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**SUMMARY OF SPOT INSPECTIONS
ON COMPLIANCE WITH MIFID II
SUITABILITY PROVISIONS**

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INTRODUCTION

In accordance with the AMF's 2020 supervision priorities, a series of short thematic "SPOT" inspections¹ were conducted in 2020 on the procedures for assessing the suitability of a financial instrument for the particular situation of a retail client when providing investment advisory services. These inspections took place within the framework of the provisions introduced by Directive 2014/65/EU of 15 May 2014 on markets in financial instruments ("MiFID II")² supplemented by Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 (hereinafter "MiFID II DR"), which came into force on 3 January 2018. The investigations covered a sample group of four investment service providers (hereinafter "ISPs") and covered a period ranging from 3 January 2018 to 16 March 2020 (the day before the first lockdown in France due to the health crisis).

The main objective of this series of SPOT inspections was to ensure ISPs' compliance with due diligence for assessing the suitability of recommended financial instruments for their clients' personal circumstances. Therefore, particular attention was paid to: *i) the scope and procedures for collecting information from clients; ii) the procedures for implementing the suitability test; iii) verification by the ISP of the existence of equivalent financial instruments which could correspond to the client's profile taking into consideration their cost and complexity; iv) submission of the contents of the suitability report summarising the advice given to the client, and v) the control system on the issue of suitability.*

This review aims to shed light on the procedures for implementing the suitability assessment provisions laid down by MiFID II. It describes the systems put in place by each ISP on the date of the controls. It should be specified that issues relating to knowledge and experience had been covered by a previous series of SPOT inspections in October 2018.³

This document is neither a position nor a recommendation. The practices identified as either "good" or "bad" highlight approaches identified during the inspections that may facilitate, or complicate, compliance with the regulations governing suitability.

¹ SPOT: Supervision des Pratiques Opérationnelle et Thématique (operational and thematic supervision of practices).

² Transposed into national law by Order No. 20171107 dated 22 June 2017 and coming into force on 3 January 2018.

³ AMF, "Review of SPOT inspections on clients' MiFID I/MiFID II knowledge and experience", October 2018.

1- OVERVIEW OF THE MAIN FINDINGS OF THE INSPECTIONS

The ESMA Guidelines 35-43-1163 concerning certain aspects of the suitability requirements of the MiFID Directive (hereinafter the "ESMA Guidelines") which the AMF applies, as specified in Position DOC-2019-03, define suitability assessment as "*the whole process of collecting information about a client and the subsequent assessment by the firm that a given investment product is suitable for him, based also on the firm's solid understanding of the products that it can recommend or invest into on behalf of the client*".⁴

Within this framework, the inspection task force analysed all stages of the process contributing to suitability assessment relating to investment advice, the collection of information on the client and the submission and regular evaluation of the suitability report. The inspection also verified the control systems established by the ISPs relating to the suitability issue. From a legal viewpoint, the due diligence of the inspection task force aimed in particular to assess the implementation of and compliance with the provisions of Articles L. 533-10, L. 533-13 and L. 533-15 of the Monetary and Financial Code (hereinafter the "MFC") and Articles 22, 52, 54 and 55 of MiFID II DR.

The implementation of the requirements relating to suitability assessment has been clarified in particular on the European level.⁵ Two years after the entry into force of the MiFID II directive, and despite important efforts made by the sample group of ISPs, the findings of the investigations carried out by the inspection task force still show significant shortcomings regarding application of the required due diligence on suitability. These findings identify areas requiring improvement that should focus on the effective collection of the necessary client's information and on the assessment of their knowledge regarding the recommended financial instrument.

Scope of information collected on the client

As regards the system for collecting the information needed to assess *i) the knowledge and experience, ii) the financial situation, including the client's ability to bear losses, and iii) the investment objectives including risk tolerance*, the inspection task force analysed the model questionnaires submitted to clients and, for those ISPs using IT tools, the subscription process. This action was supplemented by checks on a sample of transactions selected by the task force. The aim was to check the effective collection of the necessary information, its granularity and its use for the aforementioned assessment purposes. For example, the task force noted that the information collected by the ISPs in this regard varied significantly.

✓ **Assessment of the client's knowledge**

All the ISPs assess the client's knowledge by means of factual questions (in the form of a "true/false" questionnaire or multiple-choice questions) on the underlyings and the investment vehicles (CIUs and EMTNs). The task force noted four good practices, namely: *i) an assessment that is "adaptable" according to the degree of the client's knowledge and experience of financial markets and/or expressed interest in terms of financial instruments, provided that this does not lower the level of protection due to the client; ii) the possibility offered to the client of expressing their lack of knowledge on the financial instrument in question, with this answer forming part of the assessment of the client's knowledge; iii) automatic blocking mechanisms ensuring completeness of the knowledge test and blocking subscription to any financial instrument for which the client has not confirmed their knowledge, and iv) measures enabling the client to increase their knowledge of a financial instrument while restricting, temporarily and in the client's interest, investment in this instrument*. However, the inspection task force noted that one ISP allowed recommending financial instruments for which the client did not have the required knowledge, but also immediately modifying the incorrect answers in the advisory stage, which is not in compliance with the regulations.

⁴ ESMA Guidelines 35-43-1163FR, replicated by the AMF in Position DOC-2019-03, paragraph 6.

⁵ Notably by the ESMA Guidelines 35-43-1163 and the ESMA Q&A 35-43-349.

✓ **Assessment of the client's experience**

All the ISPs provided for at least one question relating to experience. The task force observed that three ISPs adapted collection of the client's experience by asking them for only part of the information listed in Article 55.1 of MiFID II DR (consideration primarily of the nature and, exceptionally, the volume of transactions in financial instruments performed by the client), which, in the absence of justification with regard to the complexity of the financial instrument, its risk level and/or the nature of the client, constitutes a breach of the regulations. The task force also noted that one ISP included a single question for assessment of the client's experience without making a distinction between classes of financial instruments, which is not in compliance with the regulations.

✓ **Assessment of the client's financial situation and ability to bear losses**

One poor practice noted by the task force was that one ISP did not express in quantified terms, for suitability assessment, the result of the assessment of the ability to bear losses. Also, the task force noted that two ISPs analysed the client's ability to bear losses exclusively by means of theoretical situation simulations for the client, without taking into consideration their financial situation (even though financial data were collected). Such an approach, moreover, denoted an assessment confused with the concept of risk tolerance (although relating to investment objectives), which is contrary to the regulations. The task force also noted that information on the client's ability to bear losses had not been collected for 50% of the consolidated sample and not assessed in accordance with the regulations for 87.5% of the consolidated sample (the latter hypothesis entailing consequences relating to the confused assessment by certain ISPs of the concepts of ability to bear losses and risk tolerance). These aspects constitute infringements of the regulations.

✓ **Assessment of the client's investment objectives and risk tolerance**

The task force observed great diversity in the number, nature and quantity of investment objectives that could be selected. In particular, even though most ISPs allowed the client to select several objectives, only one ISP provided for their hierarchic ranking for a given client. On this subject, the task force identified two good practices, namely *i) consideration of the client's preferences in the area of responsible investment, and ii) differentiation of the objectives depending on whether the client is a natural or legal person*. Regarding investment horizons, the task force noted a diversity in their collection procedures, resulting in a more or less detailed granularity. However, the task force observed that one ISP did not link the horizons to investment objectives or even proposed objectives without a horizon to be indicated, which constitutes an infringement of the regulations in this specific case. Regarding risk tolerance, this was generally assessed by means of several questions. On this subject, the task force identified two good practices: *i) the use of scenarios presenting the risk/return ratio, and ii) assessment of the client's reaction to a potential market downturn*. However, it was noted that the risk tolerance had not been assessed for 35% of the clients of the consolidated sample, which constitutes an infringement of the regulations.

Methods for collecting and updating client information

The task force noted that all the ISPs had procedures describing in detail the methods for collecting and updating the necessary client information.

For collecting client information, the task force noted two good practices, namely: *i) direct interaction with the client to ensure that they have correctly understood the purpose of the assessment and the content of the questionnaire, and ii) the existence of automatic controls during the assessment process to ensure information collection and the consistency of the information provided by the client*. However, it was noted that investment advice was issued without first collecting the necessary information concerning the client (32.5% of the sample of transactions selected by the task force), which constitutes an infringement of the regulations.

Regarding the updating of client information, the task force noted three good practices, namely: *i) setting an appointment between the client and the adviser for updating their data; ii) determining a minimum frequency of updating of the client's information, and iii) the definition of a list of events or conditions whose occurrence justifies*

anticipated and/or immediate updating. On the other hand, the application of these procedures did not make it possible to have an optimal result for updating the data of all the clients concerned. For example, the information on certain clients (30% of the consolidated sample) dated from between two and eight years prior to execution of the transaction. Whether the fact of using incomplete, out-of-date or obsolete information is defined as an infringement depends on the specific facts of the case. Two years after the entry into force of MiFID II and MiFID II DR, clients' information should be updated and comply with the obligations resulting from this legislation. Hence, the use by the ISP of questionnaires filled in by the client in a MiFID I format constitutes an infringement of the regulations.

Implementation of the suitability test

Regarding implementation of the suitability test, the task force noted that all the ISPs performed profiling of their clients, using a more or less substantial range of information (usually focusing on risk tolerance). However, this failure to consider all the information for assessment of the client's investor profile did not mean a failure to consider the information referred to in Article L. 533-13 of the MFC and in Articles 54 and 55 of MiFID II DR in the advisory stage (subject to difficulties in assessing the ability to bear losses mentioned above). A good practice noted by the task force was the existence in the automated systems of blocking and/or alerts in the event that the investment recommendation could otherwise lead to a situation of unsuitability. However, the task force noted that the implementation of the suitability assessment system by the ISPs forming the sample group was clearly insufficient. The sample of forty transactions analysed by the task force showed recommendations on financial instruments which were not strictly suitable for the client's situation at all the ISPs inspected, with between 30% and 40% of the sample of each ISP being unsatisfactory. The task force replicated the tests performed by the ISPs based on the data available in the clients' dossiers and in accordance with their procedures. The data taken into consideration were as follows: knowledge and experience in relation to the financial instrument invested in, investment horizon, risk tolerance and ability to bear losses. It should be specified that the proportions presented correspond to a conservative approach, not reflecting the shortcomings detected in procedures (for example, assessment confusing the concepts of risk tolerance and ability to bear losses). The reasons for unsuitability concerned, in order of recurrence: *i) non-observance of the investment objective (and in particular the horizon defined by the client); ii) clients' overexposure to total portfolio risk compared with their investor profile; iii) a lack of the knowledge needed to invest in the financial instrument, and iv) non-observance of the ability to bear losses.* Moreover, certain transactions combined several factors of unsuitability. Finally, these proportions amounted to between 30% and 80% (i.e. an average overall proportion of 52.5% of the sample) taking into account the absence of assessment prior to providing advice (i.e. the assessment questionnaire had been filled in by the client after the transaction), a lack of archiving and a failure to gather all the necessary information. Part of the aforementioned proportions could be explained by late implementation of the MiFID II provisions in the model questionnaires and/or tools used to assess the client. These practices constitute infringements of the regulations.

