

CONTRÔLES SPOT

Summary document on SPOT inspections of the best execution and best selection obligations applicable to asset management companies

INTRODUCTION

As announced in the AMF's presentation of its supervision priorities for 2021, a series of "SPOT" short thematic inspections covered the fulfilment of best selection and best execution obligations by asset management companies (AMCs). Since 1 November 2007, when the Markets in Financial Instruments Directive (MiFID), Directive 2004/39/EC (enacted on 21 April 2004), came into force, investment service providers have had to apply "best execution" rules. Directive 2014/65/EU of 15 May 2014 ("MiFID II") and its implementing regulations (in particular Delegated Regulation EU 2017/565 of 25 April 2016)¹ then reinforced the obligations applicable to the provision of investment services, especially for portfolio management services for third parties (investment firms) or for reception and transmission of orders, which require the adoption of "sufficient" measures to ensure best execution of orders. In accordance with the Monetary and Financial Code and the AMF General Regulation or Delegated Regulation (EU) No. 231/2013 of 19 December 2012, depending on whether it be for a UCITS or an AIF, similar but "reasonable" measures are required in the case of collective investment management activities (management of an UCITS or AIF).

Whatever the type of activity performed (discretionary management or collective investment management), AMCs are therefore required to take all measures to achieve the best possible result at order execution, taking into account the price, cost, speed, likelihood of execution and settlement, size, nature of the order, or any other consideration related to execution of the order.

These SPOT inspections concerned a sample group of five companies selected after analysing the transactions performed by the AMCs, retrieved from the AMF's internal database, during 2020 and over a one-year period. This selection was made so as to form a sample group representative of the diversity of market participants in terms of types of activity (UCITS and/or AIF, discretionary management), financial instruments traded with the predominant types of instruments being equities and, to a lesser extent, bonds, and order placing procedures (outsourced trading desk, insourced trading desk, order placing directly by the management function).

The sample group comprises the following companies:

- AMC 1: An asset management company belonging to an independent international group, accredited for collective investment management, discretionary management and investment advice, and managing assets in the form of a collective investment scheme (UCITS) invested in directly held securities;
- AMC 2: A small asset management company belonging to a banking group managing UCITS, AIFs and discretionary portfolios, and carrying out reception and transmission of orders. Several funds under management are invested in directly held securities, equities and bonds, and a significant proportion of the assets is also invested in funds;
- AMC 3: An independent asset management company accredited for UCITS management and discretionary portfolio management. The assets under management amount to several billion euros and are mostly managed within the framework of UCITS, invested in directly held securities, mostly equities;
- AMC 4: An independent asset management company managing funds worth several billion euros in collective investment schemes (UCITS and AIFs), invested in directly held securities and mostly in equities;
- AMC 5: A small independent asset management company, accredited for the management of UCITS, AIFs and discretionary portfolios partly invested in directly held securities, equities or bonds.

¹ The AMF has also updated its General Regulation and its best execution guide (AMF Position-Recommendation No. 2014-07) in order to clarify the rules introduced by MiFID II.

The inspections were conducted between July and December 2021 and covered the period from July 2018 to July 2021. The main themes analysed were as follows:

- completeness of the best execution and best selection policy and procedures;
- criteria and due diligence for selection of brokers and, where applicable, trading venues;
- procedures for monitoring best execution and best selection and for assessment of brokers, and policy review criteria;
- information obligations vis-à-vis clients;
- the control system.

This review aims to shed light on the practices of the AMCs under review with regard to their best execution and best selection obligations. This document is neither a position nor a recommendation. The practices identified as either “good” or “poor” highlight approaches identified during the inspections that may facilitate or complicate compliance with the regulations on best selection and best execution.

1. SUMMARY OF THE MAIN FINDINGS

In general, it appears that the AMCs inspected have all established a best execution policy. However, these policies are insufficiently precise and fail to provide certain information required by the applicable regulations, notably regarding the relative importance of the factors provided for by the regulations.

Indeed, with regard to best execution and best selection policies, the AMCs had all adopted the list of factors mentioned in Articles L. 533-22-2-2 and L. 533-18 I. of the Monetary and Financial Code, but none had mentioned the relative importance that it assigned to these factors and none had described in detail how the criteria relating to the characteristics of the order, the financial instrument, the execution venue or the UCITS/AIF/discretionary management concerned influenced determination of the relative importance of these factors. The lists of execution venues mentioned were very general and non-exhaustive, particularly for AMCs liable to execute all or part of their orders themselves.

For AMCs using brokers, these policies did not specify the methodology and documentary basis on which these brokers are assessed.

Furthermore, these policies did not mention, for the two AMCs using an outside trading service provider, the procedures and criteria for selection of those providers. In particular, one of these AMCs chose a service provider located outside the European Union and therefore not subject to the best execution obligation. However, neither at the time of entering into a relationship with the provider of the essential trading function, nor subsequently, did the AMC assess the risks related to the fact that the latter is not subject, on the regulatory level, to an obligation of best execution with regard to its clients.

Regarding the due diligence performed when entering into a relationship with the brokers, three of the five AMCs had established a list of documents to be collected, two of the five AMCs had produced a form designed to verify the collection of those documents and four AMCs had a committee validating the entry into a relationship. Moreover, one of the AMCs had not always ensured that its classification by the brokers used did not jeopardise the brokers' best execution obligation.

Lastly, one of the AMCs did not distinguish between the remuneration of business intelligence (or "research") services and that for execution services, and did not specify, in its policy, the importance assigned to the quality of the research, so that it did not seem capable of substantiating the compliance with its best execution obligation.

Regarding the procedures for monitoring best execution and best selection, all the AMCs mostly using brokers, namely 4 of the 5 AMCs in the sample group, had established a committee in charge of monitoring the quality of the services provided by the latter. All had determined a set of criteria based on which the members (fund managers, traders, possibly middle officers) state their opinion periodically.

However, apart from these dedicated committees, which allow a qualitative and accordingly a rather subjective assessment of the brokers (when the AMCs use them), the system for monitoring and assessment of the quality of execution is not formalised, or not much.

Of the five AMCs in the sample group, four, one of which execute most of its orders itself, receive quantitative data in the form of transaction cost analysis reports ("Transaction Cost Analysis" or "TCA" in the remainder of the document), but none of these companies had used the data from these reports to formally document assessment of the execution of its orders by itself or by brokers used, depending on the case. Moreover, the two AMCs using

an outside trading service provider had not formally expressed their own analysis of the quality of execution provided by the brokers used, and relied mainly on the information established by their outside trading service providers. Finally, with the exception of one AMC in the sample group, none had determined or used an alert threshold nor a methodology designed to detect any anomalies and implement remedial measures. Furthermore, the nature and level of the aforementioned alert threshold were not substantiated by the latter AMC and had proved ineffective given the excessive volume of alerts produced.

Moreover, during the review of the quality of execution required at least once a year by the regulations, the AMCs relied mainly on the periodic assessment of the selected brokers, by themselves or by their outside trading service provider, where applicable, and did not formally express an assessment of the suitability of the execution system in place with regard to the interest of the fundholders/clients, the interest of a possible change in this system, or comparing it with alternative systems. Concerning the information provided to clients, all the AMCs had chosen their website as the channel for publication of their best execution policy. However, one AMC had published it in a space to which access was reserved for its sole client under discretionary management, another AMC had published a watered-down version of its policy, and a third AMC had simply published a brief description of the principles of its policy.

The two AMCs for which the annual intermediation fees for the preceding financial year were above the €500,000 threshold had produced a "report on intermediation fees" and had made it available to their clients on their website.

Lastly, insofar as they provided the third-party management service, all the AMCs had drawn up a report complying with the regulatory technical standards stipulated by Delegated Regulation 2017/576/EU of 8 June 2016 ("RTS 28"), but one company indicated only aggregate data for all the companies of the group to which it belonged there, two other companies had not attached any overall information on the quality of execution obtained for each class of financial instruments to the statistical tables, and one company had chosen to send this report to its sole client under discretionary management, rather than publish it on its website.

Concerning the control system relating to best execution and best selection, generally speaking the due diligence on permanent controls regarding best execution are inadequate. Four AMCs had mentioned in their annual control plan one or more points relating to best execution. In practice, the permanent controls focused on the existence of a policy and procedures designed to formalise a scoring process, on the satisfactory holding and formal presentation of the internal assessment bodies and on compliance with publication obligations. Generally, these controls produced no analysis of the suitability and completeness of the best execution policies, and of their implementation. In particular, permanent control made no check on correct order execution by the AMC or by the brokers used, nor on the performance of such controls by the operational functions.

