

**AMF Position/Recommendation
Position/Recommendation supplementing Position 2013-02 on collecting know-your-client information – DOC-2017-08**

References: Articles 314-44, 314-46, 314-47, 314-51 to 314-53, 317-71 and 325-7 of the AMF General Regulation

Annex: AMF Position – Collecting know-your-client information – DOC-2013-02

This Position/Recommendation supplementing AMF Position DOC-2013-02 is intended for investment service providers (ISPs) and financial investment advisors (FIAs), hereinafter collectively referred to as the 'service provider'. It is nonetheless stipulated that the principles involving the internal control system (including risk mapping) concern only ISPs.

From online brokerage to everyday banking and savings, digitisation has expanded considerably, leading to the emergence of 100% online institutions/distribution channels alongside the traditional distribution networks providing mixed approaches combining the traditional branch relationship and digital processes. The laws and regulations, particularly the rules of good conduct arising under the transposition of MiFID,¹ must be observed regardless of what channel is used by the service provider to distribute financial instruments.

Whether conducted through connected platforms or objects, digitisation of processes entails new risks in the provision of investment services and/or the actions required before they are executed. If the service provider chooses to digitise processes specific to the provision of investment services or their earlier stages, it must take measures to reduce certain risks directly consequential on the absence of contact between the distributor and its client. This particularly includes:

- risk as to the quality of the information provided by the client and collected by the service provider;
- use of information collected by a poorly designed or improperly used algorithm in its two phases: defining the client's profile and choosing financial instruments consistent with his profile;
- an increase in the risk associated with the retention of clients' personal data;
- reputational risk associated with the systematic misuse of data related to a large number of clients or a failure in the data processing system.

The ISP must also incorporate assessment and control of these new risks into its internal control system.

This context has led to the production of a Position/Recommendation specifically dedicated to the risks brought about by digital transition on relationships between the service provider and its client and on the consequences for the client's behaviour.

It is agreed in this Position/Recommendation that the quality of the adequacy tests brought about by the investment advice or portfolio management services for third parties is based on the results of the following chronological steps:

- collection of information from the client;
- use of this collected data by an algorithm for defining the client's profile;
- automatic choice of financial instruments or services in keeping with this profile;
- updating and storing of the client's data.

¹ Applicable to ISPs and FIAs under the national regime.

Recommendation:

The AMF recommends when algorithms are used that the service provider informs the client in precise terms of their purpose, and of the online help arrangements or contacts made available to the client at each of these stages.

The scope of this Position/Recommendation remains identical to that of the Position on collecting know-your-client information DOC-2013-02.

This supplements, as required, the principles set out and referenced in paragraph 4 of the referenced Position (see numbered references), principles that must be assessed in proportionality with regard to the digital organisation in place.

4.1 Collection methods and traceability of information

In practice, the service provider often has recourse to questionnaires as a result of which it collects the information needed to assess the suitability or appropriateness of the investment service. Conducted through an automated process, this stage must be all the more supervised and subject to efficiency and consistency control since the provision of information by the client and its collection and processing are carried out without the service provider's human intervention, potentially putting the client in a self-assessment situation even more than in a branch (§ 4.2.2 of Position DOC 2013-02).

Position:

The system used must make it possible to ask clear and precise questions that are perceived as such by the client and to carry out controls concerning the consistency of the data input and collected in other ways (branch, phone, etc.), with any inconsistency having to give rise to a request for additional or amended information and, as the case may be, to generate alerts, caveats or blocks in the client's pathway.

Attention must also be paid to:

- cases where more than one service provider collects the information, particularly in terms of the various players' responsibilities;
- use and protection of information that might have been collected on the client within and outside the process covered by this Position/Recommendation.

By way of example, an online bank could use all or some of the data collected in a traditional manner in a branch by another entity in its group or in future use aggregated banking data.

4.1.1 Informing the client that the questionnaire is conducted in his interest

☛ **The service provider must ensure the traceability of the client's taking note of the purpose of the questions asked on his experience, knowledge, financial situation and objectives.**

Position:

The service provider must explicitly state that information is collected in the client's interest and that the provision of complete and correct information is a prerequisite for the service provider to be able to have the client benefit from a high-quality service. The service provider complies with the obligations of article L533-11 of the Monetary and Financial Code.

4.1.2 Ensuring that the questions are clear and understandable

Without human intervention, collecting information on a client's financial situation or investment objectives may necessitate particular supervision.