Verification by the ISP of the existence of equivalent financial instruments which could correspond to the client's profile taking into consideration their cost and complexity

The task force analysed the procedures relating to verification of the existence of financial instruments which could be equivalent in terms of cost and complexity given the client's profile. All the ISPs of the sample group presented a relatively homogeneous system for identifying and selecting financial instruments that could be recommended for investment. The procedures provided for the pre-selection of a list of financial instruments based on objective and qualitative criteria, and the validation of this list in one or more committees. The task force noted that this due diligence was systematically performed before issuing any investment advice, either because the ISP used standard investment propositions applying to various clients having the same investor profile, or because the ISP had a limited range of complementary financial instruments. A good practice noted by the task force was reporting to the client in writing on the performance of such due diligence in the suitability report.

Content and procedures for submission of the suitability report

While all the ISPs had procedures relating to the submission of a suitability report and the monitoring of suitability over time (for the clients concerned by this latter point), the task force observed that their application could sometimes prove limited.

✓ Submission and content of the suitability report

Regarding submission of a suitability report, the procedures of all the ISPs provided for the submission of such a report to the client following each personalised recommendation, and in any case prior to the transaction. However, and in contradiction with the aforementioned procedures, two ISPs did not always submit a report, which constitutes an infringement of the regulations. Regarding the content of the suitability report, the task force noted two good practices, namely: *i) the generation of various model suitability reports depending on the type of recommendation issued, notably in order to easily materialise a recommendation to do nothing, and ii) the indication of a maximum period of validity of the personalised recommendation.* Moreover, the task force noted that three ISPs did not provide a specific explanation to the client concerning the appropriateness of the recommendation for the client's particular situation, considering this obligation as being implicitly fulfilled by performance of the suitability tests. This practice constitutes an infringement of the regulations, which require that the ISP provide the client with a report presenting an overview of the advice given and explaining why the recommendation made is appropriate for the retail client, including how it meets the client's objectives and particular situation from the viewpoint of the required investment horizon, the client's knowledge and experience and the client's attitude regarding risk and their ability to bear losses. The task force also noted that the suitability reports of two ISPs contained standard statements showing confusion regarding the responsibilities incumbent on them in the suitability assessment, which likewise constitutes an infringement of the regulations.

✓ Monitoring of suitability over time

The task force noted that all the ISPs in the sample group informed the clients concerned that they would perform a periodic assessment of suitability as referred to in Article L. 533-15 of the MFC, through various materials: *i) in certain suitability reports (three ISPs); ii) in the general terms of sale submitted to all clients (one of the aforementioned ISPs) or iii) in the advisory services agreement signed by all the clients (one last ISP).* The analysis of the existing systems highlighted significant heterogeneity among the various ISPs inspected. A good practice noted by the task force was the use of an instructive presentation of the periodic suitability assessment report, notably including indicators allowing a clear identification of any factors of unsuitability for the client. However, three ISPs did not comply with the stipulated obligations, in breach of the applicable provisions when a re-assessment was required: the analysis of the sample illustrated the failure to submit a document as evidence of the periodic assessment for all or part of the clients concerned (two ISPs). Moreover, for those clients who received such a document when a re-assessment was required, the document contained no updated statement of how the investment corresponded to the clients' preferences, objectives and other characteristics (two ISPs, including one mentioned above). Furthermore, the task force noted the existence of additional systems established by two ISPs contributing to the monitoring of suitability over time (alert mechanisms or indicators available to the advisers in order to monitor the suitability of the recommended financial instruments throughout the business relationship). For example, a good practice noted by the task force was such systems that could lead to the issue of a new investment proposition for the client (outside of the periodic assessment).

Compliance control system

Lastly, concerning controls relating to the suitability issue, the task force analysed the controls embedded in IT tools producing automatic recommendations and the controls implemented by the Compliance staff. It may be stressed that there is no correlation between the existence of an automated advisory tool and the robustness of the ISP's control system. Regarding level-two controls, the task force identified three good practices, namely: *i) the existence of a dedicated tool for record-keeping and traceability of control results; ii) the possibility of marginal adjustments to control points notably depending on previous results, without ever lowering the level of demand, and iii) the implementation of both cross-cutting controls on the investment advisory activity and thematic and/or targeted controls according to the risks identified by the ISP.* However, for two ISPs, the controls did not cover the entire scope of suitability, notably due to a failure to check the quality of the recommendations issued by the IT tool, which constitutes an infringement of the regulations.

2- CONTEXT AND SCOPE

2.1- PRESENTATION OF THE SAMPLE OF ISPS INSPECTED

These SPOT inspections were performed jointly in four credit institutions (three of which are subsidiaries of a banking group). These four institutions, which are accredited as ISPs, were selected based on the size of their investment advisory business with retail clients and with a view to representativeness of the market (private bank, universal bank, etc.).

2.2- TOPICS ADDRESSED AND METHODOLOGY USED

The following topics were addressed during these inspections:

- The scope and procedures for collecting information from clients, notably regarding their financial situation (and specifically their ability to bear losses) and investment objectives (and specifically their risk tolerance);
- Procedures for client profiling and implementation of the suitability test;
- Verification by the ISP of the existence of other equivalent financial instruments which could correspond to the client's profile taking into consideration their cost and complexity;
- Submission by the ISP to the client of a suitability report summarising the advice given and its content (how this advice corresponds to the client's preferences, objectives and other characteristics) and, where applicable, the monitoring of suitability over time;
- The control system on the topic of suitability.

For each institution inspected, the inspection task force analysed the following aspects in particular:

- The procedures in force relating to *i) collecting and updating client information; ii) assessment of the client's ability to bear losses and risk tolerance; iii) suitability assessment; iv) identification of equivalent financial instruments which could correspond to the client's profile, and v) periodic assessment of the suitability of the advice given for the client's profile;*
- Description of the IT tools used for the issue of investment advice;
- Model client questionnaires in force;
- Model suitability report;
- The nature and results of controls performed by the institution on the topic of suitability.

Moreover, to supplement its analyses, the inspection task force selected a sample of transactions performed subsequent to investment advice, notably in order to check the existence of the client questionnaire filled in and complying with current MiFID II obligations, the suitability of the recommended instrument for the client's profile and the submission of a suitability report.

In practice, for this sample test, the task force requested each ISP to provide the list of financial instrument transactions performed by retail clients between 3 January 2018 and 16 March 2020 (inclusive) within the framework of investment advisory services. It then selected ten transactions concerning financial instruments proposed by each ISP, adopting a risk-based approach and paying special attention to the following criteria:

- The client's profile (elderly, limited knowledge, very conservative risk profile, etc.);
- The class of financial instrument invested in. In particular, the task force selected certain financial instruments having implications for investor protection (e.g. EMTNs), low liquidity or a long holding period (e.g. SCPIs). The consolidated sample of forty transactions therefore comprised 18% of investments in SCPI units and 20% of investments in EMTNs.

The task force asked each ISP to provide it with the dossier of the clients concerned, including at least: the client questionnaire, the suitability report, the subscription form (or any other document attesting the client's confirmation of the order) and the traceability of the periodic assessment (if it exists).

2.3- APPLICABLE REGULATIONS

In exercising its prerogatives, the inspection task force was supported by the following regulations, policy and work of ESMA:

Scope and methods for collecting client information

✓ Article L. 533-13 of the MFC relating to the obligation for ISPs to gather the necessary information concerning their client (knowledge and experience, financial situation (including their ability to bear losses) and investment objectives (including risk tolerance));

✓ Article L. 533-16 of the MFC relating to the conditions of application of Articles L. 533-11 to L. 533-15 of the MFC in light of the nature of the service proposed or provided, the financial instrument in question and whether or not the client is a professional investor;

✓ Article 54, paragraphs 1, 2, 4, 5, 7 of MiFID II DR specifying the ISP's obligations regarding collecting and processing client information;

✓ Article 55, paragraphs 1 and 3 of MiFID II DR specifying in particular the requirements regarding information collection on the client's knowledge and experience;

✓ AMF Position DOC-2019-03 incorporating the ESMA Guidelines on certain aspects relating to the suitability requirements of the MiFID Directive.

Procedures for implementation of the suitability test

✓ Article L. 533-13 of the MFC relating to the obligation for ISPs to take into consideration the aforementioned necessary information for suitability assessment;

✓ Article 54, paragraphs 1 to 2, 4, 5, 7, 8 and 10 of MiFID II DR specifying the nature and scope of the assessment of a financial instrument's suitability for the client profile;

✓ Article 55, paragraph 2 of MiFID II DR specifying the scope of the assessment of the client's knowledge and experience;

✓ AMF Position DOC-2019-03 incorporating the ESMA Guidelines on certain aspects relating to the suitability requirements of the MiFID Directive.

Verification by the ISP of the existence of equivalent financial instruments which could correspond to the client's profile taking into consideration their cost and complexity

- ✓ Article 54, paragraph 9 of MiFID II DR relating to the obligation for ISPs to have adequate policies and procedures in place to ensure that they understand the nature and features of the financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent financial instruments can meet their client's profile;
- ✓ AMF Position DOC-2019-03 incorporating the ESMA Guidelines on certain aspects relating to the suitability requirements of the MiFID Directive.

Suitability report content and procedures

- ✓ Article L. 533-15 of the MFC relating to the obligation for ISPs to provide on a durable medium a report presenting a summary of the advice given and explaining how the recommendation made is appropriate to the client's specific situation;
- ✓ Article D. 533-15 of the MFC requiring that the ISP inform clients if it provides a periodic assessment of the appropriateness of the financial instruments which are recommended to them;
- ✓ Article 54, paragraphs 12 and 13 of MiFID II DR specifying the aforementioned obligation;
- ✓ Article 55, paragraph 2 of MiFID II DR referring to the conditions of application of Article 54, paragraph 12 of MiFID II DR;
- ✓ ESMA Q&A 35-43-349 "On MiFID II and MiFIR investor protection and intermediaries topics".