2. CONTEXT AND SCOPE

2.1. IMPLICATIONS OF THE BEST EXECUTION AND BEST SELECTION OBLIGATION

Orders on financial instruments are the materialisation of the investment management decisions taken by the AMC and, depending on their characteristics, the market conditions or the channels used, their conditions of execution can have a significant impact on the portfolios under management. Criteria of cost, of course, but also speed of execution and other factors, depending on the orders, are therefore of special importance. Moreover, the increasing number of possible execution venues and the surge in the number of new tools for direct market access and specific trading algorithms have contributed to an increasing complexity of this obligation.

Moreover, as said earlier, the transposition of the regulations based on MiFID II has increased the best execution and selection obligations of AMCs which provide investment services of portfolio management for third parties and reception and transmission of orders.

Against this backdrop of heightened regulatory requirements and increasing market complexity, it seemed worthwhile assessing the practices of AMCs in order to identify any areas of weakness or risk regarding best execution.

This obligation is approached differently by the AMCs depending on the size of their orders, the more or less dynamic nature of the investment strategies implemented, the classes of financial instruments that they use, their order execution system which includes or outsources the trading function, or again whether or not they provide the investment service of portfolio management for third parties.

2.2. PRESENTATION IN THE SAMPLE OF AMCS INSPECTED

The sample consists of five AMCs whose characteristics are summarised in the following table.

AMC	AMC 1	AMC 2	AMC 3	AMC 4	AMC 5
Collective management	Yes	Yes	Yes	Yes	Yes
Of which UCITS	Yes	Yes	Yes	Yes	Yes
Of which AIFs	No	Yes	Yes	Yes	Yes
Asset management for third parties	No	Yes	Yes	No	Yes
Main instruments traded	CFDs, futures and equities	Equities, bonds, futures, ETFs	Equities, CFDs, futures and bonds	Equities, bonds, futures	Small- and mid-cap equities, ETFs
Use of an outside trading desk	No	No	No	Yes	Yes
Direct market access (DMA) ²	Yes	No	No	No	No

We may note here that the main class of financial instruments traded by the 5 AMCs in the sample group is equities. The practices observed by the inspections therefore mainly concern this asset class and, to a lesser extent, the

² Direct market access is defined implicitly in Article 20 of Delegated Regulation MiFID II: "1. A person shall be considered not capable of electronically transmitting orders relating to a financial instrument directly to a trading venue in accordance with Article 4(1)(41) of Directive 2014/65/EU where that person cannot exercise discretion regarding the exact fraction of a second of order entry and the lifetime of the order within that timeframe.

2. A person shall be considered not capable of such direct electronic order transmission where it takes place through arrangements for optimisation of order execution processes that determine the parameters of the order other than the venue or venues where the order should be submitted, unless these arrangements are embedded into the clients' systems and not into those of the member or participant of a regulated market or of an MTF or a client of an OTF".

listed bonds and derivatives instruments. 4 of the 5 AMCs forming the sample group use the selection of brokers for executing their orders concerning equity type financial instruments and are therefore, as such, subject to the specific best selection obligations stipulated by the regulations. On the other hand, a fifth AMC, No. 1, executes most of its orders itself and is therefore subject to best execution obligations for its transactions concerning equity type financial instruments.

2.3. APPLICABLE REGULATIONS

The work of the inspection task force was based on:

- The Monetary and Financial Code (Articles L. 533-22-2-2 and L. 533-18 to L. 533-18-2);
- The Commission Delegated Regulation of AIFM Directive (EU) No. 231/2013 of 19 December 2012 ("AIFM DR") (Articles 27 and 28);
- Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 ("MiFID II DR") (Articles 20, 64, 65 and 66);
- The AMF General Regulation (Articles 321-110 to 321-122);
- AMF Position-Recommendation No. 2014-07 (Guide to Best Execution).

Main legal sources:

Compliance with conditions of authorisation and the general obligation of asset management companies regarding best selection/execution

Articles L. 532-9 of the Monetary and Financial Code and 321-30 of the AMF General Regulation (UCITS) and Article 61 of the AIFM DR (AIFs); Articles L. 533-22-2-2 and L. 533-18 of the Monetary and Financial Code.

Procedural corpus

Best execution: Articles L 533-22-2-2 and L 533-18 II. of the Monetary and Financial Code, Article 29 of AIFM DR (AIFs), Article 66 of MiFID II DR (discretionary management);

Best selection: Articles 321-114 and 321-30 of the AMF General Regulation, Article 28 of AIFM DR (AIFs).

Arrangements for selection, monitoring and assessment of best selection/execution of brokers/counterparties

Best execution: Articles 321-110 to 321-113 of the AMF General Regulation (UCITS) and 27 of AIFM DR (AIFs), Article L. 533-18-2 of the Monetary and Financial Code, Article 66 of MiFID II DR (discretionary management);

Best selection: Articles 321-114 of the AMF General Regulation (UCITS) and 28 of AIFM DR (AIFs);

Outsourcing of tasks and operational functions: Articles 321-93 to 321-96 (UCITS) and 318-58 to 318-61 (AIFs) of the AMF General Regulation.

Client information regarding best selection/best execution

Article 65 of MiFID II DR (discretionary management), Articles 321-114 (IV) of the AMF General Regulation (UCITS) and 28.2 of the AIFM DR (AIFs).

Best selection/best execution control system

Articles 321-31 and 321-113 of the AMF General Regulation (UCITS), and 27.5, 28.3, 61 and 62 of AIFM DR (AIFs).

3. OBSERVATIONS AND ANALYSES

3.1. BEST EXECUTION IN THE PROCESS OF ORDER PLACING

The inspections noted that all the AMCs had order management facilities making it possible to trace all the stages of execution of an order with variable degrees of automation, from its initiation by the fund manager until confirmation of its execution. These systems should enable the persons in charge of execution in the AMC (fund manager, trader depending on the case) to time-stamp the successive order stages and thereby assess the conditions of execution at all levels. AMCs 1, 3 and 4, for which the volume of orders is significant, are equipped with connector systems which enable them to assess the conditions of execution of their orders in real time. Moreover, for each financial instrument traded, their systems incorporate the levels of fees paid to the various intermediaries, allowing this to be factored in satisfactorily in the assessment process.

However, for two AMCs, part of the execution process was not taken into account appropriately, namely, the potential time lag between initiation of an order by a fund manager and its handling by the trading desk:

- the managers of AMC 3 entered their orders in the order management facility themselves, except for one person who could send them by email to the in-house trading desk. In practice, these orders were included in the facility immediately by the trading desk, but the procedure did not specify how any time lag was taken into account;
- the time lag between the entry of an order by the managers of AMC 4 and its handling by the outside trading desk was not taken into account in assessing the quality of execution by the AMC.

In both these cases, certain stages of the order execution process would therefore not be taken into account for assessment of the quality of execution, in particular for the transaction cost analysis (TCA)³ that these AMCs are liable to perform.

Also, AMC 2 does not provide a sufficiently precise description of the operating procedure for the selection and allocation of orders to the brokers used and then for placing the order for each of the financial instruments traded. The retention periods for Bloomberg instant messaging are not mentioned by this AMC in its policies and procedures, and the operating procedure for retrieving these data is not described, which could affect the reliability of its assessment of the quality of execution.

Lastly, in general, the best execution policies of these AMCs do not refer to the methods and records of the stages of order execution stipulated by the appropriate procedures.

Regulatory reminders:

Article L. 533-8 of the Monetary and Financial Code

Under the terms and conditions laid down in the General Regulation of the Autorité des Marchés Financiers, investment service providers shall retain the pertinent information on all the transactions in financial instruments they have entered into.

³ See section 3.4 below.

Article L. 533-22-2-2 of the Monetary and Financial Code

I.-In the context of collective investment management, asset management companies shall take all reasonable measures to achieve, at order execution, the best possible result taking into account the price, cost, speed, likelihood of execution and settlement, size, nature of the order, or any other considerations related to execution of the order.

II.-Asset management companies shall establish and implement effective measures, and notably an order execution policy, to comply with the requirements of I above.

Article 321-96 of the AMF General Regulation

I. - Asset management companies that outsource an operational task or function shall remain fully responsible for complying with all their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code [...].

II. - Asset management companies shall exercise due skill, care and diligence when entering into, managing or terminating an outsourcing contract for critical or important operational tasks or functions.

In particular, asset management companies must take the necessary steps to ensure that the following conditions are satisfied:

- 1. The service provider must have the ability, capacity, and any authorisation required to perform the outsourced tasks or functions reliably and professionally;*
- 2. The service provider must carry out the outsourced services effectively. To this end, the asset management company must establish methods for assessing the standard of performance of the service provider.*
- 3. The service provider must properly supervise the carrying out of the outsourced tasks or functions, and adequately manage the risks stemming from outsourcing;*
- 4. Asset management companies must take appropriate action if it appears that the service provider may not be carrying out the functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them;*
- 5. Asset management companies must retain the necessary expertise to supervise the outsourced tasks or functions effectively and manage the risks stemming from outsourcing and must supervise those tasks and manage those risks;*
- 6. The service provider must disclose to the asset management company any development that may have a material impact on its ability to carry out the outsourced tasks or functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them; [...]*

Article 321-114 IV of the AMF General Regulation

[...] The selected entities must have order execution mechanisms that enable the asset management companies to comply with their obligations under the terms of this Article when they transmit orders to that entity for execution.

