

Member of **FECIF**
The European Federation of Financial
Advisers and Financial Intermediaries

ANASF comments on CESR MiFID
Second sets of mandates

Milan, 4th April 2005
CESR ref: 05-164

To: CESR
Committee of European
Securities Regulators
11-13 Avenue de Friedland
75008 Paris

ANASF COMMENTS ON

Second Consultation Paper on CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments

**Subject: CESR CONSULTATION investment advice definition – general
and specific advice. Doc.CESR/05-164**

According to art.4, 4^o paragraph of MIFID directive (European Parliament directive 2004/39/CE, and April 21, 2004 Council Directive) relative to the financial instrument markets, *"investment advice" consists of a personalized advice to a client, either on his request or on the investment firm's initiative with reference to one or more transactions on financial instruments"*.

Answering your request for additional explanation as for "investment advice" definition i.e. whether it should be limited to recommendations pertaining to specific financial instruments (i.e. *"buy 500 shares in company x"*) or should it be extended to include wider recommendations (i.e. *"you can invest 50% in equities and 50% in bonds"*) this association, ANASF believes that advice must include the generic advice (asset allocation and financial planning).

Actually, the advice in the asset allocation and financial planning stage is the fundamental answer to the client request, who wants to plan his own investments according to a desired and a temporal optic profile (*"you can invest 50% of your asset in shares and the 50% in bonds"*). In a subsequent stage only, connected to the deepening of the previous one (the generic advice) , the client will be provided with advice on specific financial instruments.

In this way a balance would be reached between the need of protecting the clients (or potential clients) and the opportunity of offering the firms the commercial freedom in the way their services are structured. The client is given an advice service which covers all his requirements (both generic and specific) not hampering, in any way, the firm's commercial freedom.

Otherwise, should the investment advice definition be conceived in the meaning of specific recommendation only, the client would not be protected because a general vision of his real needs would be missed .

Moreover, it is to be underlined that the selection of each equity belongs to other stages: an advice qualification related to this option only, without considering the originating choice, would mean the acceptance of a limited advice meaning in conflict with the investment service main significance, with no real reason for such a limitation.

In other words, the advice in the stage of *"asset allocation"* might not be instrumental to single transactions, which might be settled or not, but no doubt it refers to them being their essential part.

Finally, it is fundamental to underline the client's freedom in asking. If the client needs the so called generic advice because he cannot plan his asset by his own, it is not understandable why the latter should not be regarded as an investment advice. To prevent a citizen from receiving a certain kind of advice would be a violation of the free movement of the services.

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To conclude, ANASF strongly believes that the wider generic recommendations namely the asset allocation and the financial planning (i.e. "you can invest 50% of your asset in equities, and 50% in bonds") should be included in the "investment advice" definition.

The deletion of an advice activity related to the "asset allocation" stage from the investment advice (definition) would not turn to be understandable, but would only be the outcome of a limited approach, in contrast with an investment service systematic and unitary vision.

This document confirm the position already expressed by ANASF in the advice sent for the consultation CESR 04-562, on 1th December 2004.

We remain available for any further clarification you may require.

With kindest regards.

The Chairman
Elio Conti Nibali

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