Control systems related to the topic of suitability

- ✓ Article L. 533-10 of the MFC relating to the obligation for ISPs to have rules and procedures enabling them to ensure compliance with the measures applicable to them;
- ✓ Article 22, paragraphs 1 and 2 of MiFID II DR referring to the same obligation as that mentioned above;
- ✓ AMF Position DOC-2019-03 incorporating the ESMA Guidelines on certain aspects relating to the suitability requirements of MiFID II.

3- OBSERVATIONS AND ANALYSES

3.1- SCOPE OF INFORMATION COLLECTED ON THE CLIENT

The provisions of Articles L. 533-13 of the MFC based on MiFID II and 54.2 of MiFID II DR have clarified and strengthened the obligations applying to ISPs with regard to collecting client information, to enable them to better assess a client's suitability when proposing an investment advisory service. These provisions stipulate that the ISP must collect information considered "necessary" regarding the knowledge and experience of its clients relating to the specific type of financial instrument and the service proposed, their financial situation (including their ability to bear losses) and their investment objectives (including their risk tolerance). The ESMA Guidelines (point 27) provide examples of information that it is useful to collect because it could influence the analysis of the client's financial situation or their investment objectives: the client's age, family status, etc.

The inspection task force analysed the model questionnaires sent to clients and, for those ISPs using IT tools, the collection of client information in dedicated modules. This review was supplemented by analysis of the aforementioned sample of transactions.

The objective of the inspection task force was to assess the collection methods, the granularity of the information collected and its use in particular for assessment of clients' knowledge and experience, their ability to bear losses and their risk tolerance.

The scope of the information collected by the four ISPs inspected took into consideration the following aspects of the client's situation: personal situation (age, occupational, family and/or legal status), financial situation (financial savings and liquid assets), real estate situation, wealth situation (business assets, other assets owned), short-term budget situation (all revenues - business, real estate and other - and expenses) and long-term budget situation (loans, planned savings, other debts). *The details are provided in Annex 1 to this review.*

The task force noted that although the ISPs formally planned to collect the information covered by the regulations, its granularity and the use made of it to assess the client's situation varied significantly from one ISP to another, with an impact which could be detrimental to the suitability assessment.

Assessment of the client's knowledge

In accordance with Articles L. 533-13 of the MFC and 54.2 of MiFID II DR, ISPs must collect "*the necessary information concerning the knowledge and experience of their clients, including their potential clients, on investment matters related to the specific type of financial instrument or service*" in order to assess whether the client "*has the necessary experience and knowledge to understand the risks involved in the transaction*". The ESMA Guidelines specify that the client's level of knowledge and experience is assessed concerning the main characteristics and the risks associated with each financial instrument (points 30 and 80). These ESMA Guidelines add that the extent of the information to be collected may vary, provided that the level of protection due to the client is never lowered (points 33 to 37).

From a general viewpoint, the task force noted that the due diligence regarding assessment of knowledge varied significantly from one ISP to another, in terms of both the collection methods and the content (categories of knowledge verified, number and nature of questions asked).

Regarding the number and nature of the knowledge categories assessed, the ISPs defined between four and thirteen categories of knowledge. All the ISPs inspected assessed the client's knowledge by means of questions concerning, on the one hand, the underlying assets and, on the other hand, the investment vehicle itself (CIUs and EMTNs), whatever the underlying assets to which it offers exposure and/or in which it is invested. *The details are provided in Annex 2 to this review.*

From the viewpoint of volume, the ISPs asked between fourteen and thirty-two questions. The task force noted that:

- **All the ISPs proposed, for each category considered, at least one question on the main characteristic of the class of financial instrument in question and, for three of them, one question on the main risk involved;**
- **Two ISPs provided for specific or supplementary questionnaires** for certain financial instruments (mainly FIPs/FCPIs/FCPRs, SCPIs and products distributed within the framework of campaigns (formula funds or EMTNs)). These supplementary questionnaires showed a more detailed granularity of collection of information on knowledge and experience. This approach had been considered a good practice by the AMF in the aforementioned SPOT inspection of 2018;⁶
- **A single ISP assessed in a dedicated section the client's knowledge of basic concepts** (concepts of liquidity, risk/return ratio, market risk, etc.), as encouraged by point 31 of the ESMA Guidelines. Two other ISPs analysed the concepts of risk and return by means of questions specific to each category of financial instruments.

⁶ AMF, "Review of SPOT inspections on clients' MiFID I/MiFID II knowledge and experience", October 2018, pages 7 and 8.

Regarding the presentation of the knowledge questionnaire, the task force noted **for all the ISPs that the questions posed to clients were factual and enabled them to assess the client's knowledge (in the form of a "true/false" questionnaire or multiple-choice questions). Three of these ISPs allowed clients to express their lack of knowledge** concerning the financial instrument in question via a dedicated box (e.g. "*no opinion*" or "*I don't know*"), contributing to the assessment of the client's knowledge (e.g., by affecting the count of points and taking it into account in the knowledge/experience score or by blocking investment in the financial instrument in question). This method of counting favours a realistic overview of the client's knowledge (i.e. by preventing the client from answering the question without really knowing the answer and, by extension, without understanding the characteristics and risks of the financial instrument).

Finally, regarding the conditions for completion of the questionnaire, three ISPs had adopted a "dynamic" approach in assessing the client's knowledge:

- Two ISPs provided for categories of knowledge that mandatorily had to be assessed, and also categories concerning specific financial instruments that could optionally be assessed according to the need expressed by the client;
- One ISP allowed clients to not reply to the assessment of basic and general knowledge of financial markets (and to fill in directly the section on knowledge of classes of financial instruments) when they already showed a good experience and understanding of these concepts.

The task force also noted heterogeneity in the control of this stage of assessment by the ISPs:

- Regarding completion of the knowledge test by the client:
 - The three ISPs mentioned above provided for automatic blocking in their IT tools in the event of incompleteness of the mandatory knowledge section;
 - The last ISP provided for completion of the questionnaire by the client in paper format, the information from which was then transferred by the adviser into the advisory tool. A check on the incompleteness of knowledge was performed at this stage;
- Regarding the use of the knowledge test by the ISP:
 - Two ISPs provided for automatic blocking in their IT tools on financial instruments for which the client did not have the required knowledge (excluding specific instruments or instruments distributed as part of a campaign for one of them). These blockages also entailed additional measures. For example, these two ISPs provided for the sending of an instruction sheet to the client in the event of a failure to confirm knowledge of the class of financial instruments in question. One of these ISPs restricted the sending of an instruction sheet to SCPIs and prohibited the adviser from recommending an SCPI to the client within 8 days after sending this sheet. These measures, because they offer a virtuous approach for clients by enabling them to increase their knowledge of the financial instrument while, temporarily and in the client's interest, restricting investment in it, constitute a good practice;
 - For two other ISPs, the IT tool provided for a non-blocking control. The first ISP planned a consistency check between the client's general level of knowledge and that defined by the producer of the financial instrument. The second ISP planned, for certain financial instruments, a non-blocking alert. **For this ISP, the process made it possible to recommend to the client financial instruments for which the client did not have the required knowledge, but also to immediately modify the incorrect answers to the knowledge questionnaire in the advisory stage. This system, because it ignored the constraint of the client's actual understanding of the financial instrument and could not necessarily serve their interests as well as possible, is not in compliance with the regulations.**

Good practices:

- Proposing an assessment that is adaptable according to the client's degree of knowledge and experience of financial markets and/or the interest expressed by the latter concerning financial instruments, provided that the level of protection due to the client is not lowered.
- Allowing clients to express their lack of knowledge concerning the financial instrument in question via a dedicated box (e.g. "no opinion" or "I don't know") contributing to the assessment of the client's knowledge.
- Providing for automatic blocking mechanisms ensuring completion of the knowledge test and blocking investment in the financial instrument for which the client might not have confirmed their knowledge.
- Providing for measures allowing the client to increase their knowledge concerning a financial instrument while restricting, temporarily and in the client's interest, investment in this instrument.

Assessment of the client's experience

Article 55.1 of MiFID II DR stipulates that information regarding a client's experience includes, "to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved: [...] b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out.". Point 34 of the ESMA Guidelines specifies that the collection of the necessary information (including experience) may be adapted notably according to the "type of the financial instrument or transaction that the firm may recommend or enter into (including the complexity and level of risk)".

The task force noted that **while all the ISPs provided for at least one question relating to experience, they mainly collected information on the nature and, exceptionally, the volume of transactions carried out.** *The details are provided in Annex 3 to this review.* For example:

- Two ISPs assessed only the transactions performed by the client ("Yes/No");
- One ISP assessed the number of transactions performed by the client by means of a single question proposing three levels ("less than 10", "between 10 and 20", "more than 20");
- One ISP assessed for each class of financial instruments the performance of transactions ("never/seldom", "occasionally" and "frequently"), then, overall, the number of transactions performed relative to an amount determined by the questionnaire.

According to one ISP, this approach was justified by the "simple" nature of the financial instruments proposed to its clients. Remember, however, that Articles L. 533-13 of the MFC and 55.1 of MiFID II DR provide for adaptation not only in light of the complexity of the instrument but also its level of risk and the nature of the client. **Generally, the assessment of a breach of Article 55.1 of MiFID II DR or not requires detailed individual analysis.**

The period of experience assessed was between one year (for three ISPs) and five years (for one ISP). One of these ISPs also took into consideration the date since when the client had been investing on financial markets.

Note that **one ISP provided for a single question for assessment of experience without distinguishing between classes of financial instruments, which is not in compliance with the regulations.** As a reminder, Article L. 533-13 of the CMF requires that the ISP obtain the necessary information regarding experience "related to the specific type of financial instrument or service". Information relating to clients' experience should therefore be differentiated by type of financial instrument. This observation had already been made in the 2018 SPOT review relating to knowledge and experience.⁷

⁷ AMF, "Review of SPOT inspections on clients' MiFID I/MiFID II knowledge and experience", October 2018, page 10.

Assessment of the client's financial position and ability to bear losses

In accordance with Article L. 533-13 of the MFC, ISPs must collect the necessary information on clients regarding "their financial situation, including their ability to bear losses" so as to recommend suitable and appropriate financial instruments to them at the advisory stage. In accordance with Article 54.4 of MiFID II DR, the "information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments".