Article 64 of AIFM DR

- 1. AIFMs shall make without delay for each portfolio transaction relating to AIFs they manage a record of information which is sufficient to reconstruct the details of the order and the executed transaction or of the agreement. [...]*

Article 321-71 of the AMF General Regulation

The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the AMF, and in such a form and manner that the following conditions are met:

- 1. The AMF must be able to access them readily and to reconstitute each key stage of the handling of each transaction; [...]*

Article 72 of MiFID II DR

1 The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority [...]

Good practices:

- Particularly in the case of a significant volume of orders, using an order placing system and connector systems allowing real-time monitoring of the conditions of order execution.
- Ensuring the capability of distinguishing between various fees (brokerage fees, research costs, intermediation fees for outsourced trading desks) according to the type of order (algorithmic order, order directed to a broker, etc.).

Poor practice:

- The procedural corpus relating to best execution/selection does not refer to the operating procedures (time stamping, archiving) of the order placing procedure on which it is based.

3.2. APPROPRIATENESS AND COMPLETENESS OF BEST EXECUTION AND BEST SELECTION POLICIES AND PROCEDURES

3.2.1. Best execution factors and criteria

Firstly, the findings appearing in the present section concern the "execution policy" as defined internally by the AMC. The policy disclosed to investors may not include its entire content but must nevertheless be sufficiently specific to enable an investor to compare the execution procedures employed with those of other AMCs (see information section below).

AMCs must include in their order execution policy the factors influencing the choice of execution system (Articles L. 533-22-2-2 and L. 533-18 I. of the Monetary and Financial Code) and take into account, to determine the relative importance of these factors, criteria relating to the characteristics of the order, the financial instrument, the execution venue or the UCITS/AIF concerned. The list of factors is not restrictive, and it is incumbent on each AMC to define clearly, for each type of order that it may have to place, the factors on which its choice of execution system will be based, and their order of importance. In their policy, the AMCs all plan to take all measures needed to obtain, at order execution, the best possible result in light of these factors.

The inspections noted in the policies of the inspected AMCs the list of factors provided for by the aforementioned regulations.

The AMCs merely replicate the factors laid down by the regulations in force and:

- no AMC had mentioned in its policy an indication of the relative importance that it assigned to these factors;
- no AMC had described in detail how the criteria relating to the characteristics of the order, the financial instrument, the execution venue or the UCITS/AIF/discretionary management concerned influenced determination of the relative importance of the best execution factors, with AMC 1 merely citing Article 321-110 (UCITS) of the AMF General Regulation;
- the material factors actually used are not always reflected in the best execution/selection policy. For example, AMC 3 had not added to the list of factors that of discretion vis-à-vis the market, whereas it

indicated that in practice this factor influences the choice of method of order execution, particularly in the case of large orders.

Specific case of use of an outside trading service provider

AMCs 4 and 5 have chosen to entrust trading of the orders that they place to an outside trading service provider. They have a best selection/best execution policy. In both cases, it is the AMC that determines the factors and criteria that should be used by the service provider for selection of the broker that will be tasked with order execution.

Moreover, for these two AMCs, the procedural corpus does not stipulate the methods for selection and monitoring of the outside trading service provider, and notably the criteria used (in particular preliminary due diligence, the ability of the outsourced service provider to take into account the factors and criteria for selection of the brokers, an analysis of the cost-benefit ratio for funds and discretionary management portfolios), and the conditions according to which potential service providers would possibly be placed in competition. It therefore states neither the information having to be collected, nor the analyses that should be performed prior to selection of this table, nor the frequency of updating.

3.2.2. Execution venues

In accordance with Articles L. 533-22-2 and L. 533-18 III. of the Monetary and Financial Code, for each instrument class, the AMCs' order-execution policy shall include information on the various systems on which the investment service provider shall execute its clients' orders and the factors influencing the choice of said system. Said information shall cover at least the systems that permit the service provider to obtain, in most cases, the best possible result from execution of the clients' orders.

Moreover, in accordance with the applicable regulations, an asset management company is required to provide to UCITS unitholders or shareholders, in due time before provision of the service, a list of the execution venues which it most trusts to honour its obligation of taking all reasonable measures in order to obtain on a consistent basis the best possible result in the execution of orders placed.

The Regulation (UCITS) specifies that by execution venue is meant "*a trading platform, a systematic internaliser, a market maker, another liquidity provider, or an entity that performs similar tasks in a country that is not party to the European Economic Area agreement*"⁴.

The inspections noted that the policies of the AMCs inspected described the execution venues as follows.

AMC 1	AMC 2	AMC 3	AMC 4	AMC 5
- Multilateral Trading Facility ("MTF") - OTF - Direct Market Access ("DMA") – DMA refers to electronic facilities that allow the Firm to benefit generally from a better cost for	The selected intermediaries make it possible to [...] have access to the following execution venues: - for equities: regulated markets, MTFs	[...] has explicitly authorised its brokers to trade on various execution venues, which include in particular: - Regulated markets - Multilateral trading facilities	Depending on the order execution policy adopted by each intermediary or counterparty that has been selected, and in accordance with their best execution obligation, orders may be directed to:	[...] the orders may be executed: - On regulated markets; - On organised markets in regular operation (e.g. "Marché Libre", Alternext);

⁴ Article 321-110 IV of the AMF General Regulation.

<p>financial securities the Firm may wish to buy or sell</p> <ul style="list-style-type: none"> - Systematic internalisers - Market makers or other liquidity providers or an entity that performs a similar function in a third country - Brokers - Unregulated markets - Dark pools 	<ul style="list-style-type: none"> - for bonds and debt securities: market makers and other liquidity providers, multilateral trading facilities. [...] reserves the right to use other execution venues when considered appropriate. 	<ul style="list-style-type: none"> - Organised trading facilities - Systematic internalisers - Market makers and other liquidity providers. 	<ul style="list-style-type: none"> - Regulated markets; - Multilateral trading facilities; - Organised trading facilities; - Systematic internalisers; - Market makers; - Other liquidity providers; - Entities which perform similar tasks in a country that is not a party to the European Economic Area agreement. <p>The asset management company reserves the right to use other execution venues when considered appropriate as part of this selection policy.</p>	<ul style="list-style-type: none"> - On multilateral trading facilities; - The company reserves the right to use other execution venues when considered appropriate as part of this execution policy.
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The inspections noted that these lists are very general and explicitly non-exhaustive, and that none of the inspected AMCs, particularly those that are liable to execute orders by themselves, mentions in its best execution policy a list of the execution venues which the AMC most trusts to honour its obligation of taking all reasonable measures in order to obtain on a consistent basis the best possible result in the execution of orders transmitted.

Moreover, in their execution policy, these AMCs provide little or no information, with regard to each class of financial instruments, about the various systems in which they execute orders and the factors influencing the choice of execution system.

3.2.3. Monitoring and review of the quality of execution

Case in which the AMC is subject to a best execution obligation

AMC 1 stated in its procedure that it could occasionally add or remove a supplier proposing direct market access (DMA) in order to obtain the best possible result for its clients. The inspection task force notes that the mere possibility of changing service provider is not sufficient to ensure the best possible result in order execution.

Case in which the AMC is subject to a best selection obligation

The inspections analysed the conditions of selection of brokers by the AMCs for execution of their orders. The results show that AMCs 2, 3, 4 and 5 assess the brokers every six months in a "brokers" committee meeting, and based on this they update the list of authorised brokers (maintained/added/removed).

This analysis is based on a score awarded according to several criteria predefined by the persons in the AMC performing the management, trading and middle-office functions.

However, the inspection task force notes that the corresponding best execution/selection policies and procedure do not specify whether and how the scores awarded for any of these criteria should be

substantiated/justified/documented, notably in light of the selection factors provided for by the best execution/selection policy. Moreover, except for AMC 1, apart from the qualitative scoring criteria mentioned above, these policies and procedures do not specify a methodology by which the AMC will assess the quality of execution, e.g. through use and analysis of the data that it produces or that it obtains from the brokers or, where applicable, from other service providers that it uses.

Moreover, the inspections observed that three AMCs make a clear distinction between the remuneration of business intelligence (or "research") services and of the execution services that they receive, that one of the AMCs does not remunerate business intelligence services and that AMC 2 does not make such a distinction between these two types of services in its policy. Indeed, the policy of AMC 2 stipulates that it assigns, on the one hand, a discretionary score for the quality of execution of each of the brokers that it uses based on the volume of assets under management, the brokerage fees paid and the effective brokerage rates of the various brokers and, on the other hand, a score for the research services received. However, the policy gives no indication regarding the importance assigned to the quality of research among the broker selection criteria. Given the disparate transaction costs charged by the brokers used, and in the absence of a description of a system making it possible to assess ex-post the quality of execution provided, the policy of this AMC apparently does not enable it to effectively ensure compliance with its best execution obligation.

