

# SIMPLIFICATION

## LEVEL 3 GUIDELINES

### Examples of excessive prescriptions

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In the context of the European Commission's stated objective of reducing the administrative burden for firms, the present paper focuses on providing examples of existing Level 3 provisions, which create unnecessary complexity, while adding requirements on firms.

Although Level 3 guidelines are formally non-binding, they are perceived and applied as binding by firms, as they constitute instruments of supervisory convergence and define the framework within which supervision is conducted. In France, for instance, these guidelines are incorporated into the AMF's rulebook as official "Positions", which the authority expects firms to comply with. As a result, firms feel compelled to align fully with their content, regardless of their legal status.

Against this backdrop, the objective of simplifying EU regulation needs to include a review of Level 3 soft law. In AMAFI's view, true simplification should involve removing Level 3 provisions, which often add an unnecessary regulatory layer to Level 1 and Level 2 requirements, without delivering value-added improvements in clarity or implementation:

- Only where guidance is necessary to interpret Level 2 provisions, Q&As, which are non-binding, should be used. These Q&As should be subject to prior consultation.
- Where clarifications are needed on how to implement Level 1 or Level 2 requirements, the ESAs should work in collaboration with the industry to develop non-binding guidance, ideally building on existing industry-led standards where they exist.

We are aware that this change is only possible if the convergence of supervisory practices is improved across the EU. This is one of the reasons why a reform of the EU supervisory framework is needed ([see AMAFI / 25-34 - SIU Strategy - AMAFI's position](#))

This paper examines two illustrative cases: the **EBA Guidelines on Outsourcing** and the **ESMA Guidelines on Suitability**. For each, a comparative table outlines the legal requirements and the corresponding provisions of the guidelines.

Other examples of such Level 3 guidelines creating complexity and additional burden are provided in the "Less is more Report" produced by an expert group ([Less is more, 10 Feb. 2025, p. 39 and Appendix 4](#)).

## I. EBA GUIDELINES ON OUTSOURCING

The EBA Guidelines on Outsourcing ([EBA/GL/2019/02](#)) go significantly beyond the requirements set out in Level 1 and Level 2 legislation, such as, for investment firms and credit institutions, the Capital Requirements Directive (CRD) and MiFID II.

Although the EBA is mandated under the CRD to develop guidelines on internal governance, of which outsourcing is a component, **this mandate remains general in nature and does not explicitly refer to outsourcing arrangements. Furthermore, under MiFID II, there is no specific mandate for the ESAs to issue guidance on outsourcing, and the topic is already thoroughly addressed in Level 2 delegated regulation**, which lays out detailed and binding rules regarding due diligence, risk control, business continuity, and access rights (*Delegated regulation, Art. 31*).

In addition, MiFID limits its scope **to the outsourcing of critical or important functions**. In contrast, the EBA Guidelines adopt **a much broader scope**, applying not only to critical or important functions but also to all outsourced activities (see for example Section 7 Outsourcing policy<sup>1</sup> or Section 11 Documentation requirements<sup>2</sup> of the Guidelines). This goes well beyond the intention and legal scope of MiFID II and introduces an additional layer of operational constraints.

MiFID and CRD clearly allow firms to apply a proportionate and risk-based approach, adapted to the nature and scale of their activities. In contrast, the EBA Guidelines, although stating that they consider the proportionality principle, impose a granular set of operational obligations, which often amount to a de facto new regulatory layer. These include detailed provisions on contractual clauses, record-keeping, due diligence procedures, and exit strategies, which not only constrain firms' flexibility but also create significant compliance burdens. In many cases, these provisions go far beyond what is necessary to achieve sound risk management and effective supervisory oversight. With regards to MiFID provisions, the Guidelines result in an over-layering of requirements and significant administrative burden, raising questions about their necessity.

This excessive level of prescription undermines the principle of proportionality and creates implementation challenges for institutions, particularly smaller ones, resulting in additional costs and reducing their ability to innovate or adapt outsourcing models to evolving business needs.