The task force noted that two ISPs analysed the client's ability to bear losses exclusively by means of theoretical situation simulations for the client, without taking into consideration their financial situation (even though financial data were collected). Such an approach, moreover, denoted an assessment confused with the concept of risk tolerance (although relating to investment objectives), which is contrary to the regulations:

- For one ISP: the ability to bear losses was assessed, for both legal persons and natural persons, by means of two questions ("*Equity markets can undergo major fluctuations. Your investment portfolio loses 15% of its value, due to a general market downturn: which statement would best describe your reaction?*") and ("*To optimise your return, would you be prepared to make investments in financial instruments including leverage mechanisms?*"). The results of these questions were translated by three levels reflecting the maximum loss accepted by the client;⁸
- For one ISP: the ability to bear losses was assessed, for both legal persons and natural persons, by means of a single self-assessment question ("*Could you bear this potential loss without destabilising your wealth or jeopardising your plans?*": "Yes/No"). If the client replied in the negative, this answer generated a blockage. This question was linked to the question to assess the client's risk tolerance ("*Regarding financial investment, what level of risk of potential capital loss would you accept in return for a significant potential annual performance in one to five years' time?*").

For the remaining two ISPs, analysis of the ability to bear losses was planned on the basis of the client's data:

- For natural persons, the first ISP calculated the client's liquid assets in five years' time: current financial assets and net income, to which could be added projected assets and income over the next five years, minus any client cash requirements (real estate investment, borrowing requirement, etc.). For legal persons, the ISP multiplied the recurring pre-tax profit by three. For all clients, the results of this assessment were translated by three levels ("Low", "Medium" and "High");
- The second ISP assessed the client's ability to bear losses based on the client's holdings (held in the ISP or in third-party institutions) of balance-sheet products (regulated passbook accounts, bank savings accounts or current accounts). This represented between two and six months of the client's monthly income. The procedure also provided for the establishment of precautionary savings, with a minimum threshold set at one thousand euros. Below this threshold, the adviser prompted the client to first compile these savings. However, the task force noted a failure to materialise this stage during the issuance of investment advice, making it impossible to ensure the performance of this assessment. The task force also noted that there was no specific procedure for legal persons, with the representative himself declaring the stable surplus cash holdings of his company (defined as the capital available and not used immediately for financing operations).

More broadly, the task force noted that for the forty transactions analysed, information on the client's ability to bear losses had not been collected in the MiFID II format, and it was therefore not estimated in 50% of cases, which is not in compliance with the regulations. Moreover, if you add the cases of the two ISPs which confused the concepts of ability to bear losses and risk tolerance, then the proportion of transactions for which the ability to bear losses had not been assessed in compliance with the regulations would stand at 87.5% of the consolidated sample.

⁸ "Losses exceeding your capital", "Total loss of capital" and "Minor loss of capital".

Articles L. 533-13 of the MFC and 54.2 of MiFID II DR distinguish between the ability to bear losses (related to assessment of the client's financial situation) and risk tolerance (related to assessment of the client's investment objectives). These concepts are therefore complementary and not substitutable:

- Risk tolerance measures the client's appetite from the viewpoint of the risk/return ratio (i.e. the maximum risk that the client would be prepared to accept). Risk tolerance can therefore be assessed based on theoretical scenarios of market performance to assess the client's reactions to such scenarios;
- The ability to bear losses measures the maximum potential loss that the client could bear in light of their financial situation, favouring a pragmatic assessment based on their financial data.

These concepts concern different stages of the suitability assessment. In particular, the aforementioned regulations require not only that the ISP collect this information before issuing the advice, but also that it be used in the personalised recommendation stage to ensure that the transactions recommended to their clients are suitable for their risk tolerance and their ability to bear losses.

Poor practice:

- Not translating in quantified terms (by an amount or a percentage of the assessment base) the result of assessment of the client's ability to bear losses for the suitability assessment.

Assessment of the client's investment objectives and risk tolerance

Regarding the investment objectives, the task force noted that all the ISPs allowed clients to choose from between three and eight investment objectives. Three ISPs provided for different objectives depending on whether the client was a natural or legal person. The objectives proposed were mainly financial and could cover various situations in a client's life. The task force also noted that one ISP proposed a non-financial objective ("*give priority to responsible ESG/SRI/Solidarity/Sustainable investments*"), as encouraged in point 28 of the ESMA Guidelines. Lastly, three ISPs allowed the client to select several objectives. Regarding this, the task force noted that:

- two ISPs did not provide for any limit to the number of objectives that may be selected by the client;
- the last ISP limited the selection to two objectives which were prioritised.

The regulations require mandatory collection of information on the client's investment objective(s) in order to assess whether the transaction that the ISP intends to recommend "*meets the investment objectives of the client, including the client's risk tolerance*" (Articles L. 533-13 of the MFC and 54.2 of MiFID II DR). Point 80 of the ESMA Guidelines specifies that "*with regard to the client's financial situation and investment objectives, the suitability assessment about the impact of the instrument(s) and transaction(s) can be done at the level of the client's portfolio as a whole*". Although the selection of multiple objectives is possible, it is interesting to be able to link the financial instrument to the investment objective chosen for the transaction (and its associated investment time horizon).

Regarding the investment time horizon, **moreover, the task force noted that it could be expressed in several ways (the details are provided in Annex 4 to this review):**

- For one ISP (concerning natural persons): by filling in an optional field for each objective;
- For two ISPs (one of which only for legal persons): by entering a percentage for objectives and horizons defined in the questionnaire;
- For two ISPs: by the selection of a range of horizons having a more or less significant degree of granularity (from three ranges (less than one year, one to five years and more than five years) to a selection per year).

The task force also noted for one ISP that the IT tool provided for the selection of three investment objectives without a time frame (i.e. it provided for no field dedicated to the investment time horizon). The client could therefore select investment objectives with and without an investment horizon to be filled in (or even exclusively without a horizon to be filled in). However, certain financial instruments proposed by the ISP (real estate and private equity products) entailed a maturity date or even an obligation of holding in the portfolio. **Accordingly, the failure to collect information on an investment horizon in this case constitutes an infringement of the**

regulations. Indeed, Article 54.5 of MiFID II DR states that "*The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment*". The ESMA Guidelines identify the investment horizon as an important factor in suitability assessment because it could have repercussions on it (points 19 and 27). The need to collect this information also appeared in the obligations relating to the suitability report (Article 54.12 of MiFID II DR).

Regarding the assessment of risk tolerance, the task force noted that all the ISPs inspected provided for between one and seven questions in a more or less granular manner. It noted in particular that:

- Three ISPs assessed clients' risk appetite, and in particular their reaction in the event of a potential market downturn;
- Three ISPs assessed clients' behaviour with regard to risk by asking them to choose from between three and five risk/return profiles. For the other ISP, the assessment was based on the selection, from five statements, of that describing the positioning with regard to investment (e.g. "*minimal risk and limited return with a capital preservation objective*").

However, the task force noted that 35% of the transactions of the consolidated sample analysed showed a lack of assessment of risk tolerance, which is not in compliance with the regulations. The AMF reiterates that risk tolerance should be assessed systematically in order to ensure that the recommendation made by the ISP "*meets the investment objectives of the client in question, including client's risk tolerance*" (Articles L. 533-13 of the MFC and 54.2 of MiFID II DR).

Good practices:

- Providing for investment objectives concerning non-financial factors, in particular regarding the client's preferences concerning responsible investments.
- Providing for different objectives depending on whether the client is a natural or legal person.
- Using illustrations of levels of return that could be materialised according to the degree of risk.
- Assessing the client's reaction in the event of a potential market downturn.

3.2- METHODS FOR COLLECTING AND UPDATING CLIENT INFORMATION

The inspection task force analysed the procedures for collecting and updating client information. This action was supplemented by verifications on the aforementioned sample of transactions. The aim was to verify, on the one hand, the conditions for collecting the information necessary for suitability assessment (Articles L. 533-13 and L. 533-16 of the MFC and 54.1, 54.2 and 55.1 of MiFID II DR) and, on the other hand, the measures taken by the ISPs to ensure the complete, reliable and up-to-date nature of this information (Articles 54.7 and 55.3 of MiFID II DR).

Regarding the collection of information, the task force noted that the ISPs had adopted various measures to inform the client concerning the purpose of the assessment and to assist them in collecting information. Regarding updating of the information collected, the task force noted that all the ISPs had dedicated procedures. However, the task force noted partial compliance with the implementation of these procedures.

Methods for collecting information

Articles L. 533-13 of the MFC and 54.2 of MiFID II DR reiterate the obligation to collect the necessary information for the ISP to have a knowledge of the essential facts and characteristics concerning the client and have a sufficient basis to determine whether the transaction that it intends to recommend corresponds to the client's particular situation. In this framework, Article 54.7 of MiFID II DR defines the reasonable measures that the ISP should take to ensure the reliability of the information collected regarding its clients or potential clients:

- ensuring clients are aware of the importance of providing accurate and up-to-date information;
- ensuring all tools employed in the suitability assessment process are fit-for-purpose and are appropriately designed, with any limitations identified and actively mitigated through the suitability assessment process;
- ensuring questions used in the process are likely to be understood by clients, capture an accurate reflection of the client's objectives and needs, and the information necessary to undertake the suitability assessment; and
- taking steps, as appropriate, to ensure the consistency of client information.

The ESMA Guidelines specify, moreover (point 58), that firms must *"have a policy defining, on an ex ante basis, how to conduct the suitability assessment in situations where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person."* For legal persons, details are given in Article 54.6 of MiFID II DR.

Regarding the established collection methods, three ISPs provided solely for the collection of information during an in-person appointment, and one ISP allowed collection of information in person or by phone. Face-to-face contact remained the preferred channel of communication, making it possible to assist clients and ensure they have correctly understood the questions asked. However, whatever the channel of communication selected, all the four ISPs recapped on a durable medium the suitability assessment procedures and the need for the client to provide accurate, up-to-date information.

Regarding the rules for assessing specific situations (legal persons, groups of natural persons, natural persons represented by other natural persons), the task force noted that all the ISPs had procedures for assessing legal persons and natural persons. These procedures stipulated in particular the methods for assessing specific situations (couple, joint ownership, minor, etc.). In such cases, three ISPs had a cautious approach, adopting the replies of the least expert person, as encouraged by points 67 and 68 of the ESMA Guidelines. One of these three ISPs allowed its clients to depart from this rule (subject to the unanimous agreement of the relevant persons). The last ISP, for its part, took into account, depending on the situation, the knowledge of the least expert or the most expert person, which in the latter situation could prove less protective.