Case of use of an outside trading service provider

AMCs 4 and 5 use an outside trading service provider to select the brokers to which order execution is entrusted.

The inspections noted that these two AMCs do not mention in their procedural corpus the conditions of review of the selection/execution system in place, notably by comparison with alternative systems.

Moreover, although AMC 5 mentions in its best execution/selection policy/procedure the due diligence prior to selection of the brokers and the various aspects forming the dossier of a new broker, AMC 4 does not specify this point.

Lastly, AMC 4 uses an outside trading service provider located in the European Union and therefore authorised to provide the service of reception and transmission of orders and subject to the relevant best execution/selection obligations in accordance with MiFID II, while AMC 5 uses a service provider located outside the European Union and therefore not subject to this obligation. However, neither at the time of entering into a relationship with the provider of the essential trading function, nor subsequently, did AMC 5 assess the risk due to the fact that this service provider is subject to no regulations regarding best execution/selection with regard to its clients. It should have at least checked that the regulatory and contractual arrangements governing the services of this service provider enabled it to obtain execution conditions equivalent to those that are imposed by a best execution obligation applying to regulated service providers.

Review of the best execution/selection policy

The best execution/selection policies provide, in accordance with the regulations, for a review of their policy at least once a year and in case of an event that might justify it, but provide no details regarding the conditions of this review, and in particular the persons or entities in charge of this review, and the methodology and formalities to be used.

Regulatory reminders:

Article 28 of AIFM DR

2. AIFMs shall take all reasonable steps to obtain the best possible result for the AIF or the investors in the AIF taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the criteria laid down in Article 27(2).

Article L. 533-22-2 of the Monetary and Financial Code

I.-In the context of collective investment management, asset management companies shall take all reasonable measures to achieve, at order execution, the best possible result taking into account the price, cost, speed, likelihood of execution and settlement, size, nature of the order, or any other considerations related to execution of the order.

II.-Asset management companies shall establish and implement effective measures, and notably an order execution policy, to comply with the requirements of I above.

III.-The order execution policy shall include, with regard to each class of instruments, information on the various systems in which the asset management company executes orders and the factors influencing the choice of execution system. It shall at least include systems which enable the asset management company to achieve, in most cases, the best possible result for order execution.

Article 321-110 of the AMF General Regulation

For the purposes of I of Article L. 533-22-2(1) of the Monetary and Financial Code, asset management companies executing orders on behalf of UCITS shall take account of the following criteria to determine the relative importance of the factors referred to in I of the said Article:

- 1. The characteristics of the order concerned;*
- 2. The characteristics of the financial instruments covered by the order;*
- 3. The characteristics of the execution venues to which the order may be routed;*
- 4. The objectives, investment policy and risks specific to the UCITS and listed in the prospectus or, where such is the case, its fund rules or instruments of incorporation.*

For the purposes of this Sub-section, "execution venue" shall mean a trading platform, a systematic internaliser, a market maker, another liquidity provider, or an entity that performs similar tasks in a country that is not party to the European Economic Area agreement.

Article 321-114 of the AMF General Regulation

III. - Asset management companies shall take all reasonable measures to obtain the best possible results for the UCITS that they manage, taking into account the measures referred to in Article L. 533-22-2 of the Monetary and Financial Code. The relative importance of these factors shall be determined with reference to the criteria defined in Article 321-110.

IV. - Asset management companies shall establish and implement policies that enable them to comply with the obligation referred to in III. Such policies shall select the entities to which orders for each class of instruments are transmitted for execution. The selected entities must have order execution mechanisms that enable the asset management companies to comply with their obligations under the terms of this Article when they transmit orders to that entity for execution. Asset management companies shall provide unit holders or shareholders in UCITS that they manage with appropriate information about their policies developed for the purposes of this paragraph. This information shall be included in the management report.

In light of these elements of policy, the AMF was expecting in particular to note the **good practices** consisting of:

- establishing a map of due diligence to be performed (ex-ante, follow-up, etc.) in the case of best execution and best selection, for each class of financial instruments that it may trade and for each execution system that it may choose;

- establishing for each class of financial instruments a hierarchy of execution factors, making sure to involve in the definition of this hierarchy the fund managers or traders who will apply it.

Poor practices:

- In the case of AMCs executing their orders themselves:
 - i) not stipulating in the best execution/selection policy, in addition to the factors provided for by the Monetary and Financial Code, qualitative factors (transparency, simplicity, efficiency, etc.) taken into account for the selection of execution venues;
 - ii) the execution policy does not mention a list of the factors used to select an execution venue and the relative importance of each factor or the process by which this relative importance is determined;
 - iii) the best execution/selection policy does not provide for an assessment of the costs of inclusion of an execution venue nor for a comparison with the gains obtained through the inclusion of this execution venue.
- When the AMC outsources the trading function to a third-party service provider, the policy does not indicate the criteria on which the AMC has based its choice with regard to the interest of the fundholders, particularly by comparison with the gains provided by this service and the costs entailed for the fundholders.
- In the case of an AMC using an outside service provider for trading (selection of brokers), the AMC does not ensure that this service provider is bound to it by a best selection/best execution obligation. Regarding this, the use of an ISP unregulated in the EU for the provision of this type of service is a poor practice to the extent that this service provider is not required to comply with the best execution obligation stipulated by MiFID II and the AMC has not ensured that the rules and the contractual framework governing this service allow it to benefit from an equivalent obligation in this respect.
- The best execution/selection policy is not sufficiently precise regarding how allowance is made for the factors provided for in the Monetary and Financial Code prior to execution/selection of the broker, and in particular regarding the measures and tools used for the assessment of these factors.
- Where the AMC does not execute its orders itself, the best selection policy does not mention the various possible types of orders (care orders, limit price, other) or how the latter are taken into consideration for the selection of brokers and of the various execution services proposed by them (high touch, algorithms, etc.).
- The best execution/selection policy does not describe the methods employed for monitoring best execution/selection, the criteria for identifying anomalies and the measures that can be taken.

3.3. DUE DILIGENCE FOR SELECTION OF EXECUTION CONDITIONS: ENTRY INTO A RELATIONSHIP

Selection of brokers

AMCs must prepare and implement a policy for selection and assessment of the entities to which orders are transmitted for execution, for each class of instruments. They shall ensure that the selected entities have order execution arrangements making it possible to obtain the best possible result. For this purpose, when entering into a relationship with the broker the AMCs collect information and documents, possibly documenting this collection formally in a record of entry into a relationship.

Documents collected when entering into a relationship

	AMC 1	AMC 2	AMC 3	AMC 4	AMC 5
Record of entry into a relationship	No	Yes	No	No	Yes
List of documents to be collected in the procedure	No	Yes	Yes	No	Yes
Validation of entry into a relationship by a committee	No	Yes	Yes	Yes	Yes
Documents collected					
Articles of Association and "K-Bis"	No	Yes	Yes	Yes	Yes
Evidence of regulated broker status	No	No	Yes	No	No
Service agreement or terms of business	Yes	Yes	Yes	Yes	Yes
Client classification	No	Yes	Yes	Yes	Yes
Asset management company's consent	No	Yes	Yes	Yes	Yes
List of signatories authorised to hire the broker	No	No	No	No	Yes
List of execution venues	No	Yes	No	No	Yes
Best execution policy	No	Yes	Yes	Yes	Yes
Conflict of interest management policy	No	Yes	Yes	No	Yes

The table above shows that the practices for entering into a relationship with market intermediaries are variable from one AMC to another.

AMC 1 executes most of its orders itself and uses brokers occasionally. It does not collect documents relating to these brokers either before or after entry into a relationship.

AMCs 2 and 5 have established a document checklist which enables them to validate entry into a relationship with brokers. Where applicable, the AMCs' bodies dedicated to supervision of the brokers used, often identified as "broker committees", can ratify these entries into a relationship (in their minutes).

The documentary examination performed on a sample of dossiers relating to brokers used shows that they have variable levels of completeness. The dossiers do not all contain an agreement signed with the broker, particularly when they are of Anglo-Saxon origin. The agreements are replaced by unsigned "terms of business", the conditions of which take effect starting from the first order placed. Moreover, the inspections noted that the documents governing relations between the AMCs and the brokers are not always up-to-date, especially with regard to charges, but price changes nevertheless seem to be adequately taken into account in the systems as soon as the new charges are adopted.

Regarding the client classification more specifically, the study in the sample shows that on the whole the AMCs ensure that the brokers have not classified them as "eligible counterparties" and are therefore not exempted from the best execution obligation. However, AMC 1 does not collect this information, while AMC 2 was unable to prove that it had performed this essential formality for all its brokers.