Position:

Notwithstanding the fact that the service provider must formulate clear and understandable questions for the client and not leaving any latitude for interpretation, the client may or may not understand the question or its purpose.

- The service provider must, as the case may be, enable the client to open information windows or contact an advisor by any channel dedicated to this purpose with a view to clarifying the purpose of the questions asked.

4.1.3 Use of digital provides the possibility of improving the quality of the information collected by the service provider in terms of enrichment of the questions asked, consistency and traceability, but at the same time this channel increases the risk that the client will fail to understand or will make an incorrect assessment.

Position:

The service provider must take the measures needed to rectify the risk that the client will fail to understand or will make an incorrect assessment. The service provider must **also** ensure the traceability of the client's commitment regarding the accuracy of the replies that he gives to the questions asked unless this is ensured by another process (e.g. under general conditions of online investment services).

Note that **in all circumstances the provisions of article 314-53 of the AMF General Regulation apply to investment service providers.**²

Failing this or if the service provider is aware or ought to be aware that the information collected is out of date, inaccurate or incomplete, it must refrain from recommending financial instruments or providing the portfolio management service for third parties, or request upstream of any new proposal an update of his personal and financial data intended to ensure the suitability of the service provided or the product recommended.

With a view to improving the quality of the information collected, the questionnaire must be enriched while at the same time respecting the principle of proportionality.³

- by adapting the number of questions to the nature of the investment service provided, the client's profile and/or the complexity of the products so as to make it possible to assess his actual knowledge and his experience in the financial instruments, and by using the options provided by digital to verify in practical terms the client's answers while at the same time remaining attentive to the client's natural tendency to overestimate his abilities;
- by including (i) requests targeted at clients who are the object of specific policies so that processing, if used, of populations necessitating particular attention is uniform whether carried out face to face in a branch or online, (ii) criteria making it possible to identify them; this may involve non-resident clients, clients requesting tax-exempt products or sensitive clients (minors, the elderly, adults under guardianship, etc.);
- by using digital to construct a tree structure of questions whose logic makes it possible to verify the consistency of the answers obtained to each question but also between the questions (e.g. providing recurring questions asked from a different angle). Certain inconsistencies must be able to trigger an alert, inviting the client to correct his answers in a limited number of cases beyond which the client pathway could be stopped;
- by bringing to the client's attention the fact that it is good practice to ask him to review his information when certain events occur or if this event is liable to modify the data supplied;
- by being wary of encouraging modifications to the answers to the questionnaire.

² Article 314-53 of the AMF General Regulation: 'An investment services provider shall be entitled to rely on the information provided by its clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.'

³ While the scope of the information to be collected may vary, the ISP must at all times ensure that the recommendation or investment made on the client's behalf is suitable or appropriate for the client (excluding simple execution service). The principle of proportionality enshrined in MiFID authorises ISPs to collect a level of information proportionate to the products and services that they offer or concerning which the clients request specific investment advice or portfolio management services for third parties. On the other hand, this principle does not enable ISPs to lower the level of protection owed to clients.

4.1.4 Updating of the data collected

Position:

The service provider must, at the end of the information collection process, provide the client with a summary of the information and obtain his validation. The service provider must also give him the opportunity to revise his answers if he so wishes before his validation for use.

Use of digital enables the service provider:

- to submit this summary to the client in a systematic fashion (or, at a suitable frequency that the service provider can justify) at each new connection (or, at a suitable frequency that the service provider can justify) with a view to carrying out transactions, so as to ask him to confirm that the data supplied has not changed;
- irrespective of the answer provided by the client, to ask the client additional questions making it possible from a list of events (loss or change of job, change in family situation, etc.) to validate or invalidate the client's answer and to invite him, as the case may be, to revise each item of the data needed for the investment service to be provided;
- to ask the question again if the service provider is aware, using data legitimately in its possession, that the client's answers are inaccurate or incomplete.

4.1.5 Data retention

Use of digital makes it possible for the service provider to chronologically retain data concerning his client.

Position:

The service provider must ensure the traceability of the answers obtained by providing up-to-date, suitable and secure storage of data including a backup of services in the event of cyber-attack, hardware damage or technical problem.

4.2 On the content of the information

digitisation of processes makes it possible to enrich the collection of information that is at times more difficult to obtain in a face-to-face relationship, particularly information related to the client's investment knowledge and experience.

Position:

The service provider must ensure that data collection is consistent with and limited to the purpose sought. The service provider must also take the measures needed to ensure the security and integrity of clients' personal data.