Regarding monitoring of the collection and consistency of client information, all four ISPs used IT tools to collect this information (and perform selection of the financial instrument and suitability assessment of the transaction recommended for the client's situation) and provided for controls as part of their tools:

- Three ISPs provided for blocking in the event of incompleteness of the necessary information referred to notably in Article L. 533-13 of the MFC, allowing it to check that it had been actually collected. However, the task force notes that the presence of the information did not automatically imply that it was up-to-date. The last ISP, for its part, provided for a manual check by the adviser;
- One ISP provided for consistency checks on the information provided: for instance, one check aimed to verify that the client's risk tolerance was consistent with their investment objectives. For example, if the client indicated that they were looking for high risk and returns whereas their objective was to protect their capital, the IT tool alerted the adviser to review the questionnaire with the client.

However, the task force noted that **32.5% of the transactions of the consolidated sample showed a failure by the ISP to collect certain information necessary for the suitability assessment, and this constitutes an infringement of the regulations.** These shortcomings were numerous, and concerned *i) a failure by the client to complete the questionnaire; ii) collection ex post, i.e. after the transaction was performed by the client; iii) a lack of archiving by the ISP making it impossible for the AMF to verify compliance with those obligations, and iv) the use of a MiFID I questionnaire not collecting the information required by the provisions of MiFID II.*

Good practices:

- Giving priority to in-person interviews with clients (or any other method of communication allowing immediate human interaction), to ensure that the client has correctly understood the purpose of the assessment and the content of the questionnaire.
- Providing for automatic controls during the assessment process making it possible to ensure the collection and consistency of the information provided by the client.

Methods for updating information

Article 55.3 of MiFID II DR specifies that "*an investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.*". ISPs should therefore take reasonable measures to allow the collection of up-to-date information before issuing advice. Likewise, when the ISP has a continuous advisory relationship with the client, it must have policies and procedures to retain appropriate, up-to-date information on its clients in order to comply with the requirements relating to suitability assessment (Article 54.7 of MiFID II DR). During the 2018 SPOT inspection on experience and knowledge,⁹ the AMF had observed annual or biennial updating and had considered the existence of a defined frequency to be a good practice.

The task force noted that while all the ISPs inspected had a procedure for updating their clients' information, only three of them provided for a defined frequency (ranging from one to three years). The last ISP limited this updating to originating events (e.g. on the occasion of reviews of the client's knowledge). Most of these updating procedures (three ISPs) were based mainly on a phone call by the adviser to the client. The last ISP, for its part, sent a document each year summarising the client's situation and providing for standard indications prompting clients to contact their adviser in order to update their information. Moreover, all the ISPs prompted their clients to report any significant change in their situation. The task force noted that some of the ISPs inspected could sometimes be led to merge updating of the client's data and the check on long-term suitability, since these concepts are to some extent connected (see the developments performed in part 3.5 of this review).

However, the analysis of the sample showed that the updating procedures were not always complied with or implemented by the ISPs. For example, of the forty transactions analysed, **a data updating failure was detected for 30% of the consolidated sample, since the questionnaires dated from two to eight years before the date of**

⁹ AMF, "Review of SPOT inspections on clients' MiFID I/MiFID II knowledge and experience", October 2018, pages 14 and 15.

the transaction, and were therefore not up-to-date with the obligations resulting from MiFID II (because they were completed under the MiFID I regime).

While certain transactions were performed shortly after the coming into application of MiFID II (or via tools updated subsequent to said directive), this situation should in principle no longer be observed. Article 55.3 of MiFID II DR entitles an ISP to rely on the information provided, unless it is aware "*or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.*". Now, the obligations relating to the suitability issue were significantly reinforced as a result of MiFID II, adding new necessary information within the meaning of Article L. 533-13 of the MFC. Two years after the entry into force of the MiFID II directive and MiFID II DR, clients' information should be updated and comply with the obligations resulting from this legislation. **Hence, the use by the ISP of questionnaires filled in by the client in a MiFID I format should be prohibited since it is an infringement of the regulations.**

Good practices:

- Arranging an appointment (by phone or in person) between the client and the adviser to update their data.
- Providing for a minimum frequency of updating of the client's information.
- Defining a list of events or conditions whose occurrence justifies early and/or immediate updating.

3.3 - IMPLEMENTATION OF THE SUITABILITY TEST

Client profiling

In this part the task force endeavoured to describe the procedures defined and implemented by the ISPs to allocate a profile to their clients, and also how this profile was used in the suitability test.

In the study published by the AMF in May 2020 on the profiling of bank clients as part of an investment advisory service,¹⁰ it was noted that this profiling was based mainly on the risk profile (resulting from the assessment of the client's risk tolerance), sometimes corrected by other client information, such as the client's level of knowledge and experience. This information made it possible to establish an investor profile, in which the scope of information varied depending on the ISP in question.

The findings of the present series of SPOT inspections confirm this approach. All four ISPs used an IT tool for client profiling, taking into consideration:

- For two ISPs: assessments of the client's risk tolerance (including their investment objectives) and ability to bear losses;
- For one ISP: assessments of the client's risk tolerance, ability to bear losses and knowledge and experience. The risk tolerance and ability to bear losses served as a basis for determining the profile, while the overall assessment of the client's knowledge and experience lowered or raised this profile;
- For one ISP: exclusively the result of assessment of the client's risk tolerance.

This information was materialised in an "investor profile" (the term used varied depending on the ISP) with which was associated, for three ISPs, a risk range expressed by a score from 1 to 7. For the last ISP, the profiles translated a range of overall volatility of assets held acceptable for the client. The ISPs proposed between three (for two ISPs) and five profiles (two ISPs). *The details are provided in Annex 5 to this review.*

¹⁰ AMF, "Study on the profiling of bank clients and matching of these profiles with products as part of an investment advisory service", May 2020, pages 4 to 7.

Suitability assessment

Article L. 533-13 of the MFC requires that an ISP collect, before issuing investment advice, "*the necessary information concerning the knowledge and experience of their clients, including their potential clients, with regard to investment related to the specific type of financial instrument or service, their financial situation, including their ability to bear losses, and their investment objectives, including their risk tolerance, so as to be able to recommend to them investment services and financial instruments suitable and appropriate to their risk tolerance and their ability to bear losses.*". Article 54.2 of MiFID II DR specifies that this collection shall make it possible to determine whether the transaction that the ISP intends to recommend "*meets the investment objectives of the client in question, including client's risk tolerance*", that "*the client is able financially to bear any related investment risks consistent with his investment objectives*" and that "*the client has the necessary experience and knowledge in order to understand the risks involved in the transaction.*".

The aforementioned study on the profiling of bank clients within the framework of investment advisory services¹¹ indicated that the suitability assessment was based on a comparison between the level of risk of the client's assets and the level of risk associated with their investor profile. However, the assessment of the client's assets was heterogeneous (assets allocated to the account or total assets, exclusively the assets held with the ISP in question or also the assets declared with third-party institutions), as were the procedures for assessing suitability (automatic comparison with publication of a document tracing underexposure or overexposure, automatic comparison without document publication but with the automatic issue of an allocation or manual comparison by the adviser). Similar findings were observed in the present series of SPOT inspections.

Generally speaking, the procedures of the four ISPs provided for use of all the information required by Articles L. 533-13 of the MFC and 54.2 of MiFID II DR to assess suitability (except for difficulties regarding the confusion between assessment of the ability to bear losses and the assessment of risk tolerance discussed above). However, the consolidation and use made of this information in this assessment differed depending on the ISP, certain factors being used in the suitability assessment without being included in the client's investor profile:

- The first ISP included the client's data (investment objectives and horizons, risk tolerance and ability to bear losses) in the investor profile, which served as a basis for two control points (target market and exposure of the client's assets to volatility risk). The client's knowledge and experience, for their part, were verified within the framework of the target market assessment (via a table of correlation with the results of the client questionnaire). A third control made it possible to check that there was no excessive concentration of a financial instrument following the recommended transaction;
- The second ISP included all the information collected in the investor profile, except knowledge and experience. For the financial instruments referenced in the advisory tool, it then automatically checked thirteen control points (for example, check on the client's level of knowledge and experience or check on the match between the investment horizon chosen by the client and the target market for the product) in a module included in the tool and capable of covering all the information referred to in Article L. 533-13 of the MFC. Financial instruments distributed via campaigns or considered as complex by this ISP were not, at the time of the inspection, referenced in the tool and were therefore checked manually by the adviser;
- The third ISP included the result of the assessment of risk tolerance, ability to bear losses and knowledge and experience in the investor profile. It then made an automatic comparison in the tool between the simulated risk of the client's assets¹² following the recommended transaction and the client's investor profile. A check on consistency with the objectives was performed manually by the adviser at the level of the client's whole portfolio. Comparison between the investment horizon wanted by the client and the holding period for the recommended financial instrument was not performed systematically, since an investment time horizon was not required for all the proposed investment objectives;

¹¹ AMF, "Study on the profiling of bank clients and matching of these profiles with products as part of an investment advisory service", May 2020, page 7.

¹² Concept including exclusively the assets held by the client in the ISP.

- The fourth ISP included only the result of the assessment of risk tolerance in the investor profile and performed an automatic comparison in the tool between the risk of the client's simulated assets¹³ following the recommended transaction and the client's investor profile. The knowledge and experience and investment objectives were subject to an automatic common control in the advisory tool, which made a preliminary selection of financial instruments in light of the level of the client's knowledge and the client's investment objectives and investment time horizons. The ability to bear losses was, in accordance with the procedure, checked manually by the adviser.

The task force noted that the assessment base for the assets included in the suitability assessment was identical for all four ISPs. This base included all the assets held by the client in the ISP (bank and financial savings: savings, life insurance, securities account and "PEA" personal equity savings plan) but excluded financial investments held in third-party institutions.

Moreover, the assessment of the concept of unsuitability differed depending on the ISP:

- One ISP considered that unsuitability existed only in the event of overexposure of the client's assets to the strict risk relating to the client's investor profile and provided for automatic blocking in the IT tool in such a situation (preventing the generation of an investment advisory proposition);
- Three ISPs considered that unsuitability existed in the event of overexposure or underexposure of the client's assets to the risk relating to the client's investor profile. The underexposure of the client's assets to risk following the recommended transaction could be justified by these ISPs. Two ISPs provided for automatic blocking in the IT tool, preventing generation of the recommendation, in the event that execution of the transaction would cause overexposure of the client's assets to risk following the transaction that would otherwise have been recommended, and an alert in the event of underexposure. The last ISP provided for neither blocking nor an alert (manual control by the adviser).