Case of use of an outside trading service provider

AMCs 4 and 5 have chosen to use an outside trading venue to place all their orders, apart from those relating to derivative products for AMC 4 and those relating to portfolio management for third parties for AMC 5. They have entrusted to those venues the task of selecting from a list predefined by them the broker providing the best result for each order. For these two AMCs, the inspections noted that the criteria for selection of the chosen service provider had not been expressed sufficiently formally.

Moreover, the inspection task force noted that the trading service provider which AMC 5 chose to use was not an EU service provider and, accordingly, was not required to provide the AMC with best execution under the

conditions provided for by MiFID II. This risk had not been identified by the AMC in its due diligence prior to entering into the relationship, nor in the course of the annual review of this service provider (see above).

Regarding the selection of brokers by these outside service providers, it is performed using various approaches. AMC 5 has clearly established a list of intermediaries that could be used for the two main classes of financial instruments, itself collects the documents for entry into a relationship and has a bilateral agreement with these outside service providers. As regards AMC 4, it has itself appointed certain market intermediaries that could be used, and allows its outside service provider to propose other brokers with a view to best execution. The documents for entry into a relationship are collected by the outside trading service provider and tripartite agreements are established between the latter, the AMC and the broker by AMC 4, while AMC 5 establishes bilateral agreements with each broker. In both cases, the AMC remains sole decision-maker for entering into the relationship.

Conditions of selection of execution venues (Direct Market Access, other venues and liquidity providers)

The inspections noted that the AMCs which execute their orders themselves have not established a process for selection of execution venues or other market access venues.

In particular, AMC 1 uses one or more Direct Market Access (DMA)⁵ infrastructures made available as part of more general prime brokerage services. However, it has not formally defined due diligence prior to using this infrastructure, apart from the more general due diligence performed on the provider for their overall service.

Good practices:

- Where the AMC does not execute its orders itself and selects brokers for this purpose, making sure prior to entering into a relationship with them that they are regulatorily subject to a best execution obligation. In particular, the AMC shall make sure that it is not classified as an "eligible counterparty".
- Providing for a dossier for entry into a relationship containing, in particular, in addition to a service agreement or "terms and conditions", the most recent financial statements, the articles of association, a list of authorised signatories, a best execution policy, a conflict of interest management policy and a letter of classification of the AMC by that service provider.
- Validating the completeness of the dossiers for entry into a relationship with brokers by the formal establishment of a record and/or minutes of a committee (brokers committee or risks committee depending on practices).

Poor practices:

- Where the AMC uses an outside trading service provider, not setting out formally a documented preliminary analysis of potential benefits and risks related to this provision of services.
- Where the AMC is subject to a best execution obligation, not establishing criteria, nor formally defining preliminary objective due diligence for selection of the DMA (Direct Market Access) provider,

⁵ Direct market access is defined implicitly in Article 20 of Delegated Regulation MiFID II: "1. A person shall be considered not capable of electronically transmitting orders relating to a financial instrument directly to a trading venue in accordance with Article 4(1)(41) of Directive 2014/65/EU where that person cannot exercise discretion regarding the exact fraction of a second of order entry and the lifetime of the order within that timeframe.

2. A person shall be considered not capable of such direct electronic order transmission where it takes place through arrangements for optimisation of order execution processes that determine the parameters of the order other than the venue or venues where the order should be submitted, unless these arrangements are embedded into the clients' systems and not into those of the member or participant of a regulated market or of an MTF or a client of an OTF".

the fact of being in a relationship for the provision of a more overall service (e.g., prime brokerage) with other entities of the service provider's parent group cannot constitute a sufficient criterion.

3.4. MONITORING OF BEST EXECUTION AND BEST SELECTION, AND POLICY REVIEW

AMCs shall monitor on a regular basis the effectiveness of their best execution policy and, if they entrust execution of their orders to brokers, the quality of the execution provided by the entities selected under that policy. For this purpose, they shall implement a process of assessment, as appropriate, of the quality of their execution notably according to the chosen execution venues, the selected brokers, or any other system used.

Governance of best execution monitoring

The following table shows in detail the process of assessment, the criteria chosen by the inspected AMCs and the persons voting during this process.

AMC	AMC 1	AMC 2	AMC 3	AMC 4	AMC 5
Assessment process	The AMC has not established a regular assessment of the quality of execution provided by its service providers.	For equities, the AMC assigns a score ranging between 1 and 5 for the quality of execution every six months. For bonds, the AMC calculates a half-yearly score for each broker, combining an "operating procedure" score according to the various execution channels proposed by the broker, and a qualitative score according to two different criteria.	The three people at the trading desk assess the equity brokers every six months. Each person scores each criterion out of 10 for each of the brokers and decides on the weighting of each criterion. A weighted average of the criteria gives a final score for each broker. A report summarises in a table the final scores, the classification and volumes of each broker, and indicates brief comments on the quality of execution of each broker.	The half-yearly committee meeting on the selection of intermediaries decides on the list of intermediaries in charge of execution. The outside trading desk presents to this committee statistical performance indicators on the quality of execution provided by the brokers in the past six months, but there is no formal scoring process established by the AMC.	The two managers draw up half-yearly evaluation sheets for each of the brokers and for the outside trading desk. These sheets contain an assessment (very good, good, average or poor) for each of the criteria, and summary comments.
Qualitative criteria	-	"Operating procedure" "Monitoring by sales/broker, proactive, suitability of proposals" "Quality of execution, price position relative to	"market colour": quality of market commentary; "high touch": brokers' ability to find liquidity; "data quality": quality of execution data and reliability of middle offices;	-	Quality of execution; Quality of administrative service; Probability of execution, liquidity, indication of interests;

		<i>quotes, liquidity, speed of execution"</i>	<i>"algo footprint":</i> capability of algorithmic tools for accessing various listing markets; <i>"algo perf / support":</i> performance of algorithmic tools and responsiveness of support teams.		Cost of the order; Execution venues and market access; Financial strength.
Voters	-8	Managers	Traders	Managers	Managers

In accordance with their policy, the four AMCs using brokers for execution of their orders have a committee validating the conclusions of the assessment process every six months. Regarding AMC 4 in particular, the outside trading service provider presents at this committee meeting performance indicators relating to the quality of execution established by itself, and on this basis the committee decides, after discussions involving the management function and without the presence of the outside trading service provider, not transcribed in the minutes, to keep or get rid of a broker. AMC 4 does not formally perform either qualitative or quantitative scoring of the quality of execution provided by the brokers, and relies on the analyses provided by its outside service provider.

Quantitative criteria

Four of the five AMCs inspected consult transaction cost analysis (TCA) reports. Only AMC 2 stated that it does not obtain such reports as part of its monitoring. AMCs 4 and 5 receive these reports from their outside trading desk. AMCs 1 and 3 have asked an independent specialist supplier to produce these reports. The inspections found that:

- none of the inspected AMCs had used the data in these reports to formally justify/document the assessment of the brokers and execution venues;
- AMC 1 has established a quarterly alert mechanism for orders underperforming the VWAP⁶ indicator or the "Placement to execution" indicator by more than 5% or underperforming these two indicators by more than 1%. However, the number of alerts has increased tenfold since the fourth quarter of 2018, making it impossible to analyse each of them;
- AMC 3 receives data from its outside analysis supplier and since March 2021 has formalised the review of these reports by a monthly analysis email sent by the manager of the trading desk to the CICO, the Risk Manager and the senior management;
- AMCs 4 and 5 had not formalised their own analysis of the data provided by their outside trading desk and relied mainly on this data.

The TCA reports enable the AMCs to perform an ex-post check on the quality of execution of their orders. However, the inspections noted that the large quantity of data and the complexity of the numerous indicators provided, often without an associated precise definition, require of the AMCs an effort of assimilation before they can be suitably exploited. Among the indicators watched by the inspected AMCs are, for example, and non-cumulatively:

- the Market Impact Adjusted Arrival Price, defined as the difference between the average execution price and the mid-range at the time when the order is received, adjusted for the market impact estimated by Bloomberg before the transaction. The AMC which uses this indicator does not fully understand its

⁶ VWAP means *Volume weighted average price*.

structure insofar as it is based on models developed by Bloomberg (based notably on the depth of the order book, the size of the order relative to the average trading volume, the volatility of the security and the estimated length of time to perform the transaction);

- the difference between the average execution price and the average price if the order had been executed when it represented 20% of the trading volume for the security in question;
- the difference between the execution price and benchmarks (TWAP,⁷ VWAP, etc.);
- *Placement to execution* or *implementation shortfall*, i.e. the difference between the average execution price and the price at the time when the order was placed;
- the percentages of passive and aggressive orders.

Regulatory reminders:

Article L. 533-18 I. of the Monetary and Financial Code

[...] *In order to ensure the best possible result when several rival execution venues are capable of executing an order concerning a financial instrument, investment service providers shall assess and compare the results that would be obtained for clients by executing the order in each of the execution venues included in the execution policy mentioned in II whenever they are capable of executing that order. In making this assessment, investment service providers shall take into account the specific fees and costs for execution of the order in each of the eligible execution venues.* [...]

