

REPORT COMPLIANCE EVALUATION

Commission Directive 2003/125/EC of 22 December 2003

Implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest

November 2008

This report is designed to evaluate compliance of the Armenian laws governing the securities market with the requirements of the Commission Directive 2003/125/EC of 22 December 2003 on implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest.

The report consists of 3 parts and an annex

- Description of the Directive
- Compliance evaluation
- Conclusion.

1. Description of the Directive

The **Commission Directive 2003/125/EC of 22 December 2003 on implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest** (hereinafter referred to as ‘the Directive’) is designed to govern the rules for fair presentation of investment recommendations and disclosure of conflicts of interest. The Directive establishes that the investment recommendations which serve a possible ground for making investment decisions should be prepared and disseminated in a proper manner, trying to avoid, as much as possible, careless behavior of market participants. The Directive distinguishes between those who produce investment recommendations and those who disseminate investment recommendations prepared by third parties. In doing so, the Directive establishes stricter terms and conditions for the producers of investment recommendations.

The disclosure of information on the parties that produce investment recommendations and on the respective competent authority may prove to be valuable for investors when they are making decision on investing.

The Directive establishes both general and ancillary requirements for fair presentation of investment recommendations, specifying that the recommendations should be presented in a clear and affordable manner. There are further requirements that relate to the conflicts of interest.

The goal of the Directive is the definition of uniform criteria in respect of investment recommendations, which is based on open, clear and fair production of investment recommendations and presentation and dissemination thereof.

The provisions relating to investment recommendations are governed under the Armenian Law¹ on the Securities Market (hereinafter referred to as ‘the Law’) and other prudential regulations adopted pursuant thereto.

2. Compliance evaluation

1. Does the Armenian Law provide for the definition of investment recommendation?

Yes. Article 172 of the Law provides a detailed definition of investment proposal, further describing that an investment proposal is a written or oral study or other information containing certain advice or recommendation on choosing a strategy for investment.

Evaluation: the Armenian Law complies with the requirement of the Directive.

2. Does the Armenian Law provide for the information on persons that produce investment recommendations?

According to Article 172(3) of the Law, the Central Bank may define under its prudential regulations detailed requirements on persons who prepare and distribute investment proposals, as well as preparation and distribution of investment proposals and the information contained in such investment proposals.

Unlike the Law, the Directive establishes under its Article 2 the inclusion of information on the producers of investment recommendations, in particular, the name and job title of the individual who prepared the recommendation and the name of the legal person responsible for its production. The same article further provides that where the relevant person is an investment firm or a credit institution, Member States shall require that the identity of the relevant competent authority be disclosed; and where the relevant person is neither an investment firm nor a credit institution, but is subject to self-regulatory standards or codes of conduct, Member States shall ensure that a reference to those standards or codes is disclosed.

Evaluation: the Armenian Law only partially complies with the requirements of the Directive. Though the Law envisages that the provisions on the identity of persons producing investment recommendations would be defined under the prudential regulations of the Central Bank of Armenia, no a legal act containing such a provision has been developed by the Central Bank so far.

3. Does the Armenian Law provide for general requirements in respect of fair presentation of investment recommendations?

No. There is no regulation of this aspect by the Armenian legislature.

Article 3 of the Directive establishes such a provision, requiring that the information included in the investment recommendation be creditworthy and contain a rationale for true facts and forecasts.

¹ AL-195-N, adopted on 11.10.2007, (Official Bulletin 2007/53 (577), 31.10.2007).

Evaluation: the Armenian Law does not comply with the requirement of the Directive.

4. Does the Armenian Law provide for additional requirements in relation to fair presentation of investment recommendations?

No. There is no regulation of this aspect by the Armenian legislature.

Article 4 of the Directive sets out additional requirements in relation to fair presentation of investment recommendations. These requirements cover substantially material sources, any basis of valuation or methodology used to evaluate a financial instrument, the meaning of any recommendation made, the planned frequency, the date at which the recommendation was first released, and etc.

Evaluation: this provision of the Armenian Law does not comply with the requirement of the Directive.

5. Does the Armenian Law provide for both general and ancillary requirements for disclosure of interests and conflicts of interest?

The Armenian legislature has left this aspect to be regulated under the prudential regulations of the Central Bank, stating that the Central Bank may define under its prudential regulations detailed requirements on persons who prepare and distribute investment proposals, as well as preparation and distribution of investment proposals and the information contained in such investment proposals.

Article 5 of the Directive provides in detail that related persons should disclose interpersonal relationship that materially affects the objectivity of investment recommendations. The article further establishes the information which needs to be disclosed when a related person is a legal entity. The Directive states that the provisions on disclosure of interests and conflicts of interest should be envisaged for investment recommendations or for the appendix.

Article 6 of the Directive establishes all ancillary information which needs to be disclosed and incorporated in investment recommendations.

Evaluation: this provision only partially complies with the requirement of the Directive.

6. Does the Armenian Law provide for the existence of information on dissemination of investment recommendations, on persons who disseminate it, as well as any additional requirements where the persons who disseminate it are investment companies, non-bank financial institutions?

Article 172(3) of the Law provides that the Central Bank may define under its prudential regulations detailed requirements on persons who prepare and distribute investment proposals, as well as preparation and distribution of investment proposals and the information contained in such investment proposals.

The Directive gives a detailed set of requirements relating to both dissemination of investment recommendations and information on persons who disseminate investment recommendations.

Evaluation: there is only a partial compliance with the subject matter, as the Armenian legislature does not still have a detailed regulation of this aspect.

3. Conclusion

The review of the results of this compliance report showed that, generally, the Armenian legislation does not comply with the provisions of the Commission Directive 2003/125/EC of 22 December 2003 on implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest. In particular, no definitions are provided in relation to a/ identification of persons that produce and disseminate investment recommendations, b/ the requirements to the information included in investment recommendations, and c/ disclosure of interests and conflicts of interest, despite the Armenian Law establishes that the said aspects are governed under the prudential regulations of the Central Bank.

It should be noted that the Armenian legislature allows for the above mentioned provisions to be regulated but when it uses an expression 'it may establish' in the Law, there is an impression that the legislature makes it possible for a 'may not establish', and this is a direct way of going into inconsistencies with the Directive.

Annex

	Question	Yes	Partially	No	Notes
1.	Does the Armenian Law provide for the definition of investment recommendation?	√			Article 172 of the Law.
2.	Does the Armenian Law provide for the identification on persons that produce investment recommendations?		√		Partially, Article 172(3) of the Law.
3.	Does the Armenian Law provide for general requirements in respect of fair presentation of investment recommendations?			√	
4.	Does the Armenian Law provide for additional requirements in relation to fair presentation of investment recommendations?			√	
5.	Does the Armenian Law provide for both general and ancillary requirements for disclosure of interests and conflicts of interest?		√		Partially, Article 172 of the Law.
6.	Does the Armenian Law provide for the existence of information on dissemination of investment recommendations, on persons who disseminate it, as well as any additional requirements where the persons who disseminate it are investment companies, non-bank financial institutions?		√		Partially, Article 172 of the Law.
	Total 6	1	3	2	