This concern is amplified by the fact that the EBA plans to further expand the Guidelines. It is indeed currently consulting on their revision to incorporate new provisions stemming from DORA, which regulates the outsourcing of ICT-related services. AMAFI believes that outsourcing risks related to investment services should continue to be managed under the risk-based framework of CRD (now IFR-IFD) and MiFID II, and now DORA, without being overburdened by overly detailed Level 3 Guidelines.

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<sup>1</sup> "The outsourcing policy should differentiate between the following: a. outsourcing of critical or important functions and other outsourcing arrangements".

<sup>2</sup> "As part of their risk management framework, institutions and payment institutions should maintain an updated register of information on all outsourcing arrangements at the institution and, where applicable, at sub-consolidated and consolidated levels, as set out in Section 2, and should appropriately document all current outsourcing arrangements, distinguishing between the outsourcing of critical or important functions and other outsourcing arrangements".

CRD ( <i>Directive 2013/36/EU</i> )	MiFID ( <i>Directive 2014/65/EU</i> )	MiFID Commission Delegated Regulation (EU) 2017/565	EBA Guidelines ( <i>EBA/GL/2019/02</i> )
<p><b>Article 74 - Internal governance and recovery and resolution plans</b></p> <p>1. Institutions shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote <b>sound and effective risk management</b>.</p> <p>2. The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and <b>proportionate</b> to the nature, scale and complexity of the risks inherent in the business model and</p>	<p><b>Article 16 - Organisational requirements</b></p> <p>5. An investment firm shall ensure, when relying on a third party for the performance of <b>operational functions which are critical</b> for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. <b>Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.</b></p>	<p><b>Article 30 - Scope of critical and important operational functions</b></p> <p>1. For the purposes of the first subparagraph of Article 16(5) of Directive 2014/65/EU, an operational function shall be regarded as <b>critical or important</b> where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under Directive 2014/65/EU, or its financial performance, or the soundness or the continuity of its investment services and activities.</p> <p>(...)</p> <p><b>Article 31 - Outsourcing critical or important operational functions</b></p> <p>1. <b>Investment firms outsourcing critical or important operational functions shall remain fully responsible</b> for discharging all of their obligations under Directive 2014/65/EU and shall comply with the following conditions:</p> <p>(a) the outsourcing does not result in the delegation by senior management of its responsibility;</p>	<p><b>31 pages</b> of provisions for firms covering aspects already dealt with in the Level 1 and 2 texts (including in detail as per Art. 31 of the MiFID delegated regulation), sometimes adding to them:</p> <ul style="list-style-type: none"> <li>- Proportionality</li> <li>- Outsourcing by groups and institutions that are members of an institutional protection scheme</li> <li>- Assessment of outsourcing arrangements</li> <li>- Sound governance arrangements and third-party risk</li> <li>- Sound governance arrangements and outsourcing</li> <li>- Outsourcing policy</li> <li>- Conflicts of interests</li> <li>- Business continuity plan</li> <li>- Internal audit function</li> <li>- Documentation requirements</li> <li>- Pre-outsourcing analysis</li> <li>- Supervisory conditions for outsourcing</li> </ul>

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<p>the institution's activities. The technical criteria established in Articles 76 to 95 shall be taken into account.</p> <p><b>3. EBA shall issue guidelines on the arrangements, processes and mechanisms referred to in paragraph 1, in accordance with paragraph 2.</b></p>		<p>(b)the relationship and obligations of the investment firm towards its clients under the terms of Directive 2014/65/EU is not altered;</p> <p>(c)the conditions with which the investment firm must comply in order to be authorised in accordance with Article 5 of Directive 2014/65/EU, and to remain so, are not undermined;</p> <p>(d)none of the other conditions subject to which the firm's authorisation was granted is removed or modified.</p> <p><b>2. Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions</b> and shall take the necessary steps to ensure that the following conditions are satisfied:</p> <p>(a)the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to</p>	<ul style="list-style-type: none"> <li>- Risk assessment of outsourcing arrangements</li> <li>- Due diligence</li> <li>- Contractual phase (inc. sub-outsourcing of critical or important functions, Security of data and systems, Access, information and audit rights, Termination rights)</li> <li>- Oversight of outsourced functions</li> <li>- Exit strategies</li> </ul>

