



10.07.2015.

EACB response to the ESMA Consultation Paper on Draft guidelines for the assessment of knowledge and competence (ESMA/2015/753)

1. Introduction

The European Association of Cooperative Banks (EACB) welcomes the opportunity to contribute to the ESMA Consultation Paper on Draft guidelines for the assessment of knowledge and competence as co-operative banks are dedicated at offering high quality investment advice and information about financial instruments, investment services or ancillary services to their clients on a country-wide basis by combining the added value that face-to-face contact with bank employees and physical proximity of bank offices can bring, with the advantages offered by the internet. More particularly, apart from providing on-line banking channels, co-operative banks invest in a network of offices and branches staffed with highly qualified and trained employees that can offer personalised advice or simply offer clients the chance to get answer to their investment related questions. In doing so, they make high quality and interactive investment services available in a very user friendly way also to (non internet-based) clients in more remote and less populated areas of the EU.

As acknowledged by ESMA, in addition to the minimum standard already required by MiFID in the area of knowledge and competence most of the member states already have further detail specific obligations with respect of knowledge and competence of employees giving investment advice or information about instruments and services on behalf of an investment firm. The proposed guidelines for the assessment of competence and knowledge of an investment firm staff should not interfere with current workable solutions already applicable in many Member States. To the extend possible, current flexible regime needs to be maintained and there should not be new quasi-binding requirements, focusing on “good practices” rather than “best practice”. With this in mind we welcome the fact that ESMA acknowledges 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.

You will find our detailed responses to the consultation questions below.

2. Answers to questions

Q1: Do you think that not less than five consecutive 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

The voice of 4,200 local and retail banks, 78 million members, 205 million customers

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19

www.eacb.coop • e-mail : secretariat@eacb.coop



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.

The EACB welcomes the fact that ESMA provide an exemption for existing relevant staff . In general we consider that the envisaged period of five years relevant experience is sufficient. rThis said, we consider that setting a specific rigid and inflexible limit already in these guidelines may not be necessary.

In any case, it is not necessary to require that the five consecutive years of experience should be made in the "same firm". It might be even useful to have a broader range of experience. We do not think it is a disadvantage in terms of knowledge and competence. Decisive is that the experience has been acquired in the field of MiFID investment services. This is sufficient to ensure that the staff employed has the necessary knowledge and competence; especially considering that banks and co-operative banks in particular have a direct vested interest to use only adequately qualified staff.

Moreover, the investment firm is always responsible for a trainee or an investment advisor and the firm oversees continuously its staff. Flexible training and provision of investment advice needs to be guaranteed. For example a trainee should be able to give investment advice also during the training period, gradually, by selling first only non-complex saving products under supervision without having yet taken the exam. After taking the exam, he or she could move on to giving investment advice on more complex products. Studying, gaining work experience and getting a degree needs to be seen as a whole. Moreover, in our view, this period also depends on the nature of the service (dependent / independent advice, as for independent advice the level of experience and knowledge needs to be higher.)

However, the condition "... where that the firm has assessed their knowledge and competence " (see above the question; for detailed version see draft guidelines No. 6 f sentence 2 and No. 25 a sentence 2..) is unclear. To the extend that the employee has the necessary experience his/ her knowledge and competence is to be considered fulfilled. This is also guaranteed - as it is the case also with employees who are not covered by the grandfathering clause – by on-going monitoring (including through compliance). Such an approach would provide legal clarity for those employees who are engaged in investment advice, etc. for many years without relevant complaint. In this respect, we would suggest the deletion of the Draft Guideline No. 6 f sentence 2 and No. 25a sentence 2 (" where the firm has assessed and continues to assess that the staff member is able to fulfil the firm's obligations under Article 24 and 25 of MiFID II and any implementing measures relevant to these Articles.").

Q2:ESMA proposes that the level and 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?

in general, we agree with the proposed approach that the level of knowledge and competence expected for those providing advice should be of a higher standard than that those providing information.