However, the scope of these procedures should be put into perspective. **The sample of forty transactions analysed by the task force showed recommendations on financial instruments which were not strictly suitable for the client's situation at all the ISPs inspected, with between 30% and 40% of the sample of each ISP being unsatisfactory¹⁴.** The task force replicated the tests performed by the ISPs based on the data available in the clients' dossiers and in accordance with their procedures. The data taken into consideration were as follows: knowledge and experience in relation to the financial instrument invested in, investment time horizon, risk tolerance and ability to bear losses. It should be specified that the proportions presented correspond to a conservative approach, not reflecting the shortcomings detected in procedures (for example, assessment confusing the concepts of risk tolerance and ability to bear losses).

The factors of unsuitability concerned, in order of recurrence: *i) non-observance of the investment objective (and in particular the horizon defined by the client); ii) client's overexposure to total portfolio risk compared with their investor profile; iii) a lack of the knowledge needed to invest in the financial instrument, and iv) non-observance of the ability to bear losses.* Certain transactions combined several factors of unsuitability. **Moreover, these proportions excluded the following situations: questionnaire absent or subsequent to the investment and data incomplete or not collected (old questionnaire format). By taking into consideration these situations, proportions ranging from 30% to 80% of their respective samples were obtained¹⁵. Part of the aforementioned proportions could be explained by late implementation of the MiFID II provisions in the model questionnaires and/or tools used to assess the client. The AMF gives a reminder that these shortcomings constitute infringements of the regulations.**

¹³ Concept including exclusively the assets held by the client in the ISP.

¹⁴ As mentioned in section "2.2. TOPICS ADDRESSED AND METHODOLOGY USED", the size of each sample is limited to ten transactions and shall therefore not be considered as representative. The relevant findings may not have a general scope and shall be used for illustrative purposes.

¹⁵ As mentioned in section "2.2. TOPICS ADDRESSED AND METHODOLOGY USED", the size of each sample is limited to ten transactions and shall therefore not be considered as representative. The relevant findings may not have a general scope and shall be used for illustrative purposes.

Article 54.10 of MiFID II DR stipulates that *"when providing the investment service of investment advice or portfolio management, an ISP shall not recommend or decide to trade where none of the services or instruments are suitable for the client."* Also, Article 54.8 of MiFID II DR recommends that the ISP abstain in the same way when it has not obtained the necessary information stipulated in Article 54.2 of MiFID II DR.

Good practice:

- Providing in IT tools for blocking and/or alerts in the event that the investment recommendation could otherwise lead to a situation of unsuitability.

3.4 - VERIFICATION BY THE ISP OF THE EXISTENCE OF EQUIVALENT FINANCIAL INSTRUMENTS WHICH COULD CORRESPOND TO THE CLIENT'S PROFILE TAKING INTO CONSIDERATION THEIR COST AND COMPLEXITY

Article 54.9 of MiFID II DR stipulates that ISPs shall have adequate policies and procedures in place to ensure that they understand the nature and features of the financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent financial instruments can meet their client's profile.

All four ISPs offered, at the level of their group, a system for identifying and selecting financial instruments that could be recommended for investment ("recommendable product range"). The task force noted, for example, that two ISPs provided for the exclusion of certain financial instruments from the recommendable product range (SCPIs, CFDs, etc.). Moreover, two ISPs also allowed a recommendation to be issued for a financial instrument that might not be included in their recommendable product range. The selection procedure was relatively homogeneous:

- One or more teams were in charge of preliminary selection of a list of financial instruments based on criteria defined in their procedures. These criteria were both objective (fund size and performance, costs, geographic region, level of risk acceptable for clients, etc.) and qualitative ("quality" of the fund managers, complexity of the instrument, understandability for advisers and clients, etc.);
- The product selection was validated according to a defined frequency in one or more dedicated committees. One ISP, for example, provided for a committee for each major asset class. Moreover, apart from the validation of new products, these committees could be useful for monitoring the existing universes. For example, two ISPs provided for alert mechanisms, linked to the materialisation of certain events (e.g. AMF penalties, change of capital structure) or to market conditions (e.g. extreme market tension, failure of a given counterparty), justifying the convening of a special committee meeting.

Based on the current findings, a distinction should be made between two categories of ISP:

- Two ISPs used standard investment propositions which applied to various clients having the same investment profile. This situation is specified under point 86 of the ESMA Guidelines, which considers that the assessment of cost and complexity for 'equivalent' products could be done *"on a higher level, centrally, (for example within an investment committee or any other committee defining common portfolio strategies or model investment propositions)"*. This circumstance does not exempt the ISP from its obligation to ensure that the selected financial instruments are suitable for the profile of each of its clients;
- The other two ISPs had a range of financial instruments that are exclusively complementary (i.e. not substitutable). In such cases, point 85 of the ESMA Guidelines states that *"For firms with a restricted range of products, or those recommending one type of product, where the assessment of 'equivalent' products could be limited, it is important that clients are made fully aware of such circumstances"*. It adds that *"In this context, it is particularly important that clients are provided appropriate information on how restricted the range of products offered is, pursuant to Article 24(4)(a)(ii) of MiFID II"*. Based on the information submitted, the task force noted that this indication did not appear in the suitability reports.

Only one ISP referred to this financial instrument selection procedure in the latest version of its investment proposition sent to the client.

Good practice:

- Mentioning to the client the existence of due diligence performed by the ISP in the suitability report on this topic.

3.5 - CONTENT AND PROCEDURES FOR SUBMISSION OF THE SUITABILITY REPORT

Submission of a suitability report to the client

Article 54.12 of MiFID II DR provides for the submission "to the retail client [of] a report that includes an outline of the advice given and how the recommendation provided is suitable for the retail client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, client's knowledge and experience and client's attitude to risk and capacity for loss". Article L. 533-15 (II) of the MFC, for its part, provides clarifications regarding the timing and procedures for submission of the report to the client, namely "prior to the transaction" and "on a durable medium".

The ESMA Q&A 35-43-349 confirms this interpretation (pages 43 and 44):¹⁶ "When providing the suitability report according to Article 25(6) of MiFID II and Article 54(12) of the MiFID II Delegated Regulation, firms should state on an individualized basis how the recommendation given is suitable for the retail client. The suitability report should enable a client to understand if and why the recommendations given are suitable for the client. Therefore the firm should explicitly set forth not only if but how the recommendation (including the recommendation not to sell, buy or hold a product) matches the client's investment objectives, including his risk tolerance, his financial situation including the ability to bear losses and his knowledge and experience and any other relevant client's characteristics. [...] This does not prevent investment firms from using a standardized template for the suitability report. Where firms use pre-phrased statements they should ensure that they are granular enough to refer to the different aspects of the suitability assessment and to the different characteristics of the recommended product. Firms should in any case provide the option for advisers to add "further aspects" where they can include specific client information that may not be covered by the template".

In this part, the task force consulted the existing procedures and, for the sample of transactions selected, aimed to i) check that a suitability report was effectively submitted to the client and ii) analyse its content. Firstly, it should be stressed that several names were used by the various ISPs to refer to the suitability report: "investment or advisory proposition", "suitability report" or "advisory interview".

All the ISPs inspected provided for the submission of a suitability report to the client following each personalised recommendation, and in all cases prior to the transaction. **In practice, the inspection task force observed that only two ISPs effectively and systematically submitted a suitability report in 100% of the transactions analysed. The absence of such submission, for part of the transactions of the other two ISPs, constitutes a breach of the requirements provided for by Articles L. 533-15 of the MFC and 54.12 of MiFID II DR.**

Moreover, the suitability report was generated by the IT advisory tool in all the ISPs. However, it should be specified that the tool of one of the ISPs inspected excluded certain types of financial instruments, mainly due to their complexity or their marketing period. The procedures for delivering the suitability report to the client differed according to the ISP and the meeting format: submission in person, email or availability in the customer area.¹⁷

Analysis of the content showed that the degree of granularity of the information contained in the suitability report was heterogeneous. The inspection task force noted that the composition varied between one page (email format) and about ten pages (PDF format), which will inevitably have an impact on the document's instructiveness and degree of precision regarding the client. The inspection task force also noted that only one ISP made a formal distinction between the propositions of arbitrage, investment and holding, notably in order to easily express a recommendation not to buy and/or not to sell.¹⁸ Despite these points, it can be observed that:¹⁹

¹⁶ ESMA Q&A 35-43-349 "On MiFID II and MiFIR investor protection and intermediaries topics".

¹⁷ Regarding the durable medium concept, see Article 314-5 of the AMF General Regulation and ESMA Q&A 35-43-349 mentioned above (page 37): "Can the suitability report be made available to the client on the firm's website, with the client receiving a notification (via email or through any other means of communication) regarding the availability of this document?".

¹⁸ The ESMA Q&A 35-43-349 mentioned above confirms this approach (page 38: "Shall a suitability report be provided to the client when the advice given is not to buy or sell a financial instrument?").

¹⁹ Note that the presentation is based on existing procedures and does not necessarily imply that they are replicated in client dossiers.

- All four ISPs included information specific to the client's profile. The degree of information ranged from a mere indication of the client's investor profile to the transcription of all the client's characteristics assessed by the ISP (knowledge and experience, risk tolerance, ability to bear losses, etc.). Regarding this point, the inspection task force noted at one of the ISPs that there was no correspondence between, on the one hand, the information resulting from the replies to the current client questionnaire and the information included in the suitability report and, on the other hand, the terminology used before the assessment and afterwards in reporting to the client;
- The presentation of a summary of the personalised recommendation made to clients differed between the ISPs in the sample group but in most cases it included: the nature (title and ISIN code) and risk rating of the financial instrument, the direction of the transaction and the nominal amount of the recommended transactions. Moreover, all four ISPs described the client's initial portfolio and the repercussions of the recommendation on said portfolio, if the latter performed the recommended transaction;
- For the verifications performed in the suitability assessment, three ISPs presented a review to the client. For the first two ISPs, the new profile of the client's assets following the recommended transaction was placed in perspective with their investor profile in a published document. The last ISP described the various tests performed and their results (analysis of the target market, and the assets' exposure to volatility risk and concentration risk) ;
- Finally, for two ISPs, the suitability reports were accompanied by attachments, in particular the KIID or the prospectus of the recommended financial instrument. For the other ISPs, these documents were not directly attached to the investment proposition (although the procedures provided for them to be sent prior to the investment).