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		<p>perform the outsourced functions, reliably and professionally;</p> <p>(b)the service provider carries out the outsourced services effectively and in compliance with applicable law and regulatory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;</p> <p>(c)the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;</p> <p>(d)appropriate action is taken where it appears that the service provider may not be carrying out the functions effectively or in compliance with applicable laws and regulatory requirements;</p> <p>(e)the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to</p>	

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		<p>supervise the outsourced functions effectively and manage those risks;</p> <p>(f)the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;</p> <p>(g)the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;</p> <p>(h)the service provider cooperates with the competent authorities of the investment firm in connection with the outsourced functions;</p> <p>(i)the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight</p>	

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		<p>in accordance with this article, and the competent authorities are able to exercise those rights of access;</p> <p>(j)the service provider protects any confidential information relating to the investment firm and its clients;</p> <p>(k)the investment firm and the service provider have established, implemented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;</p> <p>(l)the investment firm has ensured that the continuity and quality of the outsourced functions or services are maintained also in the event of termination of the outsourcing either by transferring the outsourced functions or services to another third party or by performing them itself.</p> <p><b>3. The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement.</b> In</p>	

CRD ( <i>Directive 2013/36/EU</i> )	MiFID ( <i>Directive 2014/65/EU</i> )	<b>MiFID Commission Delegated Regulation (EU) 2017/565</b>	EBA Guidelines ( <i>EBA/GL/2019/02</i> )
		<p>particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.</p> <p>4. Where the investment firm and the service provider are <b>members of the same group</b>, the investment firm may, for the purposes of complying with this Article and Article 32, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.</p> <p>5. Investment firms shall <b>make available on request to the competent authority all information necessary</b> to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of Directive 2014/65/EU and its implementing measures.</p>	

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		<p><b>Article 32 - Service providers located in third countries</b></p> <p>1. In addition to the requirements set out in Article 31, where an investment firm outsources functions related to the investment service of portfolio management provided to clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied:</p> <p>(a)the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;</p> <p>(b)there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.</p> <p>2. The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:</p>	

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		<p>(a)obtain on request the information necessary to carry out their supervisory tasks pursuant to Directive 2014/65/EU and Regulation (EU) No 600/2014;</p> <p>(b)obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;</p> <p>(c)receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of Directive 2014/65/EU and its implementing measures and Regulation (EU) No 600/2014;</p> <p>(d)cooperate with regard to enforcement, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the Union in cases of breach of the requirements of Directive 2014/65/EU and its implementing measures and relevant national law.</p> <p>3. Competent authorities shall publish on their website a list of the supervisory authorities in third countries with</p>	

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		<p>which they have a cooperation agreement referred to in point (b) of paragraph 1.</p> <p>Competent authorities shall update cooperation agreements concluded before the date of entry into application of this Regulation within six months from that date.</p>	

## II. ESMA'S GUIDELINES ON MiFID II SUITABILITY REQUIREMENTS

While the MiFID II Level 1 and Level 2 texts establish a robust and proportionate framework for the assessment of suitability, ESMA's Guidelines on Suitability ([ESMA35-43-3172](#)) go significantly beyond what is required, introducing an overly detailed and rigid interpretation of firms' obligations.

In particular, the guidelines prescribe a level of granularity in the information to be collected from clients which goes beyond the legislative framework, and which does not bring additional value. For example, they suggest including personal elements such as marital status and family situation, which are **not mentioned in the Level 2 Delegated Regulation**. Articles 54(4) and 54(5), as well as Article 55, already provide a comprehensive list of the factors that should be considered to assess a client's knowledge, experience, financial situation, and investment objectives.