Training by an investment firm itself needs to suffice for staff giving information. No certified exam requirements should be set for staff providing such services. Staff giving information have completely different job descriptions from investment advisors. If the client, after receiving the information, asks for advice staff providing information will guide the client to an advisor.

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

Draft Guidelines – III. Definitions

Nr. 6 f – Knowledge and Competence

For point. 6 f sentence 2, please refer to our answer to Q1.

Nr. 6 h – Appropriate Experience

As explained in our response to Q1, when it comes to appropriate experience we do not consider that the “NCA or another national body identified in the Member State should specify „...a *minimum period to be specified.*” (point. 6 h sentence 2).

Indeed, setting a specific rigid and inflexible limit in these guidelines is nor necessary or appropriate.

It is of course important that the staff has the necessary knowledge and competence for the performance of his/ her duties, but these can be obtained in a variety of ways, while the intensity of the experience may also vary; e.g. training on the job for a longer period or by intensive course.

The investment firm is always responsible for a trainee or an investment advisor and the firm oversees continuously its staff. Flexible training and provision of investment advice needs to be guaranteed. Moreover, in our view, this period also depends on the nature of the service (dependent / independent advice, as for independent advice the level of experience and knowledge needs to be higher.)

Therefore, we do not consider that "minimum period of time" should be necessarily set. Moreover, each individual case must be assessed individually - depending on the qualifications of the employee as well as his specific area of responsibility. A minimum period of time would not allow a



case by case assessment and would not be in line with the principle of proportionality¹.

We therefore ask for deletion of the requirement of a minimum period of time. In our opinion, the requirement that only staff with appropriate experience may be employed is sufficient; especially since No. 25 e to i of the guidelines already include detailed specifications with respect to the required experience.

Draft Guidelines – V.I General

Nr. 17 – Additional requirements

No. 17 of the draft guidelines provides that Member States may adopt additional requirements on staff providing advice and information. We do not consider this provision necessary. Even more, considering that contrary to Art. 24 par. 12 MiFID II, that expressly allows Member States to impose further requirements Art. 25 MiFID II does not foresee such „goldplating“. Therefore, we would request the deletion of No 17 of these draft guidelines.

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

Nr. 20 and Nr. 21

In connection with the information requirements for investment products, we would request to add the phrase "**type of**" investment products.

First of all, the addition of the phrase "type of" investment products corresponds to the requirements of Art. 24 para. 5 MiFID II, according to which the client should always be made available "only" information that relates to the specific type of financial instrument ("... to understand the nature and risks of the investment service and of the specific type of financial instrument ...").

Moreover, there are also practical reasons for this addition. Investment firms can – before entrusting an employee with the task in accordance with Article 25, Section 1 of MiFID II – only ensure, that the employee has the necessary expertise with a view to "types of products". Indeed, there should be a differentiation between the initial qualification exam/ assessment of the investment advisor that is competent to offer the service and the monitoring of supervision of the activity of the advisor once he/ she is active in the firm. Any exam that an adviser would be asked to take for getting the qualification could only ever test his/her knowledge as regards types "types of products". A proficiency assessment/ exam on the basis of each single product before entrusting an employee with

¹ ESMA itself consider that "These guidelines, which aim to set a general framework, should be applied in a proportionate manner, taking into account the nature, scale and complexity of a firm's business and the nature and range of financial services and activities undertaken in the course of its business, as well as the specific activities carried out by staff" (see No. 11 of the draft guidelines).



the above task would be disproportionate due to the variety of products available in the market. This would also be very problematic considering the speed that the products change and evolve. The assessment therefore will be rapidly out of date.

Crucial is therefore that the employee has – before entrusted with the above task – sufficient knowledge and competence with regards to the types of products and is able – to the extent that the scope of activities also includes to provide product-specific information – to obtain this further knowledge and understanding. The fact that the employees have the necessary knowledge and competence with regard also to the specific individual products, is of course monitored and verified by compliance function and the NCA in connection with the relevant service or activity

In its "Final Report - ESMA's Technical Advice to the Commission on MiFID II and MiFIR" from December 19, 2014, ESMA apparently acknowledges this two-stage nature of the required expertise. Indeed, in Technical Advice No 27 of Section 2.7 "Product Governance" of its Final Report there is a specific rule for the required product-specific expertise ("... the relevant staff possess the necessary expertise or receive appropriate training to understand the characteristics and risk of the products that will be distributed and the services provided as well as the needs, characteristics and objectives of the identified target market".).

