



ASSOGESTIONI

associazione del risparmio gestito

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ESMA – European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

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Your ref: ESMA/2015/753

Assogestioni's reply to ESMA's Consultation Paper on Draft Guidelines for the assessment of knowledge and competence (ESMA/2015/753)

Assogestioni¹ welcomes the opportunity to respond to ESMA's Consultation Paper on Draft guidelines for the assessment of knowledge and competence (ESMA/2015/753) pursuant to Article 25(1) and 25(9) of MiFID II (directive 2014/65/UE).

Q1: Do you think that not less than five years of appropriate experience of providing the same relevant services at the date of application of these guidelines would be sufficient to meet the requirement under knowledge and competence, provided that the firm has assessed their knowledge and competence? If yes, please explain what factors should be taken into account and what assessment should be performed by the investment firm. Please also specify whether five consecutive years of experience should be made in the same firm or whether documented experience in more than one firm could be considered.

As a general indication, we believe that staff with experience of five years should be considered to meet the requirement under knowledge and competence according to MiFID II.

However, we would like to highlight the importance to recognize that such period of experience should not be regarded as a minimum requirement as we believe that it should be for the firms to determine whether a particular staff member with an experience below the 5-year threshold could still fulfill the requirements to be MiFID II compliant. In other words, it should be for the firm, rather than for NCAs,

¹ Assogestioni is the trade body for Italian investment management industry and represents the interests of members who manage funds and discretionary mandates around € 1.740 billion (as of May 2015).



to realize the assessment of the appropriateness of experience on the basis and by virtue of its deeper knowledge of staff, stating the reasons for any case below the threshold.

Furthermore, it is important to acknowledge that not only experience gained within one firm is relevant to meet the requirement, nor should experience gained only in consecutive years be considered. As far as the first aspect is concerned, one cannot deny that experience in different firms can indeed provide additional knowledge and strengthen skills thanks to different sets of frameworks a person could come across. As for the second, experience should not be determined on the basis of the fact that professional activity has been carried out in a consecutive manner (and through full time employment): the mere fact that professional activity has been suspended (or made part-time) is not impairing the width and nature of the experience. In the light of these comments, we encourage ESMA to reconsider the definition of “appropriate experience” as per paragraph 6(h) referring to experience gained “on a full time equivalent basis excluding breaks”.

Q2: ESMA proposes that the level of intensity of the knowledge and competence requirements should be differentiated between investment advisors and other staff giving information on financial instruments, structured deposits and services to clients, taking into account their specific role and responsibilities. In particular, the level of knowledge and competence expected for those providing advice should be of a higher standard than that those providing information. Do you agree with the proposed approach?

As a general note, we share ESMA’s proposal to differentiate the requirements applicable to staff providing investment advice and other staff giving information on financial instruments, structured deposits and services. However, we wish to draw ESMA’s attention to the fact that the definition of staff giving information as per paragraph 6(c) and paragraph 6(e) might in the end result in possibly comprehending all kinds of staff that may have contact with clients on the marketing of financial instruments, investment services or ancillary services. We would welcome further clarification in this regard, bearing in mind that a certain degree of flexibility should be left to firms to define in more details the staff in scope on the basis of the roles and responsibilities of the respective functions.

Q3: What is your view on the knowledge and competence requirements proposed in the draft guidelines set out in Annex IV?

Please, find below our comments on the different parts of the draft guidelines. For the sake of convenience, we refer to the different sections contained in the document under consultation.

I. Scope

We wish to draw ESMA’s attention to the uncertainty around the scope of application of the guidelines, as it results from different sections therein.



More specifically, while it is clear from art. 25(1) and 25(9) of MiFID II that the guidelines shall apply to natural persons giving investment advice or information, Section I (sub-section “what?”, p. 11) of the draft guidelines generically states that they apply in relation to the provision of the investment services, activities and ancillary services as per Section A and B of Annex I of MiFID II, with no further specification. For avoidance of any doubt, it should be clarified that the guidelines only address the specific services as indicated in the directive.

V. Guidelines on the application of Article 25(1) of MIFID II

V.I General

It is important to note that paragraph 14 (in conjunction with paragraph 17) could create unintended consequences on the free movement of persons. In the draft guidelines, ESMA acknowledges that there is a variety of assessments on knowledge and competences across the different Member States and affirms that “the specification of the criteria for assessment of the qualifications and experience required to comply with these guidelines has to be made at national level” (paragraph 9, p. 5). As requirements may well vary from one NCA to another, ESMA should refrain from posing additional barriers to companies wishing to use the MiFID passport, by requiring that “firms should ensure that staff providing relevant services possess the necessary knowledge and competence to meet relevant regulatory and legal requirements [...]”. This provision could make it difficult for a firm to meet its obligations (i.e. the legal requirements, if ESMA interprets “legal” as “national”), given the many possible requirements established by different NCAs. In this sense, knowledge and competence considered sufficient in one Member State should then be equally considered sufficient in another, for the same service provided, in accordance with the purpose and the essence of the passport regime under MiFID.

V.II Requirements for staff giving information about investment products, investment services or ancillary services

With regards to paragraph 21(d), it would appear onerous for staff giving information about investment products, investment services or ancillary services to be required to assess all data relevant to the investment products, including financial statements and financial data and we encourage ESMA to reconsider this provision.

V.V Assessment, maintenance and updating of knowledge and competence

While understanding the need for training, we believe that paragraph 25(h) could prove not practical, establishing the trainer be present during all clients meetings and communications of the member of staff who does not yet have the level of experience required. We propose to amend such provision in the way as to establish that the trained person should provide the trainer with a report of his/her clients meetings and communications, that certifies and testifies the training activities he/she has conducted, without the need for the trainer to be present during all clients meetings and communications. The proposal would avoid excessive



burdens, while at the same time ensuring that the trained person is adequately monitored and followed during his/her traineeship, in accordance with the purpose of the guideline.

Q4: Are there, in your opinion, other knowledge or competence requirements that need to be covered in the draft guidelines set out in Annex IV?

We are not aware of other knowledge or competence requirements which need to be covered in the draft guidelines as indicated in Annex IV of the document.

Q5: What additional one-off costs would firms encounter as a result of the proposed guidelines?

N/A.

Q6: What additional ongoing costs will firms face as a result of these proposed guidelines?

N/A.

The Director General