This approach is **inconsistent with the principle of proportionality, as enshrined in Level 2**, which explicitly states that "*investment firms shall determine the extent of the information to be collected from clients, giving due consideration to the nature and extent of the service provided*". The current guidelines constrain this discretion and leave little flexibility to investment firms to tailor implementation depending on their business model, the nature of their client, or the type of services offered, especially when dealing with very simple products or with more sophisticated investors.

This approach contributes to **undermining the client experience**, especially in the context of the European Commission's current initiative to simplify the retail investor journey. Requiring clients to provide non-essential personal information may lead to frustration or disengagement, acting as an obstacle to retail participation in capital markets.

In addition, the Guidelines sometimes go further than the suitability aspects, dealing for example with matters related to product governance, which are subject to dedicated ESMA's Guidelines ([ESMA35-43-620](#)). While there is a logical link between product governance and suitability, notably in the "know your product" dimension, the responsibilities relating to product design, target market definition, and product review are already comprehensively addressed under the product governance rules. **Replicating these elements in the suitability framework is redundant, blurs the lines between two distinct regimes, and increases regulatory complexity without enhancing investor protection.**

By layering non-binding guidance on top of detailed Level 2 rules, the Guidelines create **operational complexity and unnecessary compliance costs**, with potentially adverse effects on investor engagement and market access.

MiFID ( <a href="#">Directive 2014/65/UE</a> )	MiFID <a href="#">Commission delegated regulation (EU) 2017/565</a>	<a href="#">ESMA's Guidelines</a>	Comments
<p><b>Article 25 - Assessment of suitability and appropriateness and reporting to clients</b></p> <p>2. When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including his ability to bear losses, and his investment objectives including his risk tolerance so as to enable the investment firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.</p> <p>(...)</p>	<p><b>Article 54 Assessment of suitability and suitability reports</b></p> <p>2. Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:</p> <p>(a) it meets the investment objectives of the client in question, including client's risk tolerance;</p> <p>(b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;</p> <p>(c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.</p>	<p><b>General guideline 2</b></p> <p>24. <b>Information necessary to conduct a suitability assessment</b> includes different elements that may affect, for example, the analysis of the client's financial situation (including his ability to bear losses) or investment objectives (including his risk tolerance). Examples of such elements are the client's:</p> <ul style="list-style-type: none"> <li>• <b>marital status</b> (especially the client's legal capacity to commit assets that may belong also to his partner);</li> <li>• <b>family situation</b> (changes in the family situation of a client may impact his financial situation e.g. a new child or a child of an age to start university);</li> <li>• <b>age</b> (which is mostly important to ensure a correct assessment of the investment objectives, and in particular the level of financial risk that the investor is willing to take, as</li> </ul>	<p>ESMA's guidelines are overly prescriptive on the information to be collected, going beyond Level 1 and Level 2 prescriptions (adding marital status, family situation, etc.), without adding value to the list already provided in Article 54 of the Delegated Regulation (in particular in paragraphs 4 and 5) and Article 55 of the same.</p> <p>This calls into question the possibility of a proportionate application, whereas it is set at Level 2 ("<i>Investment firms shall determine the extent of the information to be collected from clients</i>", "<i>giving due consideration to the nature and extent of the service provided</i>").</p> <p>Requesting all and only the information necessary to carry out</p>