Therefore, In connection with the basic competence examination to satisfy Art. 25 para. 1 MiFID II the phrase "type of" investment products should be added consistently in draft guidelines No. 20 b and c, and in No. 21 a, b, d, e and f.

Draft Guidelines – V.III Requirements for staff giving investment advice

Nr. 22 und Nr. 23

In relation to the requirements under Draft guidelines No. 22 und No. 23 we revert to our arguments above concerning draft guidelines No. 20 und No. 21. ("type of" investment products). Consequently we consider that the phrase "type of" should be added to draft guidelines No. 22 b, c and e and No. 23 a, b, d, e and f.

Annex V – Illustrative examples of the application of certain aspects of the guidelines

With regard to the need to add the phrase "type of" investment products in Annex V, please refer to our remarks above.

General comments to no. 20 to no. 23 and Annex V

Generally we would like to point out that the requirements for the knowledge and competence should not go beyond the obligations itself.

We therefore consider an examination of the exact wording of the Guidelines on the basis of



relevant MiFID II rules (Level 1 and Level 2, if necessary in addition, as published in Official Journal) necessary to ensure consistency.

For example at draft guidelines No. 22 b and c it would be better to use the phrase "investment products being **marketed or recommended**" (instead of "offered" – see Final Report, 2.14 TA 5). Also draft guidelines No. 20 b and 22 b go too far when they refer to "including **any** general tax implications" when compared to the Final Report which mentions only information with respect to two kinds of taxes, i.e. Transactions Tax, Securities Lending taxes (see tables in the Final Report, 2.14 Annex 2.14.1). Moreover, we do not see any basis on basis of MiFID II for a requirement to take into account the portfolio (but in No. 22 g there is such a presumption). In Annex V, for example, the phrase "**product best suited** to the client profile" goes too far.

Draft Guidelines – V.V Assessment, maintenance and updating of knowledge and competence

Nr. 25 a and Nr.25 d,e, f,g, h and i – Existing staff

With regard to our proposed changes to No. 25 a, please refer to our answer to Q1.

In relation to letter d) to i) and in particular to the ESMA'proposal "*to ensure that, where the staff member does not have any appropriate experience in the provision of relevant services to the client, the inexperienced staff member is trained by another member of staff until they are deemed to have gained the appropriate experience*" taking into account the business model of the intermediary, we consider that the latter should be able to define what is "*appropriate experience*" and consequently decide on the minimum period of training.

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?

No, from our point of view the draft guidelines cover all necessary requirements regarding knowledge and competences.

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

The one-off costs depend largely on the concrete content of the guidelines. Only if the proportionality principle is consistently applied and the draft guidelines do not go beyond the level 1 and level 2 obligations (see our response to Q 3) the one-off cost wouldn't be high/disproportional.

Indeed, there should not be any additional one-off or ongoing costs, as the advisors of our members are provided with a good level of training already now. If, however, the currently provided



requirements are not considered sufficient, there would probably be further one- off costs and maybe, depending on the law, ongoing costs. The exact costs cannot be estimated at the moment.

Moreover, we would like to note that at the date of application of these guidelines, some of our members may have employees who have only given advice for 2 or 3 years until that date. Of course, their professional training meets all the criteria required in MiFID I. If this was no longer sufficient, there would be additional costs for further education and on the job training (or whatever would be then required at national level). Please also refer to our response to Q1.

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

Please refer to our response to Q5 above.

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department (m.vanberkel@eachb.coop)
- Ms Ilektra Zarzoura, Adviser, Financial markets (i.zarzoura@eachb.coop)