More precisely, regarding the personalised explanation given to the client concerning the appropriateness of the recommendation for the client's situation, three ISPs considered this obligation as being implicitly fulfilled by performance of the preliminary tests mentioned above. However, **this practice is not adequate to satisfy the requirements of Articles L. 533-15 of the MFC and 54.12 of MiFID II DR, in light of the aforementioned ESMA Q&A, which require that the ISP provide the client with a personal explanation of how the personalised recommendation corresponds to the client's preferences, objectives and other characteristics.** The procedure of the last ISP provided for detailed reporting on assessment of the transaction recommended to the client, although this reporting was not observed in most of the transactions analysed.

Moreover, the inspection task force stresses that two ISPs provided for signature of the suitability report by the client. Also, all four ISPs defined a maximum period of validity of the investment proposition. The information appeared directly in the suitability report (two ISPs) or in the internal procedures (two ISPs). One of the ISPs adopted a period of ten days, and three ISPs stipulated this period as one month.

Lastly, two ISPs included standard statements in the suitability reports which raised ambiguity regarding the ISP's responsibility to conduct the suitability assessment process, and this constitutes an infringement of the regulations. As an illustration, the task force noted the following statements in certain advisory propositions:

- For one ISP: "*Accordingly, after you have ensured that you perfectly understand this recommendation (in particular with regard to the risk exposure that it implies), **and that it is suitable for your situation**, you are free to accept or reject this Investment Proposition";²⁰ and,*
- For another ISP: "*When he enters into the transaction presented, the investor will be assumed to understand and accept the risks involved. He will also be assumed to act on his own account and **to declare that this transaction is suitable for his situation** after having possibly requested the opinion of his customary advisers if he has considered it necessary. Every investor must also perform his own analysis of, in particular, the legal, fiscal, accounting and regulatory aspects of each transaction so as to be able to determine the pros and cons of the transaction and does not rely on the Issuer or its intermediary to do this, in this case [the ISP]".²¹*

²⁰ Underlining and bold letters added.

²¹ Underlining and bold letters added.

Now, the AMF gives a reminder that Article 54.1 of MiFID II DR stipulates that ISPs "*shall not create any ambiguity or confusion about their responsibilities in the process when assessing suitability*". Moreover, point 18 of the ESMA Guidelines specifies that "*firms should avoid stating, or giving the impression, that it is the client who decides on the suitability of the investment, or that it is the client who establishes which financial instruments fit his own risk profile*" and point 19 states that "*any disclaimers (or other similar types of statements) aimed at limiting the firm's responsibility for the suitability assessment would not in any way impact the characterisation of the service provided in practice to clients nor the assessment of the firm's compliance to the corresponding requirements [...]*".

Good practices:

- Providing for the generation of various model suitability reports depending on the type of recommendation issued (investment, arbitrage or holding propositions), notably in order to easily materialise a recommendation to do nothing.
- Providing for a maximum period of validity of the personalised recommendation.

Monitoring of suitability over time

The monitoring of suitability over time is defined by the following regulatory and legislative provisions:

- Article L. 533-15 (II) of the MFC stipulates, for ISPs having informed their clients that they would perform a periodic assessment of suitability in accordance with Article D. 533-15 1° of the MFC, that "*the periodic report shall contain an updated statement on how the investment corresponds to the preferences, objectives and other characteristics of retail clients*";
- Article 54.12 of MiFID II DR specifies that "*investment firms shall draw clients' attention to and shall include in the suitability report information on whether the recommended services or instruments are likely to require the retail client to seek a periodic review of their arrangements. Where an investment firm provides a service that involves periodic suitability assessments and reports, the subsequent reports after the initial service is established may only cover changes in the services or instruments involved and/or the circumstances of the client and may not need to repeat all the details of the first report*";
- Article 52.5 of MiFID II DR states that "*investment firms providing a periodic assessment of the suitability of the recommendations provided pursuant to Article 54(12) shall disclose all of the following: a) the frequency and extent of the periodic suitability assessment and, where relevant, the conditions that trigger that assessment; b) the extent to which the information previously collected will be subject to reassessment; and c) the way in which an updated recommendation will be communicated to the client*"; and,
- Article 54.13 of MiFID II DR stipulates that "*investment firms providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended*".

The task force first consulted the existing procedures of the ISPs in the sample group and the content of the documents submitted to the clients in the selected sample and endeavoured to check whether there was any indication providing for a periodic suitability assessment.

The task force noted that all the ISPs in the sample group informed the clients concerned that they would perform a periodic assessment of suitability as referred to in Article L. 533-15 of the MFC:

- Either through an indication given directly in the suitability report (three ISPs);
- Or in the general terms of sale submitted to all clients (one of the aforementioned ISPs);
- Or in the advisory agreement signed by all clients (one last ISP).

For the clients in question, the task force then analysed the content of any documents testifying to the performance of monitoring of suitability over time, i.e. the formal presentation of an up-to-date review of how the investment corresponds to the client's specific situation.

The name of the deliverable sent to clients periodically was variable: "report on the financial savings situation", "annual advisory suitability report", etc. Apart from this formal aspect, the analysis of the existing systems highlighted significant heterogeneity among the various ISPs inspected.

Regarding the two ISPs providing for a periodic assessment of all their clients:

- One of the ISPs submitted no document testifying to the performance of a periodic assessment to the inspection task force, despite its procedures; and
- The other ISP performed an overall assessment of the suitability of the financial instruments for the client's investor profile (compliant or non-compliant, without further details), defined the purpose of the various tests performed (i.e. checks on the target market, on exposure of the assets to volatility risk and concentration risk) and provided for action to be taken when faced with divergences. This document was sent to 100% of the clients concerned.

Regarding the two ISPs providing for a periodic assessment for certain clients only:

- One ISP traced the assessment phase in the advisory IT tool with a presentation of the client's portfolio and a published document comparing the portfolio's risk level with the client's investor profile. This document was not sent to all the clients concerned; and
- The other ISP formalised a periodic instructive report summarising the information possessed on the client for each characteristic assessed and verifying its consistency in relation to the financial instruments held by means of indicators (diagrams and colour codes). This document was sent to 100% of the clients concerned.

The first three ISPs mentioned above did not meet the obligations set by the regulations: the analysis of the sample illustrated the failure to submit a document as evidence of the periodic assessment for all or part of the clients concerned for two ISPs. Moreover, for those clients who received such a document, the document contained no updated statement of how the investment corresponded to the preferences, objectives and other characteristics of retail clients (for two ISPs, including one mentioned above). These practices constitute infringements of Article L. 533-15 of the MFC.

However, the task force noted the existence of optional arrangements established by two ISPs contributing to the monitoring of suitability over time. These ISPs used alert mechanisms or indicators available to the advisers in order to ensure the suitability of the financial instruments recommended throughout the business relationship. The nature of the alerts was varied (market indicators, target market criteria, "crucial" events such as a fine by a regulator, etc.). In certain cases, always in the client's interest, these alerts could lead to the issue of a new investment proposition.

Good practices:

- Using an instructive presentation of the content of the periodic suitability assessment report, notably including indicators allowing a clear identification of any factors of unsuitability for the client.
- Deploying arrangements (alerts or indicators) that could lead to the issue of a new investment proposition (separate from the periodic assessment).

3.6 - COMPLIANCE CONTROL SYSTEM

The inspection task force analysed the control system governing the issue of suitability (content, procedures and results of the controls deployed), based in particular on Articles L. 533-10 of the MFC and 22 of MiFID II DR which define and regulate ISPs' obligations with regard to the verification of compliance.

Ex-ante control system

All the ISPs had IT tools designed to assist with the issue of advice and materialise the suitability assessment. The content of the controls performed in these tools depended on the suitability assessment procedures defined by

the ISP. For example, the nature of the control points could concern verification of the appropriateness and suitability of the financial instrument for the client's situation, product governance, volatility risk or concentration risk. The nature of the verifications performed in the IT tools varied depending on the ISPs in the sample group, and this impacts both the reliability of the recommendations issued by the tool and, more broadly, the effectiveness of the system in light of the objectives pursued.

The existence of such an automated system is contingent on preliminary referencing of the financial instruments in the tool. As a reminder, one ISP excluded financial instruments distributed during campaigns or considered "complex". In such cases, there was a significant difference in the degree of due diligence performed, consisting of preliminary targeting of clients and manual completion of control sheets, entailing an operational risk.

The IT tools made available to the advisers (operational level), providing for automated alert, blocking or consistency check mechanisms, theoretically help to secure the suitability issue. However, the result depends on the nature and effectiveness of the automatic safeguards and should in any case be incorporated in the ISPs' control system.

Ex-post control system

All the ISPs had two control levels. Depending on the ISP in question, the department in charge of performing the level-one control differed (management supervision, or the risk, middle- or back-office departments), as did the nature of the verifications (completeness and compliance of dossiers). However, for all the ISPs, the level-two control was the responsibility of the compliance department. An analysis of this department's organisation highlighted the following points:

- Two ISPs defined the content of their control plan freely, while two other ISPs partially included control points determined by the group to which they were affiliated. This organisation had the effect, in particular, of allowing centralisation of controls at the head of the group while offering the flexibility needed for inclusion of the ISP's specific requirements;
- The frequency of performance of controls varied depending on the ISP and the nature of the controls (from quarterly to annual);
- All four ISPs had a tool for recording the results of the controls, ensuring their traceability (date and person in charge of the control);
- All the ISPs provided in their procedures for the obligation of defining a remediation measure in the case of a result considered unsatisfactory;
- All four ISPs had well established committee procedures for presenting the results of the controls before the company's management bodies, thereby raising awareness and enhancing the monitoring of compliance-related subjects. In addition, certain ISPs provided for presentation of the results of the controls to the business units concerned in order to facilitate the correction of detected shortcomings.

