.

Whether or not a recommendation is based on the client’s personal situation will depend on a number of factors, including the information the service provider has gathered about the client and the way in which it has presented its questions.

So, for example, if a service provider has gathered information from a client, or elements about his investment objectives and/or financial situation, and this client returns to the service provider for a similar service, he can reasonably expect that the information previously provided will be used, and therefore that the recommendation will be based on his personal situation. Conversely, if the client provides information to the service provider in connection with the granting of a mortgage, he cannot reasonably expect, unless otherwise stated by the service provider, that this information will be used when he contacts the service provider for the provision of an investment advice service.

5. ISSUED OTHERWISE THAN EXCLUSIVELY TO THE PUBLIC

Question 5.1. What is a recommendation “intended exclusively for the public”?

The last paragraph of Article 9 of DR MiFID II 2017/565 states that a recommendation “*is not considered as personalised if it is exclusively intended for the public*”.

In §76 of its Supervisory Briefing, the ESMA specifies that this applies in particular to communications in newspapers or magazines, on television or radio, or via posters displayed in public places (e.g. public transports),

even if these communications promote a particular financial instrument¹⁹ (provided that they are not presented as being suitable for a particular personal situation).

On the other hand, the ESMA points out that a recommendation made via the internet²⁰ (emails, websites, social networks, mobile applications, etc.) or a training course²¹ are not necessarily considered to be exclusively aimed at the public and may therefore constitute a personalised recommendation involving the provision of an investment advice service. In the case of training or courses, for example, an investment advice service may be qualified when a service provider gathers information on the client's personal situation during the course or the training, and uses this as the basis for providing a personalised or tailored recommendation.

Question 5.2. Can a “mailing”, in other words the sending of bulk emails to given persons, constitute a personalised recommendation?

As stated by the ESMA,²² although mail sent to groups of clients should probably not be likened to investment advice, the fact that a recommendation is sent to several clients does not automatically mean that it cannot be deemed to be personalised. The following elements are particularly important to determine whether a mailing constitutes a personalised recommendation: chosen target, content of the message, language used.

Accordingly, the sending of bulk emails by securities services to holders of securities to inform them of financial transactions affecting those securities does not constitute a personalised recommendation, provided that the email is not accompanied by any solicitation, recommendation, opinion or value judgement on the appropriateness of the transaction.

However, when the email contains a recommendation that meets the conditions recalled in Question & Answer 4.1 above, the sending of bulk emails constitutes investment advice in the same way as that given in person, by telephone or by letter.²³ In such cases, for sending bulk emails the service provider must check beforehand that the proposed product is appropriate.²⁴

Question 5.3. Does the communication of an investment research report to a client imply the provision of an investment advice service?

In most cases, the provision of a research report does not constitute an investment advice service. In fact, Article 36.1 of DR MIFID II 2017/565 defines investment research as “research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public”²⁵. Paragraph b of this same article also states that if this investment research was made by a service provider to a client, it would not be qualified as investment advice. Also, generally, the communication of an investment research report to a client does not imply the provision of an investment advice service.

However, depending on how the research report is communicated to the client, an investment advice service may be qualified. This is the case in particular if, at the time of communication of the research report, it is implied to the client that the financial instrument mentioned in the report is suitable to his profile²⁶.

¹⁹ §81 to 83 of the ESMA's Supervisory Briefing.

²⁰ §77 to 80 of the ESMA's Supervisory Briefing.

²¹ §87 of the ESMA's Supervisory Briefing.

²² §84 to 86 of the ESMA's Supervisory Briefing.

²³ Being recalled that this communication is subject in particular to the obligations stated in Article 37 of DR 2017/565..

²⁴ §89 of the ESMA's Supervisory Briefing.

²⁵ §91 et seq. of the ESMA's Supervisory Briefing.

²⁶ §107 of the ESMA's Supervisory Briefing.

6. PRESENTATION TO THE CLIENT

Question 6.1. What does it mean to make a recommendation to a person in his/her capacity as an investor or potential investor?

The ESMA states in its Supervisory Briefing²⁷ that this qualification is fairly obvious in the vast majority of situations for both the service provider and the client, whether the client is a natural person, a legal entity or a group of natural persons or legal entities.

