

## Article 25

### **Assessment of suitability and appropriateness and reporting to clients**

1. When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him.

2. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 1, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client.

Where the investment firm considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. This warning may be provided in a standardised format.

Where clients or potential clients do not provide the information referred to under the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the investment firm shall warn them that the firm is not in a position to determine whether the service or product envisaged is appropriate for them. This warning may be provided in a standardised format.

3. Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services, with the exclusion of the ancillary service specified in Section B (1) of Annex 1, to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 2 where all the following conditions are met:

a)- the services referred to any of the following financial instruments:

(i) shares admitted to trading on a regulated market or on an equivalent third-country market, or on a MTF, where these are shares in companies, and excluding shares in non-UCITS collective investment undertakings [that have not been authorised for sale to retail customers in a Member State by the Competent Authority of that Member State](#) and shares that embed a derivative;

(ii) bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;

(iii) money market instruments, excluding those that embed a derivative), or incorporate a structure which makes it difficult for the client to understand the risk involved;

(iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;

[\(v\) shares or units in non-UCITS collective investment undertakings that have been authorised for sale to retail customers in a Member State by the Competent Authority of that Member State;](#)

(vi) other non-complex financial instruments for the purpose of this paragraph.

For the purpose of this point, if the requirements and the procedure laid down under subparagraphs 3 and 4 of paragraph 1 of Article 4 of Directive 2003/71/EC [*Prospectus Directive*] are fulfilled, a third-country market shall be considered as equivalent to a regulated market.

b)- the service is provided at the initiative of the client or potential client,

c)- the client or potential client has been clearly informed that in the provision of this service the investment firm is not required to assess the suitability or appropriateness of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules. This warning may be provided in a standardised format,

d)- the investment firm complies with its obligations under Article 23.

4. The investment firm shall establish a record that includes the document or documents agreed between the firm and the client that set out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

5. The client must receive from the investment firm adequate reports on the service provided to its clients. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice, the investment firm shall specify how the advice given meets the personal characteristics of the client.

6. The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 94 measures ⇐ to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients. Those delegated acts shall take into account:

(a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;

(b) the nature of the products being offered or considered, including different types of financial instruments and banking deposits referred to in Article 1 (2);

(c) the retail or professional nature of the client or potential clients or, in the case of paragraphs 5, their classification as eligible counterparties.

7. ESMA shall develop by [] at the latest, and update periodically, guidelines for the assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved in accordance with paragraph 3 (a).