Article 65.7 of MiFID II DR

7. Investment firms shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 5 and, in particular, the quality of the execution by the entities identified in that policy and, where appropriate, correct any deficiencies.

Article 321-112 of the AMF General Regulation

Asset management companies shall supervise the effectiveness of their arrangements for order execution and their policy on this matter in order to detect any deficiencies and to remedy them as appropriate. In particular, they shall periodically verify whether the execution systems stipulated under their order execution policies obtain the best possible result for the UCITS or whether they need to modify their execution arrangements. [...]

Article 321-113 of the AMF General Regulation

Asset management companies shall conduct an annual review of their order execution arrangements and policies.

Such a review must also be conducted whenever a material change occurs affecting the asset management company's ability to continue obtaining best execution for the orders passed on behalf of UCITS on a consistent basis using the execution venues stipulated under its order execution policy.

Article 321-114 of the AMF General Regulation

V. - Asset management companies shall monitor the effectiveness of the policies established for the purposes of IV on a regular basis, especially with regard to the quality of the execution provided by the entities selected under their policies.

Where appropriate, they shall remedy any deficiencies brought to light.

In addition, asset management companies shall be required to conduct an annual policy review. Such a review must also be conducted each time a material change occurs that has an effect on an asset management company's ability to continue obtaining best execution for the UCITS that it manages.

⁷ TWAP means "Time-Weighted Average Price".

Article 27.5 of AIFM DR

4. AIFMs shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders with a view to identifying and, where appropriate, correcting any deficiencies.

5. AIFMs shall review their execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.

Article 28.3 of AIFM DR

3. AIFMs shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 2 and, in particular, the quality of the execution by the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, AIFMs shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.

Good practices:

- Ensuring that the personnel in charge of execution or the selection of brokers, depending on the case, have tools and information enabling them to ensure that the best selection and best execution factors, as defined in the AMC's best execution and best selection policy, are suitably taken into account, in particular execution prices and costs or else liquidity conditions.
- Having an in-house body (committee) for monitoring and assessment of the quality of execution, whether execution be performed directly by the AMC or via selected brokers. This body gathers, at a frequency appropriate for the volume of orders, the assessment of the persons involved in the process of placing orders (in particular fund managers, analysts and for certain aspects the middle office), and formally presents their conclusions.
- Supplementing the qualitative assessment described above with regular quantitative analyses, including by sampling.
- Acquiring tools or using an independent supplier in order to have reports concerning the quality of execution/selection, especially in the case of AMCs having a significant volume of transactions.
- As part of the monitoring of best execution/selection, for collective investment management, producing comparisons of the quality of execution with that which could have been obtained via another broker/another trading facility and/or on another trading venue.
- Setting out formally and sending to the managers a regular report concerning monitoring of the quality of execution, at a frequency appropriate for the volume of orders (every month in the case of a significant volume).

Poor practices:

- Failing to include in the assessment of quality of execution the time elapsing between generation of the order by the fund manager and its handling by the person in charge of trading when that person is not the originator of the order themselves (in-house trading desk or outside trading service provider).
- As part of monitoring of the quality of execution, not documenting decisions/conclusions with analyses, including by sampling, performed on the basis of the data and reports relating to quality of execution available to the AMC.
- Not producing a formal analysis of alerts as defined in the best execution/selection policy
- For AMCs subject to a best selection obligation, where the volume of orders does not justify the acquisition of a solution or the use of a supplier for analysis of the quality of execution, not obtaining from the brokers data or an analysis report on the quality of their execution, notably by sampling or, when such reports and data are available to it, not performing their analysis.
- Not defining/applying a methodology for analysis of the transaction cost reports indicating, in particular, the frequency of analysis, the relevant indicators used and their precise definition and calculation methods, and formal presentation of the conclusions of this analysis.

- Not substantiating by data or analyses performed by the service providers the choice to include, for one or more classes of financial instruments, only a single entity in the best execution/selection policy.
- Neither the best selection and best execution policy, nor its methods of implementation, make it possible to establish a clear distinction between consideration of the factors of assessment of the quality of execution and consideration of the factors of assessment of the quality of research services provided separately, in the process of selection of the brokers in charge of execution.

3.5. INFORMATION FOR CLIENTS AND INVESTORS

3.5.1. Publication of the best execution/selection policy

AMCs shall provide the unitholders or shareholders of the UCITS/AIFs that they manage with appropriate information concerning their best execution policy. This information, which must be provided in due time before provision of the service, concerns:

- on the one hand, the relative importance assigned to factors influencing the choice of execution system, notably according to the characteristics of the order in question, and
- on the other hand, the list of execution venues most trusted by the AMCs.

Moreover, this information must be included in the management report of each UCITS (Article 321-114 of the AMF General Regulation).

AMCs which provide a service of portfolio management for third parties must also provide these two types of information to their clients before provision of the service, with other points listed in Article 66 of the MiFID II Delegated Regulation.

All the inspected AMCs have chosen their website as the channel for publication of this information. The inspections found that:

- AMC 1 had published all of its execution policy in an area to which access was reserved for its discretionary management clients;
- AMC 2 had published a version of its execution policy different from its in-house execution policy, considering the latter too operational;
- AMC 3 had published an excessively brief description of the main principles of its best execution policy;
- AMCs 4 and 5 had published all of their up-to-date execution policy.

The inspections found that:

- the fact of providing information on the best execution policy in an area to which access was reserved for clients who are investors in the AMC's UCITS/AIFs complies with the regulations only when the AMC does not provide a third-party management service, which is the case for AMC 1;
- the publication of a document different from the execution policy requires of the AMC that an appropriate level of information should appear there, i.e. that the information required by the regulations appear there (namely the factors and criteria adopted for execution and their respective importance, the preferred execution venues or the entities to which the orders are transmitted for execution depending on the case, and the methods by which the AMC ensures the quality of execution (bodies, frequency and methodologies). Special vigilance is also required to ensure that updates of the in-house document are immediately reflected in the published document.

Moreover, AMCs shall provide the unitholders or shareholders of the UCITS they manage with appropriate information on their policy of selection and assessment of the entities that provide them with investment decision aid services and order execution services (Article 321-115 of the AMF General Regulation). This information must be published on their website or, failing that, in the management report of each UCITS.

AMCs 1, 2, 4 and 5 have included this information on best selection in the same document as the provisions relating to best execution. AMC 3 has published on its website an obsolete selection policy, because it dated from February 2019 whereas the document had been updated in August 2021.

3.5.2. Reports on intermediation fees

AMCs are obliged to produce a "Report on Intermediation Fees" whenever the intermediation fees that they have paid in the preceding financial year exceed €500,000 (Articles 319-18 and 321-122 of the AMF General Regulation). This document must be available on their website or, failing that, be published in the management report of each UCITS.

Of the inspected AMCs, AMCs 1, 2 and 5 had not produced reports on intermediation fees, because these fees were below the threshold of €500,000. AMCs 3 and 4 had produced and published this report each year since 2018 and on their website they make available to investors their report on intermediation fees in the preceding financial year.

AMCs 3 and 4 also indicate the breakdown by percentage of intermediation fees and research fees for the period in question.

3.5.3. RTS 28 reports

AMCs providing a service of portfolio management for third parties shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained (Article 65 of the MiFID II Delegated Regulation). Regulatory technical standards ("RTS⁸ 28") have specified the requirements expected of this report (Commission Delegated Regulation 2017/576 of 8 June 2016) which came into force on 3 January 2018. This information comprises, for each class of financial instruments, the name and identifier of the execution venue, the volume and number of client orders executed, expressed as a percentage of the total number of orders executed on that venue, and the percentages of passive orders, aggressive orders and directed orders out of the orders executed.⁹

On 3 October 2018, ESMA published a Q&A on the subject of the RTS 28 report.¹⁰ This stated, in particular, that "*If a portfolio manager, or a receiver and transmitter of orders, sends an order to an entity for execution (broker), the distinction between passive and aggressive orders as defined in Article 2 of RTS 28 is likely not relevant and will not need to be disclosed in the report to be published in accordance with Article 65(6) of the Delegated Regulation*" (question 14).

⁸ Regulatory Technical Standards

⁹ Article 2 of Commission Delegated Regulation (EU) 2017/576 of 8 June 2016: "the following definitions shall apply: a) 'passive order' means an order entered into the order book that provided liquidity; b) 'aggressive order' means an order entered into the order book that took liquidity; c) 'directed order' means an order where a specific execution venue was specified by the client prior to the execution of the order.