When a service provider makes a recommendation to a client to buy, exchange, redeem, sell, hold or underwrite a financial instrument (or any of the other actions mentioned in Question & Answer 3.1), it is addressing the client in his capacity as an investor, unless the opposite can be proven by the service provider. The client is also considered to be acting in his capacity as an investor when his main motivation is to hedge a risk.

Question 6.2. What does it mean to make a recommendation to a person in his/her capacity as an agent of an investor or potential investor?

In a similar way to the qualification of the client's "investor" status, the ESMA considers that the qualification of an agent of a client is fairly obvious in a large number of situations, notably when a person holds a power of attorney over the client's account²⁸.

However, this qualification is less obvious in other situations. This is the case, for example, when a portfolio manager calls on the services of an advisor specialised in a particular field for one of his clients. In this situation, the suitability test must be carried out on the end client (the client of the portfolio manager). The specialised advisor must therefore ensure that he has sufficient information on the portfolio manager's client²⁹.

Question 6.3. Does the absence of specific remuneration disqualify an investment advice service?

The absence of specific remuneration for this service is not sufficient to demonstrate that an investment advice service has not been provided. The provision of a personalised recommendation free of charge may constitute an investment advice service, as the free nature of the service does not remove the qualification of "client" of the person to whom the service is provided³⁰ (subject to the fulfilment of the 4 other conditions – see Question & Answer 1.1).

²⁷ §108 of the ESMA's Supervisory Briefing.

²⁸ §94 of the ESMA's Supervisory Briefing.

²⁹ Regarding the rules by which financial investment advisers are bound, refer to Question 1.8 of Position-Recommendation DOC-2006-23 (Questions and answers on the rules that apply to financial investment advisers).

³⁰ With the exception of financial investment advisers.

Question 6.4. Can the “indirect” marketing of financial instruments lead the manufacturer of said financial instruments, or any intermediary distributors, to provide the end client with an investment advice service?

This is a situation in which a service provider (manufacturer) designs a financial instrument intended to be marketed by another service provider (distributor) to its own clients. In this situation, the manufacturer is not in a relationship with the end clients and is therefore not deemed to have provided them with an investment advice service, even if it has drafted some of the materials used to market said financial instrument.

A similar reasoning may be held for any intermediary distributors which are no longer in a relationship with the end clients or their agents.

7. OTHER POINTS

Question 7.1. Do persons who provide asset management advice in the normal course of their business have to be accredited to provide investment advice services?

Asset management advice³¹ is a generic, non-regulated activity without any legal definition, which those who regard themselves as involved in it generally consider requires dual expertise, serving individuals and legal entities: advice on asset management strategy and advice on investment, financial and real estate strategy.

Investment advice is an investment service defined by the MFC and DR MiFID II 2017/565; one of its components which distinguish it from asset management advice is its scope, i.e. investment advice must necessarily relate to financial instruments.

Therefore, an asset management adviser who only recommends an asset strategy or an allocation of assets to his clients without recommending transactions in financial instruments would not be considered as providing an investment advice service.

Question 7.2. Could a service provider³² who does not wish to provide investment advice nevertheless be considered as providing this service?

Yes, the mere fact of mentioning in the information provided to clients, whether orally or through legal or marketing documentation, that the service provider does not provide an investment advice service (or any other mention to this effect - for example, that the service provider does not carry out a suitability test) is not sufficient to disqualify the actual provision of an investment advice service³³.

If a service provider does not wish to provide the investment advice service, it must ensure that, in practice, no investment advice is given to the client. In §20 of ESMA's Supervisory Briefing, it is also mentioned that a service provider who does not wish to provide the investment advice service must train its staff, particularly those in direct contact with clients, so that they are fully aware of its intention not to provide this service, and must ensure that its IT tools do not give this impression either.

³¹ Such a service will be provided if a personalized recommendation is made by the service provider (and the other conditions are also met – see Question & Answer 1.1), for example in a phonecall with its client.

³² Excluding financial investment advisers.

³³ Such a service would be provided if a personalised recommendation is issued (and if the other conditions are also met – see Question – Answer 1.1), for example when making a call with its client.

In the absence of appropriate procedures and guidelines, a service provider who does not wish to provide the advice service runs the risk that operational staff may be led to implicitly or explicitly formulate recommendations that could legitimately be considered personalised by the clients to whom they are addressed.

In this case, provided that the other conditions mentioned in Question & Answer 1.1 are also met, the service provider could be deemed to be providing the investment advice service without the necessary authorisation (or without having been properly registered).