

Public consultation on

Understanding the definition of advice under MiFID

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V/F/I – Verband der Finanzdienstleistungsinstitute (German Association of Financial Service Firms) is an association of so-called small license firms, i.e. they do not hold customer funds and do not deal on own account. They are either firms advising on investments, receiving and transmitting orders (introducing brokers) and/or portfolio managers.

In its Parts V and VI of the consultation paper, the committee takes the position that the collection of the necessary information regarding the client's knowledge and experience and a subsequent recommendation of a financial instrument to a client would constitute investment advice (No. 46). The use of a disclaimer could not prevent the qualification of a recommendation as investment advice (No. 47).

Any factual information on a client is considered by the committee information about a client's personal circumstances (No. 48). This includes also a person's knowledge and experience in investing. (No. 46) Any recommendation made is presumed to be based on this information (Nos. 50, 51). No disclaimer is possible (Nos. 53, 54).

V/F/I wonders whether there is any area remaining for an intermediary service like the receipt and transmission of orders based on a recommendation of the investment firm that will not be investment advice. Does the committee's position leave any room for applying Art. 19 No. 5 of the Directive 2004/39/EC to an intermediary making any recommendation. Since the committee considers also a recommendation not to invest as falling under investment advice (No. 11), the warning required under Art. 19 No. 5 Par.2 would be investment advice reducing the Article 19 to absurdity. Does such extension of applying the provision of investment advice overrule the legislation in the two directives (2004/39/EC and 2006/73/EC)? Should not the use of personal information gathered as imposed by MIFID for all services rendered coupled with a unequivocal disclaimer take such recommendations out of investment "advice" destroying the CESR introduced presumption? If not, there would be, according to V/F/I's knowledge of the industry no intermediaries left whose services would not include investment advice because intermediaries sitting and waiting for client orders not talking with the client about an instrument is non existent or they are brokers or introducing brokers operating under Article 19 No. 6 of MIFID.