¹⁰ https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf

Among the inspected AMCs, the inspections noted that:

- AMC 1 had published on its website annual reports entitled "quality of execution" indicating the information defined in RTS 28 despite the fact that it did not provide any service of portfolio management for third parties. However, the data reported by it were aggregate data for all the companies of the group to which it belongs;
- AMCs 3 and 5 had not attached to the statistical tables any overall information on the quality of execution obtained for each class of financial instruments. Moreover, the percentages of aggressive and passive orders appearing in these tables were sometimes indicated as zero, clearly for want of data;
- AMC 3 had chosen to send this report to its sole client in discretionary management rather than publish it on its website;
- AMC 2 had published on its website the RTS 28 report for financial years 2019 and 2020 and made available its RTS 28 report for financial year 2021. These reports show, for each of the classes of financial instruments for which it provides investment services, the breakdown of order flows by volume and number of orders executed as a percentage during the elapsed period for the top five venues;
- AMC 4 had published on its website the RTS 28 report and had also made available to its clients its RTS 28 report for the preceding financial year. These reports indicate, for each type of financial instrument, the proportion of the volume of orders executed and the proportion of orders for the top five brokers and the percentages of passive, aggressive and directed orders;
- AMCs 4 and 5 had not stated that they made use of an outside trading desk and had indicated in the reports the five main brokers that they had used.

3.5.4. Other information

AMCs 2 and 4 indicated in the annual reports of the funds of the selected sample information relating to the selection of brokers.

AMC 4 does not mention in the funds' annual reports the research-related part which forms part of the total transaction price.

Regulatory reminders:

Article 65 of MiFID II DR

6. Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. In particular, when the investment firm selects other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU. Upon reasonable request from a client, investment firms shall provide their clients or potential clients with information about entities where the orders are transmitted or placed for execution.

Article 66 of MiFID II DR

2. The information on the execution policy shall be customised depending on the class of financial instrument and type of the service provided and shall include information set out in paragraphs 3 to 9.

3. Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

- a) *an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in Article 27(1) of Directive 2014/65/EU, or the process by which the firm determines the relative importance of those factors;*
 - b) *a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders and specifying which execution venues are used for each class of financial instruments, for retail client orders, professional client orders and SFTs;*
 - c) *a list of factors used to select an execution venue, including qualitative factors such as clearing schemes, circuit breakers, scheduled actions, or any other relevant consideration, and the relative importance of each factor; the information about the factors used to select an execution venue for execution shall be consistent with the controls used by the firm to demonstrate to clients that best execution has been achieved on a consistent basis when reviewing the adequacy of its policy and arrangements;*
 - d) *how the execution factors of price, costs, speed, likelihood of execution and any other relevant factors are considered as part of all sufficient steps to obtain the best possible result for the client;*
 - e) *where applicable, information that the firm executes orders outside a trading venue, the consequences, for example counterparty risk arising from execution outside a trading venue, and upon client request, additional information about the consequences of this means of execution;*
 - f) *a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions;*
 - g) *a summary of the selection process for execution venues, execution strategies employed, the procedures and process used to analyse the quality of execution obtained and how the firms monitor and verify that the best possible results were obtained for clients. This information shall be provided on a durable medium, or on a website (where that does not constitute a durable medium) provided that the conditions specified in Article 3(2) are met.*
4. *Where investment firms apply different fees depending on the execution venue, the firm shall explain these differences in sufficient detail in order to allow the client to understand the advantages and the disadvantages of the choice of a single execution venue.*
5. *Where investment firms invite clients to choose an execution venue, fair, clear and non-misleading information shall be provided to prevent the client from choosing one execution venue rather than another on the sole basis of the price policy applied by the firm.*
6. *Investment firms shall only receive third-party payments that comply with Article 24(9) of Directive 2014/65/EU and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.*
7. *Where an investment firm charges more than one participant in a transaction, in compliance with Article 24(9) of Directive 2014/65/EU and its implementing measures, the firm shall inform its clients of the value of any monetary or non-monetary benefits received by the firm.*
8. *Where a client makes reasonable and proportionate requests for information about its policies or arrangements and how they are reviewed to an investment firm, that investment firm shall answer clearly and within a reasonable time.*
9. *Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total costs they incur. The summary shall also provide a link to the most recent execution quality data published in accordance with Article 27(3) of Directive 2014/65/EU for each execution venue listed by the investment firm in its execution policy.*

Article L. 533-22-2-2 of the Monetary and Financial Code

III. [...] Asset management companies shall provide appropriate information to the shareholders or unitholders of collective investment products regarding their order execution policy.

When the order execution policy provides that orders can be executed outside of a trading venue, the asset management company shall inform in particular the shareholders or unitholders in the collective investments of this possibility.

Article 321-111 of the AMF General Regulation

Asset management companies shall be required to provide holders of shares or units in the UCITS with the following information about their execution policy in good time, prior to the provision of services:

- 1. The relative importance that the asset management company attributes to the factors referred to in I of Article L. 533-22-2-2 of the Monetary and Financial Code based on the criteria referred to in Article 321-110 or the process by which the relative importance of these criteria is determined;*
- 2. A list of the execution venues in which the asset management company has the most confidence for meeting its obligation to take all reasonable measures to obtain the best execution of the orders passed on behalf of UCITS on a consistent basis.*

Article 321-112 of the AMF General Regulation

[...] Asset management companies shall notify holders of shares or units in the UCITS of any material changes in their order execution arrangements or policies.

Article 321-114 of the AMF General Regulation

IV. - Asset management companies shall establish and implement policies that enable them to comply with the obligation referred to in III. Such policies shall select the entities to which orders for each class of instruments are transmitted for execution. The selected entities must have order execution mechanisms that enable the asset management companies to comply with their obligations under the terms of this Article when they transmit orders to that entity for execution. Asset management companies shall provide unit holders or shareholders in UCITS that they manage with appropriate information about their policies developed for the purposes of this paragraph. This information shall be included in the management report.

Article 321-115 of the AMF General Regulation

An asset management company shall draw up and implement a policy for selecting and assessing the entities that provide it with the services referred to in (b) of Point 1° of Article 321-119, having regard to criteria related inter alia to the quality of the investment research produced.

It shall provide the holders of shares or units in the UCITS it manages with suitable information, posted on its website, about the policy it has adopted in accordance with the first paragraph. The management report for each UCITS shall refer explicitly to this policy.

If the asset management company does not have a website, this policy shall be described in the management report for each UCITS.

Article 321-122 of the AMF General Regulation

[...] If the asset management company uses investment decision aid and order execution services and if the intermediation fees for the previous year came to more than EUR 500,000, it shall compile a document entitled "Report on Intermediation Fees" that shall be updated as needed. The report shall specify the terms and conditions on which the asset management company used investment decision aid and order execution services for the preceding year, along with the breakdown between:

- 1- Intermediation fees related to order reception, transmission and execution services;*
- 2- Intermediation fees related to investment decision aid and order execution services..*

The breakdown for applying costs shall be formulated as a percentage and based on an established method using relevant and objective criteria.

It may be applied to:

- 1- Either all the assets in a given class of UCITS;*

2- Or by any other procedure suited to the method used for applying costs.

If applicable, the "Report on Intermediation Fees" shall specify the percentage of all intermediation fees in the previous year shared with third parties under the terms of the commission sharing agreements referred to in Article 321-121 for the fees referred to in b in Point 1° of Article 321-119.

It shall also give an account of the measures implemented to prevent or deal with any potential conflicts of interest in the selection of service providers.

This document shall be posted to the asset management company's website, if the company has one. The management report for each UCITS shall refer explicitly to this document. If the asset management company does not have a website, the document shall be included in the management report for each UCITS.

Article 3 of MiFID II DR

1. Investment firms shall publish the top five execution venues in terms of trading volumes for all executed client orders per class of financial instruments referred to in Annex I. Information regarding retail clients shall be published in the format set out in Table 1 of Annex II and information regarding professional clients shall be published in the format set out in Table 2 of Annex II. The publication shall exclude orders in Securities Financing Transactions (SFTs) and shall contain the following information: a) class of financial instruments; (b) venue name and identifier; (c) volume of client orders executed on that execution venue expressed as a percentage of total executed volume; (d) number of client orders executed on that execution venue expressed as a percentage of total executed orders; (e) percentage of the executed orders referred to in point (d) that were passive and aggressive orders; (f) percentage of orders referred to in point (d) that were directed orders; (g) confirmation of whether it has executed an average of less than one trade per business day in the previous year in that class of financial instruments. 2. Investment firms shall publish the top five execution venues in terms of trading volumes for all executed client orders in SFTs for each class of financial instruments referred to in Annex I in the format set out in Table 3 of Annex II. The publication shall contain the following information: a) volume of client orders executed on that execution venue expressed as a percentage of total executed volume; (b) number of client orders executed on that execution venue expressed as a percentage of total executed orders; (c) confirmation of whether the investment firm has executed an average of less than one trade per business day in the previous year in that class of financial instruments. 3. Investment firms shall publish, for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution obtained on the execution venues where they executed all client orders in the previous year. The information shall include: a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when assessing the quality of execution; (b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders; (c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received; (d) an explanation of the factors that led to a change in the list of execution venues listed in the firm's execution policy, if such a change occurred; (e) an explanation of how order execution differs according to client categorisation, where the firm treats categories of clients differently and where it may affect the order execution arrangements; (f) an explanation of whether other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client; (g) an explanation of how the investment firm has used any data or tools relating to the quality of execution, including any data published under Delegated Regulation (EU) 2017/575; (h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU.

