# ESMA_QA_1779

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## Additional Information

**Level 1 Regulation**
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

**Topic**
Recording of telephone conversations and electronic communications

**Subject Matter**
Recording of telephone conversations and electronic communications

**Question**
What is the applicable scope of the record keeping requirements set out in Article 16(7) of MiFID II in terms of products and services?

## ESMA Answer

03-10-2017

Original language

[ESMA35-43-349 MiFID II Q&As on Investor protection Ch.3, question 13]

The requirements set out in Article 16(7) of MiFID II and the related Article 76 of the MiFID II Delegated Regulation apply “at least” to the provision of services (1), (2) and (3) included in Annex I, Section A of MiFID II.

Article 16(7) only requires the recording of communications in relation to the client order services mentioned above. However, the second subparagraph of Article 16(7) also requires those conversations and communications that are “intended to result in” the provision of these services to be recorded. In practice, other investment services like investment advice (paragraph (5) of Annex I, Section A) may be provided at the point when there is an intention to provide a client order services. In this case, the content of the advisory service would need to be recorded, as it would de facto be in scope of Article 16(7) of MiFID II.

ESMA notes that Members States may also decide to extend the requirements further to other MiFID services, or non-MiFID services and products.