MiFID ( <i>Directive 2014/65/UE</i> )	MiFID <i>Commission delegated regulation (EU) 2017/565</i>	ESMA's Guidelines	Comments
<p>3. When providing either investment advice or portfolio management that involves the switching of financial instruments, investment firms shall obtain the necessary information on the client's investment and shall analyse the costs and benefits of the switching of financial instruments. When providing investment advice, investment firms shall inform the client whether or not the benefits of the switching of financial instruments are greater than the costs involved in such switching.</p>	<p>(...)</p> <p>4. The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.</p> <p>5. The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.</p> <p><b>Article 55 - Provisions common to the assessment of suitability or appropriateness</b></p> <p>1. Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or</p>	<p>well as the holding period/investment horizon, which indicates the willingness to hold an investment for a certain period of time);</p> <ul style="list-style-type: none"> <li>• <b>employment situation</b> (the degree of job security or that fact the client is close to retirement may impact his financial situation or his investment objectives);</li> <li>• <b>need for liquidity</b> in certain relevant investments or need to fund a future financial commitment (e.g. property purchase, education fees).</li> </ul>	<p>the suitability assessment is key so that the client is not dissatisfied by the amount of information to be provided. This is of particular relevance in the client journey to accessing capital markets, currently under consultation for simplification (<a href="#">ESMA asks input on the retail investor journey as part of simplification and burden reduction efforts</a>).</p>

MiFID ( <i>Directive 2014/65/UE</i> )	MiFID <u>Commission delegated regulation (EU) 2017/565</u>	ESMA's Guidelines	Comments
	<p>transaction envisaged, including their complexity and the risks involved:</p> <p>(a) the types of service, transaction and financial instrument with which the client is familiar;</p> <p>(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;</p> <p>(c) the level of education, and profession or relevant former profession of the client or potential client.</p>		
<b>Article 16 - Organisational requirements</b>  <p>3. (...) An investment firm which manufactures financial instruments for sale to clients shall maintain, operate and review <b>a process for the approval of each financial instrument</b> and significant adaptations of existing financial instruments <b>before it is marketed or distributed to clients</b>. The product approval process shall specify an identified target market of end clients within the relevant</p>		<p><b>General guideline 7</b></p> <p>71. Firms should ensure that the policies and procedures implemented to understand the characteristics, nature and features (including costs and risks) of investment products allow them to recommend suitable investments, or invest into suitable products on behalf of their clients.</p> <p><b>Supporting guidelines</b></p>	<p>Guideline 7 duplicates some requirements of product governance, which are detailed further in dedicated ESMA's Guidelines (<a href="#"><u>esma35-43-620 report on guidelines on product governance.pdf</u></a>). Although product governance and suitability requirements are linked, "Know your product" features are fully addressed and managed by Product Governance rules. This Guideline is therefore</p>

MiFID ( <a href="#">Directive 2014/65/UE</a> )	<a href="#">MiFID Commission delegated regulation (EU) 2017/565</a>	<a href="#">ESMA's Guidelines</a>	Comments
<p>category of clients for each financial instrument and shall ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market. An investment firm shall also regularly review financial instruments it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.</p> <p><b>Article 24 - General principles and information to clients</b></p> <p>2. Investment firms which manufacture financial instruments for sale to clients shall <b>ensure that</b></p>		<p>72. Firms should adopt robust and objective procedures, methodologies and tools that allow them to appropriately consider the different characteristics, including sustainability factors, and relevant risk factors (such as credit risk, market risk, liquidity risk<sup>50</sup>, ...) of each investment product they may recommend or invest in on behalf of clients. This should include taking into consideration the firm's analysis conducted for the purposes of product governance obligations</p> <p>51. In this context, firms should carefully assess how certain products could behave under certain circumstances (e.g. convertible bonds or other debt instruments subject to the Bank Recovery and Resolution Directive<sup>52</sup> which may, for example, change their nature into shares). Considering the level of 'complexity' of products</p>	<p>not useful and creates confusing. It adds to the complexity of the regulatory framework with no avail.</p>

