



ESMA published guidance for firms using AI in investment services

On 30 May 2024, the European Securities and Markets Authority (“ESMA”) issued a public statement providing initial guidance for investment firms using AI

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On 30 May 2024, the European Securities and Markets Authority (“**ESMA**”) issued a public statement providing initial guidance for investment firms¹ using artificial intelligence (“**AI**”) in the provision of investment² services to retail clients³. This comes in response to the advancement of AI and its potential to redesign the landscape of retail investment services.

Risks raised by the use of AI in investment services

While AI offers a large number of opportunities and benefits for both firms and retail clients, ESMA highlights that, it also presents risks regarding:

- algorithmic biases when computer systems create unfair outcomes and perpetuate, amplify or introduce discrimination against certain individuals;
- over-reliance for both service providers and clients on AI for decision making;
- lack of transparency, explanation and interpretation in the decision making processes;
- privacy and security concerns raised by the collection, storage, and processing of the large amount of data required by AI tools; and
- robustness and reliability issues when AI produces outputs that are factually incorrect.

In this regard and in order to overcome these challenges, ESMA has sought to reinforce compliance with MiFID II obligations and to emphasise the imperative to prioritise clients’ best interests.

MiFID II Requirements

Client’s Best interest and information for clients

According to ESMA, when firms provide retail clients with information on how the firm uses AI tools for the provision of investment services, they should ensure that the communication of information is presented in a **clear, fair, and non-misleading manner**.

Additionally, investment firms using AI for client interactions, such as through chatbots or other types of AI systems, should **transparently disclose** to clients the use of such technology during these interactions.

Organisational requirements

ESMA also reminds MiFID II obligations regarding organisational requirements which covers several aspects such as governance, risk management, knowledge, competence and staff training.

ESMA expects firms to:

- ensure an appropriate oversight of the AI technology to ensure it **aligns with the firm overall strategy, risk tolerance and compliance framework**;
- establish **robust governance structures**, conduct regular AI model testing, and monitor AI systems to identify and mitigate potential risks and biases;
- develop and maintain **robust risk management processes** and procedures specifically tailored to address challenges raised by AI;
- implement **comprehensive testing and monitoring systems** to evaluate the performance and impact of AI applications on investment services;
- ensure an **adequate level of diligence on the selection process of providers** along the value chain and implementation of adequate controls; and
- ensure the **implementation of an adequate training program** on the topic of AI for relevant staff ensuring they are able to manage, interpret and work with AI technologies.

Conduct of business requirements

As per MiFID II requirements regarding conduct of business, ESMA underlines that firms should design and monitor AI systems to **align recommendations with clients' financial situations, investment objectives' and risk tolerance**.

In this sense, the ESMA indicates that firms should conduct periodic stress tests to evaluate how these AI systems could perform under extreme market conditions.

Record keeping

In compliance with MiFID II requirements, ESMA expects firms to **maintain comprehensive records on AI utilisation** which includes clients complaints, decision-making processes, data sources and algorithms modifications.

Conclusion

ESMA and the Commission de Surveillance du Secteur Financier plan to continue monitoring the use of AI in investment services and the relevant EU legal framework to determine whether further action is needed in this area.

For further information, don't hesitate to reach out to your usual Simmons contact.

Source:

- [Public Statement on AI and investment services](#)

¹"investment firm" within the meaning of article 4(1)(1) 2014/65/EU of 15 May 2014 on markets in financial instruments ("MiFID II").

²"investment services" within the meaning of Annex I, Section A of MiFID II.

³"retail client" according to article 4 (1) point (11) of MiFID II.

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