

Investment advice under IMD is a crime, says report

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European IFAs advising on investments must be authorised under the MiFID, not just the IMD, or potentially face criminal charges, according to a report conducted by AES International.

[The report](#), the findings of which have been backed by international law firm Macfarlanes, looked into the parameters under which IMD and MiFID-authorised firms can operate.

It concluded that in order for an IFA to legally provide investment advice on products such as shares, unit trusts and collective investment schemes, they must apply for and satisfy MiFID regulation.

The report said - with the exception of firms based in the UK or Gibraltar which have been granted an 'Article 3' exemption from MiFID on the basis they would not provide cross-border advice into Europe - that firms "[Making]personal recommendations that a client would understand as investment advice are automatically subject to MiFID."

The research paper goes on to state that advice on "life policies from countries within the EEA which contain investment elements that are unit linked i.e. have been 'unitised' into units of insurance are subject to the IMD - but portfolio management, advice on life policies containing equities (unless provided by an exempt insurer themselves) or the non-unitised collective investment schemes of the type heavily promulgated by international advisers, require MIFID authorisation."

The study further warns that breaching this legislation could have dire consequences for IFAs.

It said: "The breaching of this legislation in most EEA countries is at worst a criminal, and at best a civil, offence that may result in fines, bans or more serious sanction. Current regulatory actions by Spanish, Belgian, Dutch and UK regulators are beginning to clarify what has to date been a largely ignored, or conveniently termed 'grey area', but, by written legislation, is in fact nothing of the sort."

[Last week](#), the Federation of European Independent Financial Advisers published similar research, which also concluded that European IFAs are able to advise on the underlying investments within an insurance wrapper while being only authorised by the IMD.

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