MiFID ( <a href="#">Directive 2014/65/UE</a> )	MiFID <a href="#">Commission delegated regulation (EU) 2017/565</a>	<a href="#">ESMA's Guidelines</a>	Comments
<p><b>those financial instruments are designed to meet the needs of an identified target market of end clients within the relevant category of clients, the strategy for distribution of the financial instruments is compatible with the identified target market, and the investment firm takes reasonable steps to ensure that the financial instrument is distributed to the identified target market. An investment firm shall understand the financial instruments they offer or recommend, assess the compatibility of the financial instruments with the needs of the clients to whom it provides investment services, also taking account of the identified target market of end clients as referred to in Article 16(3), and ensure that financial instruments are offered or recommended only when this is in the interest of the client.</b></p>		<p>is particularly important, and this should be matched with a client's information (in particular regarding their knowledge and experience). Although complexity is a relative term, which depends on several factors, firms should also take into account the criteria and principles identified in MiFID II, when defining and appropriately graduating the level of complexity to be attributed to products for the purposes of the assessment of suitability.</p> <p>Firms should adopt procedures to ensure that the information used to understand and correctly classify investment products included in their product offer is reliable, accurate, consistent and up-to-date. When adopting such procedures, firms should take into account the different characteristics and nature of the products considered (for example, more complex products</p>	

MiFID ( <a href="#">Directive 2014/65/UE</a> )	<a href="#">MiFID Commission delegated regulation (EU) 2017/565</a>	<a href="#">ESMA's Guidelines</a>	Comments
		<p>with particular features may require more detailed processes and firms should not solely relying on one data provider in order to understand and classify investment products but should check and challenge such data or compare data provided by multiple sources of information).</p> <p>75. In addition, firms should review the information used so as to be able to reflect any relevant changes that may impact the product's classification. This is particularly important, taking into account the continuing evolution and growing speed of financial markets.</p>	
<b>Article 25 - Assessment of suitability and appropriateness and reporting to clients</b> 6. (...) When providing investment advice, the investment firm shall, before the transaction is made,	<b>Article 54 - Assessment of suitability and suitability reports</b> 11. When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and	<b>Guideline 10</b> 98. Firms should take all necessary information into account, so as to be able to conduct a cost-benefit	The cost and charges provisions ( <a href="#">Delegated Regulation, Art. 50</a> ) require to take into account monetary costs and not "both monetary and non-monetary factors of costs and benefits"

MiFID ( <a href="#">Directive 2014/65/UE</a> )	MiFID <a href="#">Commission delegated regulation (EU) 2017/565</a>	ESMA's Guidelines	Comments
<p><b>provide the client with a statement on suitability</b> in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client.</p>	<p>buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake <b>an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.</b></p> <p>12. When providing investment advice, <b>investment firms shall provide a report to the retail client that includes an outline of the advice given and how the recommendation provided is suitable</b> for the retail client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, client's knowledge and experience and client's attitude to risk and capacity for loss.</p> <p><b>Article 50 - Information on costs and associated charges</b></p>	<p>analysis of the switch, i.e. an assessment of the advantages and disadvantages of the new investment(s) considered. When considering the cost dimension, firms should take into account all costs and charges covered by the relevant provisions under Article 24(4) of MiFID II and the related MiFID II Delegated Regulation provisions. <b>In this context, both monetary and non-monetary factors of costs and benefits could be relevant.</b></p> <p>99. When providing investment advice, <b>a clear explanation of whether or not the benefits of the recommended switch are greater than its costs should be included in the suitability report</b> the firm has to provide to the retail client before the transaction is made.</p>	<p>stated in the paragraph 98 of the Guidelines.</p> <p>The suitability statement does not have to include costs either (<a href="#">Delegated regulation, Art. 54. 12</a>). MiFID 2 does not require information on switching investments to be included into the suitability as to how to inform their clients on this aspect.</p> <p>The Annex of the Delegated regulation stating the costs to be disclosed to clients does not include non-monetary benefits.</p> <p>The Guidelines go further than the Level 1 and Level 2 provisions, adding further complexity to the regulatory framework.</p>