4.3 On using the information

4.3.1 Data consistency

Identification of a sizeable number of consistencies, facilitated by recourse to digital (see 4.1.3 of AMF Position DOC 2013-02), should be able to trigger alerts and thereby strengthen the effectiveness of the internal control system.

4.3.2 Using the data

Position:

All data collected from the client and of use in satisfying the requirements of article L533-13 of the Monetary and Financial Code **must be used to determine his profile**. The modelling used in a profiling algorithm at times results in the data items collected or legitimately available being weighted one in relation to another; **the service provider must, in such a case, be able to justify the choices made in modelling the algorithm** used and its changes.

Partial use of the client's data and overweighting or selection of certain data items would in all likelihood lead to generalised use of standard profiles. Given the risk of generalised recommendations unsuited to the client's situation, the risk of deterioration in the quality of investment advice provided to the client cannot be ruled out.

Once the data has been validated by the client, the service provider must let him have a summary in terms of profile (4.1.4). Digitisation makes it possible to identify the client's respective responsibilities (completeness and accuracy of the answers) and determination of his profile by the service provider on the basis of the information submitted by the client or legitimately available, the client first being informed accordingly in such a case. Digitisation also makes it possible to retain the traceability of the link between the data collected, the client's profile, and the services or products offered or provided to the client.

Digitisation appears the occasion for the service provider to be able to justify (and verify in the internal control system) the consistency of the services and products offered to the client or provided at his request on the basis of his profile.

Position

The service provider must be able to justify (and verify in the internal control system) the consistency of the services and products offered to the client or provided on the basis of his profile.

- The service provider must, as the case may be, ensure that all the elements enabling it to offer the product can be returned to the client when the product is subscribed.
- The products chosen by the algorithm must ensure that the regulatory documents are made available to the client: in practice, links with a 'product library' are used so that the regulatory documentation made available is at all times up to date.
- The service provider must organise the retention of successive confirmations by the client in a dedicated secure space. This dedicated space must comprise a library of the documents that have been submitted to him, such that they cannot be deleted, along with links with the documents made available (including the various versions). Note that access to such data by the AMF is specified by article L621-8-4 of the Monetary and Financial Code.
- When the service provider recommends that the client simultaneously carries out transactions on more than one financial instrument enabling, for example, a change in asset allocations in his portfolio, its proposal must state that its advisory service relates to each of the transactions carried out on the proposed instruments and in particular on the allocation proposed between the various instruments.

4.4 Means and procedures

Online collection of the client's information must entail strengthening by the service provider of its procedures and its internal control system as well as adaptation of its control methodologies. The digital process also makes it possible to retain the flows of information received from or provided to the client over time.

Position:

- Modifications of the client's data at his initiative without any event justifying them (including when he changes his risk profile) must constitute an alert in the service provider's internal control system (see 4.1.3 of AMF Position DOC 2013-02).
- Validation of the algorithms and retention of the successive versions making it possible to define the client's profile must be integrated into the ISP's internal control system.

- The service provider must in particular watch out of:
 - the establishment of excessively standardised client profiles and the risk of deterioration in the quality of the resulting investment advice;
 - the quality of the simulations implemented to be able to offer any of the products that are suitable for the client;
 - control of the effective provision to clients of regulatory documents in their definitive versions;
 - and compliance with the proper use of the personal data that it collects directly from the client or any third party (other group entities, data suppliers) and compliance with general data protection rules.

5. Reputational risks

Position:

The service provider must assess the reputational risk related to repeated errors associated with the questionnaire or algorithm used applied to a large number of clients and take account of such risk in its non-compliance risk mapping.

6. Security risks

The service provider's liability remains incurred with respect to the client including when the service provider turns to third parties to store and collect the data or to implement the algorithm for determining the profile and/or the financial instruments, being the objects of personal recommendations or the portfolio management service for third parties.

Position:

The service provider must:

- mention on any screen that binds it with respect to the client **the contact details of the division that can be contacted by the client** and, as the case may be, of the subcontractors concerned;
- put in place processes suited to **authentication of the client** so as to restrict cases of identity theft;
- ensure the quality of partner third parties in these processes, having regard to the professional rules applicable to them;
- ensure the integrity of the data submitted by or to such third parties (see point 4.4 of AMF Position DOC 2013-02);
- ensure that the service provider's partner third parties (e.g. publishers of investment advice or asset management software) that might participate in the provision of investment advice or portfolio management services for third parties have the necessary approvals.