

**MIFID - CESR CONSULTATION  
ON RECORD KEEPING**  
-  
**RESPONSE OF THE FRENCH ASSOCIATION OF  
INVESTMENT FIRMS (AFEI)**

**Summary of AFEI's position**

- **Drawing up a list of minimum record keeping requirements at European rather than national level will certainly contribute to harmonised implementation of those requirements provided that Member States refrain from "gold plating".**
- **To that end, CESR must make every effort to ensure that the list it ultimately puts forward does not impose additional requirements, whether directly or indirectly, on top of those provided for in MiFID.**
- **The new requirements will oblige the industry to create and implement new procedures. This will certainly take time, and it would be useful if CESR could evaluate those timeframes.**

Further to its Level 3 work on the Markets in Financial Instruments Directive (MiFID), and to help Member States satisfy the requirements of Article 51(3) of the implementing regulation, the Committee of European Securities Regulators (CESR) is proposing a list of minimum record keeping requirements and is consulting with the industry as to the list's content and relevance.

The French Association of Investment Firms (AFEI) hereby submits its response to CESR's questions:

- ✓ **Question 1: Do you agree that a common list of minimum records in all CESR members will benefit investors and industry?**

Yes, we do. We believe that, at European level, this overview will certainly help investment firms to fulfil their requirements, provided that Member States avoid adding further obligations ("gold plating").

In particular, investment services providers with operations in several countries certainly stand to gain from harmonisation, and this will have a positive impact for investors in terms of cost: CESR's work on record keeping is directly valuable for the industry and is also indirectly beneficial for investors.

The persistence of different practices and/or divergent interpretations by Member States of the legislation could make it harder for companies to manage their procedures. CESR should give high priority to taking action in this area.

For efficiency's sake, CESR should take account of similar requirements stemming from other directives (Market Abuse, Capital Requirements, etc.) that are already in force or in the pipeline.

Please note that the UK's Financial Services Authority plans to produce a digest of the requirements arising from all these directives (*FSA Consultation 06-19, no. 29-12 et seq.*).

AFEI also reminds CESR that firms will have to create and apply new procedures in order to implement these obligations, and that this will take time. In our view, CESR should pay special attention to this aspect and be able to estimate an "average timeframe" for firms to comply with the new requirements.

✓ **Question 2: Do you agree with the content of the list elaborated by CESR? If not, which records should be added or deleted and for which reasons?**

**Regarding content**, AFEI feels that a clear-cut distinction should be made between mandatory records, within the meaning of MiFID (cf. Art. 13(6) MiFID, which lays down a general requirement; Art. 51 of the implementing directive; and Arts 7 and 8 of the implementing regulation) and the information that it is simply useful or advisable to store, the choice of which is left to the firm's discretion.

Information in the second category should not be included in CESR's list, which, it must be remembered, is a "list of [...] minimum records" (Art. 51(3) of the implementing directive).

Accordingly, "marketing communications" have no place on CESR's list, since there are no MiFID-related requirements on storing such information.

Similarly, information relating to an "aggregated transaction that includes a client order", and "aggregation of one or more client orders and an own account order" are not covered by explicit MiFID requirements per se and should therefore be deleted from the list. In any case, the keeping of these records would appear to be covered at a more general level by Art. 7 of the implementing regulation ("Orders received or arising or decision to deal taken in providing the service of portfolio management", cf. item 10 on the list), by Article 47(1) of the implementing directive ("Orders executed on behalf of clients", cf. item 11 on the list) and by Article 8 of the implementing regulation ("Orders carried out [...] and transactions effected for own account", cf. item 12 on the list).

**Furthermore, a distinction** between the following elements would make CESR's list easier to use, as: Client relations (category and identity of the client, special characteristics of retail clients, disclosures to clients, etc., compliance, research, marketing, internal organisation of the firm, services / financial instruments offered, disputes...

**Additional comments.** Regarding items 3 and 4 on the list, dealing with records of clients' knowledge and experience, MiFID stipulates that this requirement pertains to "knowledge and experience in the investment field relevant to the specific type of product or service". This stipulation is important because it avoids the storage of overly general data; it should therefore be added specifically to the list.

Item 1, which concerns the recording of each client's identity and the category in which it is placed, states that this information should be recorded at the beginning of the business relationship with the client – in principle, new clients – or when clients are re-categorised.

This process of re-categorising existing clients will demand a considerable effort from the firms concerned, and the time needed to do this must also be taken into account (cf. our comment on timeframes for implementing new procedures, question 1).

✓ **Question 3: Do you consider that a specific requirement for keeping records of the provision of investment advice should be introduced?**

No, we do not. We see little point in including special provisions on investment advice.

In terms of record keeping, the provision of investment advice (Art. 19(4) MiFID) does not entail any specific requirements in addition to those concerning the client relationship that are already included in the list.