The task force noted that there was no correlation between the existence of an automated advisory tool and the robustness of the ISP's control system. It highlighted the main control points that can be grouped around four topics, although with differences from one ISP to another in terms of existence and granularity (*the details are provided in Annex 6 to this review*):

- Firstly, two ISPs had deployed controls designed to ensure compliance with the various obligations to fulfil with regard to coverage of the suitability scope:
 - One ISP planned three different control topics, for which the control points could be adapted notably depending on the risk factors identified during previous exercises (e.g., an increase in the size of the samples, targeting on an adviser for whom the analysed transactions testified to a significant level of non-compliance, etc.). However, this adaptation was marginal and never made the control level less demanding. This approach constitutes a good practice;
 - The other ISP identifies four types of controls: two controls covering the investment advice activity (cross-cutting control on advisory activity and control on the financial instruments

invested in via the advisory tool) to which could be added controls targeted more closely on specific financial instruments (for example, an exhaustive review of subscriptions to EMTNs marketed during campaigns). This approach likewise constitutes a good practice;

- Furthermore, two ISPs had established controls limited to compliance with the formal requirements governing the issue of a personalised recommendation, aiming mainly to check the existence, completeness and traceability of investment propositions. No control point was planned on assessment of the suitability of the recommended transaction in relation to the client's profile. **The control system relating to the suitability issue could therefore have shortcomings concerning the scope of control, notably with regard to the provisions of Article 22 of MiFID II DR, in light of points 76 and 82 of the ESMA Guidelines.**

Due to the fundamental role assigned to automated tools in suitability assessment by the ISPs in the sample group, the task force verified the existence of procedures for reviewing the algorithms used, in accordance with the ESMA Guidelines. Point 76 of the Guidelines specifies that "*firms that rely on tools in the suitability assessment process should have appropriate systems and controls to ensure that the tools are fit for purpose and produce satisfactory results*". Point 82, for its part, describes in detail the minimum due diligence that can be performed "*in order to ensure the consistency of the suitability assessment conducted through automated tools*" and specifies that "*even if the interaction with clients does not occur through automated systems, firms should regularly monitor and test the algorithms that underpin the suitability of the transactions recommended or undertaken on behalf of clients*". While one of the ISPs in the sample group stated that it performed a regular review of the architecture of the client questionnaire on the linking of profiles, the analysis nevertheless shows that none of the ISPs performs the due diligence although this is encouraged by the aforementioned Guidelines (except for acceptance testing during the deployment or modification of a tool and except for occasional checks related to a malfunction).

Good practices:

- Having a tool dedicated to recording and the traceability of the results of controls.
- Providing for the possibility of adaptations of the control points notably depending on the previous results (marginal adaptations, without ever making the control level less demanding).
- Performing both cross-cutting controls on the investment advice activity and thematic and/or targeted controls, depending on the risks identified by the ISP.

Annex 1: Details of the scope of information collected by the ISPs

	ISP A	ISP B	ISP C	ISP D
Client's personal situation				
Age	X	X	X	X
Occupation	X	X		X
Family situation	X	X		X
Number of children	X	X		
Legal status (legal capacity, guardianship, curatorship)		X	X	X
Real estate situation				
Primary residence	X	X	X	X
Other real estate property	X	X	X	X
SCPI/OPCI products		X		X
Financial situation				
Financial savings (ordinary securities account, PEA, life insurance, PEL, etc.)	X	X	X	X
Liquid assets	X	X	X	X
Other assets				
Business assets	X			
Tangible assets (wine, forests, works of art, other)		X		
Other assets	X	X		
Budget situation				
Professional income	X	X	X	X
Property income	X	X		
Other income	X	X		
Expenses	X	X	X	X
Loans and liabilities				
Loan (including housing)	X	X	X	X
Savings			X	X

	ISP A	ISP B	ISP C	ISP D
Client's personal situation				
Company name / trade name	X	X	X	X
Legal form	X	X	X	X
Legal representative	X	X	X	X
Number of company employees		X	X	
Financial situation				
Total balance-sheet assets	X			
Balance-sheet total		X	X	
Own funds		X	X	
Cash position (in particular stable surplus)		X	X	X
Revenues		X	X	
Operating profit	X			
Financial result/recurring pre-tax/non-recurring	X			
Net profit/(loss)	X			
Net assets	X			
Liquid assets	X		X	X
Debt	X			
Financial investments	X		X	X

Annex 2: Details of the categories of financial instruments used by the ISPs to assess clients' level of knowledge

ISP	Categories of knowledge	Number of questions per category	Total number of questions asked
ISP A	9 categories: money market; bonds; equities; investment funds; hedge funds/private equity; derivatives; structured products; real estate and commodities.	2 questions	18 questions
	Additional questionnaires: Private equity / FCPR.	4 questions	
ISP B	4 categories: Functioning of financial markets; Functioning of simple financial products (equities, bonds, CIUs); functioning of life insurance products; functioning of complex financial products (with questions for each category: complex CIUs, warrants and certificates, structured products, tax exemption products, FCPIs/FIPs/FCPRs, OPCIs, SRD, private equity, derivative products).	Between 4 and 18 questions	32 questions
ISP C	7 categories: Bond and similar investments; equity and similar investments; diversified investments; structured investments with fully secured capital; structured investments with unsecured capital; real estate financial investment; private equity and tax exemption products.	Between 1 and 3 questions	14 questions
	Additional questionnaires: EMTNs distributed during campaigns, FCPIs and SCPIs.	Between 7 and 8 questions	
ISP D	13 categories: Euro investment vehicles (secure pocket of life insurance contracts and funded pension schemes)/money market funds; equities; bonds; CIUs in equities, bonds, diversified and real-estate (OPCIs); structured products with fully or partly secured capital; structured products with unsecured capital; real-estate financial investments, real estate paper; tax exemption investments; convertible bonds and convertible bond CIUs; Deferred Settlement Service (SRD); index-linked investment products; leveraged derivatives; financial analysis.	Between 1 and 4 questions	26 questions

Annex 3: Details of questions relating to assessment of clients' experience by the ISPs (excluding additional or specific questionnaires)

	Period analysed	Transactions performed	Number of transactions performed by the client	Average transaction amount
ISP A	Past year		1 overall question (without distinguishing between classes of financial instruments): "less than 10", "between 10 and 20", "more than 20".	
ISP B	Past year	1 question per class of financial instruments. 3 possible answers: "never/seldom", "occasionally", "frequently".	2 overall questions (without distinguishing between classes of financial instruments): - Performance of at least one transaction relative to 3 levels of defined amounts (less than €100k, more than €100k, more than €500k); - Performance of 10 transactions exceeding a unit amount of €600 per quarter.	
ISP C	Past five years	1 question per class of financial instruments. 2 possible answers: "Yes" or "No".		
ISP D	Past year	1 question per class of financial instruments. 2 possible answers: "Yes" or "No".		

Annex 4: Details of the investment objectives and investment time horizons proposed by the ISPs

	Maximum number of objectives that can be selected	Objectives that can be selected by a client who is a natural person	Objectives that can be selected by a client who is a legal person	Investment time frames
ISP A	1 "main" objective	3 objectives: <ul style="list-style-type: none"> - Preservation of capital; - Income generation; - Wealth creation. 		3 time frames: <ul style="list-style-type: none"> - Less than 1 year; - 1 to 5 years; - More than 5 years.
ISP B	No limits on the number that can be selected	6 objectives: <ul style="list-style-type: none"> - "Protect" capital and keep it available; - Receive complementary income; - Build a balanced investment strategy; - Increase the value of capital over the long term; - Build a strategy that aims to generate high or very high returns; - Transfer capital in the event of death and/or prepare for retirement. 	4 objectives: <ul style="list-style-type: none"> - "Protect" capital and keep it available; - Build a balanced investment strategy; - Increase the value of capital over the long term; - Build a strategy that aims to generate high or very high returns. 	For natural and legal persons: set by the ISP and broken down by the client as a percentage of the investment made with the ISP: less than 2 years, from 2 to 5 years, from 6 to 8 years, more than 8 years.
ISP C	No limits on the number that can be selected	8 objectives: <ul style="list-style-type: none"> - Prepare a project (private or professional real estate); - Organise wealth transfer; - Prepare for children's education or assist relatives; - Prepare for retirement; - Obtain supplementary income; - Optimise taxation; - Gradually build wealth; - Add value to/diversify savings. 	No objective can be selected. The ISP asks the client that is a legal person: "Is your surplus cash position: occasional (as a %) / permanent (as a %)".	For natural persons: time frame to be entered by the client. For 3 objectives (optimising taxation, obtaining supplementary income and gradually building wealth), no time frame may be entered by the client. For legal persons: set by the ISP and broken down by the client as a percentage (for occasional surpluses: less than 3 months, 3 months to 1 year. / For permanent surpluses: 12 to 18 months, 18 to 24 months; more than 24 months).
ISP D	At most 2 objectives (1 general objective and 1 specific objective)	8 objectives: <ul style="list-style-type: none"> - Build and/or increase the value of financial assets; - Receive income; - Reduce one's taxes (income tax); - Prepare for retirement; - Prepare a real-estate project; - Re-use capital held in divided ownership; - Prepare wealth transfer; - Give priority to responsible investments (ESG/SRI/Solidarity/Sustainable). 	3 objectives: <ul style="list-style-type: none"> - Manage the cash position; - Fructify stable own funds; - Save for an investment. 	One-year time frames.

Annex 5: Details of investor profiles proposed by the ISPs

SRR	0	1	2	3	4	5	6	7
ISP B		Conservative						
		Balanced						
		Dynamic						
ISP D	Very conservative							
		Conservative						
			Balanced					
				Dynamic				
					Aggressive			
ISP C		Very conservative						
			Conservative					
			Balanced					
				Dynamic				
				Aggressive				

Volatility of the client's assets/overall risk exposure of assets	0%-6.5%	6.5%-12%	More than 12%
ISP A	Low	Moderate	High

Annex 6: Details of control points

Topics	Nature of control points
Nature of the investment service	<ul style="list-style-type: none"> - No issue of advice for orders identified as resulting from a service of reception and transmission of orders. - Observance of due diligence within the framework of investment advice (signature of advisory agreements, management strategy, assignment of mandatory profiles, compliance with the planned allocation).
Suitability report	<ul style="list-style-type: none"> - Preliminary submission and quality of the suitability report. - Absence of defective advice. - Compliance of the transaction with the proposed fund universe. - Verification of the existence of alternative, less complex or costly financial instruments. - Submission of accessory documents (KIID, ex-ante costs and charges).
Suitability verification	<ul style="list-style-type: none"> - Correct assessment of the client (date of updating of the investor profile, complete/accurate and up-to-date information, consideration of the client's debt in their investor profile). - Check on the suitability of the recommended financial instrument for the client's profile. - Checks on funds for which a recommendation has been issued and a marketing process has been validated by Compliance (client targeting, control sheet, etc.); - Marketing of complex products.
Suitability monitoring	<ul style="list-style-type: none"> - Updating of the client's situation and verification of the suitability of the recommended financial instruments. - Sending of the annual suitability review to the client.