Good practices:

- Ensuring that the execution policy published on an AMC's website is in compliance with its in-house execution policy and the operational process implemented in the AMC.

- In addition to UCITS, also showing in the annual reports of AIF type funds information on the AMC's broker selection policy even if has a website on which its policy for selection of its brokers also appears.

Poor practices:

- In the case of an AMC using an outside trading service provider, not performing control due diligence concerning the information provided by said service provider for production of the RTS 28 reports and the reports relating to intermediation fees before their publication.
- Indicating as zero the percentages of passive or aggressive orders in the RTS 28 reports when the data are missing.
- In the reports relating to intermediation fees, not showing sufficiently clearly the distinction between intermediation fees and research fees, by showing only the research fees collected via commission sharing agreements.

3.6. CONTROL SYSTEM

3.6.1. Permanent control

The inspections analysed the AMCs' permanent control systems relating to best execution and best selection, and made the following observations:

- All the AMCs except AMC 4 had mentioned in their annual control plan one or more points relating to best execution;
- AMC 1 is the only one to have established, within the framework of joint monitoring performed by the management and control teams, an alert threshold for the analysis of orders executed atypically. However, the inspection task force noted that the establishment of this threshold had not undergone a preliminary justification and that this threshold had not been updated when the number of alerts became too great for each of them to be analysed individually;
- AMC 5, which uses an outside trading desk located in a third country outside the European Union, had not established sufficient controls. In particular, its control work did not enable it to identify the legal and regulatory risks related to the use of this unregulated service provider;
- AMC 2 did not perform the controls provided for in its annual plan with the planned frequency.

In general, the inspections note that the permanent control work on best execution mainly concerns the existence of a policy, the formal establishment of a scoring process, the satisfactory functioning of a governance body, where applicable, or else the publication of the information required by the regulations. For example, the permanent controls do not aim to ensure a suitable level of justification and documentation of the assessment processes in place and, if a broker is used, do not include a verification of the quality of execution provided by those brokers, nor monitoring of the checks performed by the AMC's management or trading functions on those brokers.

3.6.2. Periodic control

Of the inspected AMCs, only AMC 2 has performed a periodic control on the theme of best execution and best selection.

Regulatory reminders:

Article 27.5 of AIFM DR

5. AIFMs shall review their execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.

Article 28.3 of AIFM DR

3. AIFMs shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 2 and, in particular, the quality of the execution by the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, AIFMs shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.

Article 61.2 a) of AIFM DR

An AIFM shall establish and maintain a permanent and effective compliance function which operates independently and has the following responsibilities:

a) monitoring and, on a regular basis, evaluating the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph 1 and the actions taken to address any deficiencies in the AIFM's compliance with its obligations;

Article 62 of AIFM DR

1. AIFMs shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of collective portfolio management activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the AIFM.

2. The internal audit function referred to in paragraph 1 shall:

a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the AIFM's systems, internal control mechanisms and arrangements;

b) issue recommendations based on the results of work carried out in accordance with point (a);

c) verify compliance with the recommendations referred to in point (b);

d) report internal audit matters.

Article 321-31 of the AMF General Regulation

I. - The asset management company shall establish and maintain an effective compliance function that operates independently. Its role is to:

1. Monitor and, on a regular basis, assess the adequacy and effectiveness of policies, procedures and measures implemented for the purposes of Article 321-30, and actions taken to remedy any deficiency in compliance of the asset management company and the relevant persons with their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code;

2. Advise and assist the relevant persons in charge of the management company's services and business so that they comply with the asset management company's professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code. [...]

Article 321-112 of the AMF General Regulation

Asset management companies shall supervise the effectiveness of their arrangements for order execution and their policy on this matter in order to detect any deficiencies and to remedy them as appropriate.

In particular, they shall periodically verify whether the execution systems stipulated under their order execution policies obtain the best possible result for the UCITS or whether they need to modify their execution arrangements. [...]

Article 321-113 of the AMF General Regulation

Asset management companies shall conduct an annual review of their order execution arrangements and policies.

Such a review must also be conducted whenever a material change occurs affecting the asset management company's ability to continue obtaining best execution for the orders passed on behalf of UCITS on a consistent basis using the execution venues stipulated under its order execution policy.

Article 321-114 of the AMF General Regulation

V. - Asset management companies shall monitor the effectiveness of the policies established for the purposes of IV on a regular basis, especially with regard to the quality of the execution provided by the entities selected under their policies.

Where appropriate, they shall remedy any deficiencies brought to light. [...]

Good practices:

- Where an outside trading service provider is used, permanent control performs an inspection/audit at least once a year on the arrangements and means employed by it and presents its findings formally.
- Where an outside trading service provider is used, presenting formally and documenting the implementation of specific controls on the quality of order execution obtained by the brokers selected by those service providers.
- Ensuring that the list of persons authorised to transmit orders is regularly updated and reviewed.
- Ensuring the updating and proper consideration of the brokerage fees charged by the brokers, but also those related to research and the outsourcing of the trading desk.
- Ensuring that an up-to-date report is kept on the various brokerage rates practised with the brokers depending on each financial instrument and/or the type of orders (algorithmic order, order traded by the broker directly, other).

Poor practices:

- Where an order execution service provider not regulated in the European Union is used, not adapting controls to make due allowance for the resulting regulatory risk.
- Performing level-two controls regarding best execution only at the level of the AMC's parent group, so that it is not possible to identify findings specific to the orders placed by the AMC.
- Following generated alerts, not providing for remedial measures other than a necessary recalibration of the alerts, without any other justification.
- Not describing in the procedural corpus the methodology of the level-two controls.
- Relying solely on the permanent controls performed by the outsourced trading desk, in the specific case of measures of the quality of order execution.
- Not ensuring that the dossiers of the brokers used, where applicable, contain all the constituent documents when entering into a relationship.
- Not ensuring that the brokerage rates applied in practice are consistent with those indicated in the agreements signed with the brokers.
- Not performing or ensuring the implementation of ex-post random inspections of the quality of order execution.

3.7. OTHER CONSIDERATIONS

- Procedure relating to gifts and inducements

As is the case with all service providers, and in light of the substantial amounts of fees that can be paid by CIUs or discretionary portfolios to the brokers used, particularly when there is a large volume of orders, the AMCs, their managers or their traders may find themselves in a situation of conflict of interest, especially if they are authorised to receive inducements from those brokers.

AMCs should therefore establish an appropriate procedure for conflict of interest management. In this regard, they are expected to establish a procedure designed to regulate the possibility for the AMC, its managers and its personnel to receive such inducements.

AMCs 2 and 4 have no specific procedures, but their code of ethics mentions the prohibitions that must be complied with by employees with regard to gifts and inducements from brokers, and the level of the threshold above which disclosure must be performed.

AMCs 2 and 4 continuously monitor the gifts and inducements received by employees, as well as the amounts involved, and each year they receive employees' sworn statements. AMC 5, moreover, has set an annual limit on the cumulative total gifts received from each broker.

Regulatory reminders:

Article 321-30 of the AMF General Regulation

Asset management companies shall establish and maintain appropriate operational policies, procedures and measures to detect any risk of non-compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code and the subsequent risks, and to attenuate those risks.

For the purposes of the preceding paragraph, asset management companies shall take into account the nature, scale, complexity and range of the businesses that they engage in.

Article 45 of AIFM DR

1. AIFMs shall adopt adequate and effective arrangements, processes and techniques in order to:

- a) identify, measure, manage and monitor at any time the risks to which the AIFs under their management are or might be exposed;*
- b) ensure compliance with the limits set in accordance with Article 44.*

Article 21-1 of MiFID II DR

1. Investment firms shall comply with the following organisational requirements: a) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities; [...]

Good practices:

- Providing for monitoring of the gifts and inducements received for each broker.
- Stipulating not only a maximum value for the gifts and inducements that the AMC's employees may report and accept, but also set a maximum number or maximum cumulative value of gifts/inducements that may be received by a given broker or an outside trading service provider over a given period.
- Requiring employees to make their statements continuously in accordance with a threshold set beforehand by the AMC above which disclosure is mandatory and shall contain evidence.

- Ensuring satisfactory monitoring of the statements of gifts and inducements received by employees and ensuring that the appropriate procedure correctly describes the operating procedure for the statement and for its monitoring.

Poor practice:

- Not producing a monitoring report on the amounts stated for each broker and each employee.