MiFID ( <a href="#">Directive 2014/65/UE</a> )	MiFID <a href="#">Commission delegated regulation (EU) 2017/565</a>	<a href="#">ESMA's Guidelines</a>	Comments
	<p>2. For ex-ante and ex-post disclosure of information on costs and charges to clients, investment firms shall aggregate the following:</p> <p>(a) all costs and associated charges charged by the investment firm or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client; and</p> <p>(b) all costs and associated charges associated with the manufacturing and managing of the financial instruments.</p> <p><b>Costs referred to in points (a) and (b) are listed in Annex II to this Regulation.</b> For the purposes of point (a), third party payments received by investment firms in connection with the investment service provided to a client shall be itemised separately and the aggregated costs and charges shall be totalled and expressed both as a cash amount and as a percentage.</p>		

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	<p style="text-align: center;"><b>ANNEX II</b></p> <p style="text-align: center;"><b>Costs and charges</b></p> <p style="text-align: center;"><b>Identified costs that should form part of the costs to be disclosed to the clients (1)</b></p> <p><i>Table 1 — All costs and associated charges charged for the investment service(s) and/or ancillary services provided to the client that should form part of the amount to be disclosed</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Cost items to be disclosed</th><th style="text-align: center;">Examples:</th></tr> </thead> <tbody> <tr> <td><b>One-off charges related to the provision of an investment service</b></td><td>All costs and charges paid to the investment firm at the beginning or at the end of the provided investment service(s). Deposit fees, termination fees and switching costs (1).</td></tr> <tr> <td><b>Ongoing charges related to the provision of an investment service</b></td><td>All ongoing costs and charges paid to investment firms for their services provided to the client. Management fees, advisory fees, custodian fees.</td></tr> <tr> <td><b>All costs related to transactions initiated in the course of the provision of an investment service</b></td><td>All costs and charges that are related to transactions performed by the investment firm or other parties. Broker commissions (2), entry- and exit-charges paid to the fund manager, platform fees, mark-ups (embedded in the transaction price), stamp duty, transactions tax and foreign exchange costs.</td></tr> <tr> <td><b>Any charges that are related to ancillary services</b></td><td>Any costs and charges that are related to ancillary services that are not included in the costs mentioned above. Research costs. Custody costs.</td></tr> <tr> <td><b>Incidental costs</b></td><td>Performance fees</td></tr> </tbody> </table> <p>(1) Switching costs should be understood as costs (if any) that are incurred by investors by switching from one investment firm to another investment firm. (2) Broker commission should be understood as costs that are charged by investment firms for the execution of orders.</p> <p><i>Table 2 — All costs and associated charges related to the financial instrument that should form part of the amount to be disclosed</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Cost items to be disclosed</th><th style="text-align: center;">Examples:</th></tr> </thead> <tbody> <tr> <td><b>One-off charges</b></td><td>All costs and charges (included in the price or in addition to the price of the financial instrument) paid to product suppliers at the beginning or at the end of the investment in the financial instrument. Front-loaded management fee, structuring fee (1), distribution fee.</td></tr> <tr> <td><b>Ongoing charges</b></td><td>All ongoing costs and charges related to the management of the financial product that are deducted from the value of the financial instrument during the investment in the financial instrument. Management fees, service costs, swap fees, securities lending costs and taxes, financing costs.</td></tr> </tbody> </table> <p>(1) It should be noted that certain cost items appear in both tables but are not duplicative since they respectively refer to costs of the product and costs of the service. Examples are the management fees (in table 1) referred to as fees paid to an investment firm for providing the service of portfolio management to its clients, while in Table 2 it refers to management fees charged by an investment fund manager to its investor; and broker commissions (in Table 1), they refer to commissions incurred by the investment firm when trading on behalf of its clients while in Table 2 they refer to commissions paid by investment funds when trading on behalf of the fund.</p>	Cost items to be disclosed	Examples:	<b>One-off charges related to the provision of an investment service</b>	All costs and charges paid to the investment firm at the beginning or at the end of the provided investment service(s). Deposit fees, termination fees and switching costs (1).	<b>Ongoing charges related to the provision of an investment service</b>	All ongoing costs and charges paid to investment firms for their services provided to the client. 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