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EACB Response to the ESMA Consultation Paper on Draft guidelines on MiFID II product governance requirements (ESMA/2016/1436)

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Introduction/Preliminary remarks

The European Association of Co-operative Banks (EACB) welcomes the opportunity to participate to the ESMA Consultation Paper on Draft guidelines on MiFID II product governance requirements.

The concept of target market and enhanced product governance requirements are important new features in MiFID II when it comes to investor protection. The EACB has closely followed the debate on potential level III measures and considers that it is important to provide clear and harmonised EU-level guidance in target market in order to facilitate smooth provision of investment services cross-border.

Having reviews the proposed guidelines carefully with its members, the EACB has worked on responding to the various consultation questions. In addition to that it has the following overarching concerns:

- **ESMA should stay within the borders of its mandate/ No Gold- plating by EU member States**: The EACB assumes that when defining the target market, the requirements of MIFID II will be respected. In particular, this would mean that guidelines should not go beyond Level I and II of MiFID II and that the EU Member States should not apply gold plating in the national implementation of product governance rules.
- **Maximum Standard:** As a general point it should be made clear that the criteria laid out by ESMA on the target market should be considered as an absolute maximum standard as opposed to a minimum. The proposed criteria will impose high implementation costs on distributors and manufacturers alike.
- **Proportionate approach:** ESMA acknowledges the need of a proportionate approach. A proportionate approach for defining the target market is in particular important for non-complex products, execution only services and professional and eligible counterparties as end clients.

  - ***Treatment of non- complex products:*** It is pivotal that an appropriate and proportionate approach should enable that non-complex financial instruments may be distributed to mass retail. Only for complex products would the target market need to be more precisely defined. With this in mind we welcome points 17 ("Background section") and 74 ("Annexes-Guidelines section") of the ESMA consultation, where ESMA explicitly states that some products are suitable for distribution in mass retail markets, and they give the examples of 'ordinary shares' (point 17, page 7) and 'ordinary UCITS funds' (point 74, page 35). This is in line with the MiFID II Delegated Directive where in Recital 18 it is clarified that certain simple products 'would be compatible with the needs and characteristics of mass retail market'. At the same time we are concerned because ESMA seem to mix 'complexity' with 'riskiness' in point 35 (page 27) which reads: 'This is especially important for products characterised by complexity/risk features (or other relevant features such as, for example, illiquidity or innovation), as well as for situations where there might be significant conflicts of interest (such as in relation to products issued by the firm itself or by other entities within the group)'. The definition of 'complexity' should be bound to Level 1 provisions and 'riskiness' is not and should not be linked or included therein.
    It is in interest of retail investors to have a proportionate approach of the product governance rules as it will allow better access to investment products. Not doing this will lead to less

diversified investments portfolios with a higher risk profile, increased costs for retail investors or even investment firms not offering their investment services anymore to the mass retail market, especially with regard to advisory and execution-only services. It will also not help the EU Capital Markets Union, as boosting retail investments is an important cornerstone in order to develop the CMU further and potentially result in a declining liquidity of the markets of financial instruments.

- ***Target market requirements in situations that fall within the execution- only regime/ appropriateness regime*:** The guidelines on product governance requirements should make a clear distinction between target market requirements that apply to: 1) the execution-only situations or in situations where an appropriateness test has to be done on the one hand and 2) in cases where investment advice or asset management are provided on the other hand. This is because only in the latter case, it is reasonable to conduct a relative more thorough assessment of the target market and obtain information about aspects such as the clients' financial situation and clients' objectives.
- ***Professional clients and eligible counterparties:*** Professional clients and eligible counterparties are deemed to have the necessary knowledge and experience when they invest. The six categories as described on page 5 and 6 for determining the target market are not suitable to be used with professional clients and eligible counterparties as end-clients.

- **No requirement to distribute certain products under investment advice:** Regarding the identification and assessment of the target market by the distributor and the interaction with investment services (pages 28 and 29, points 37-43) it is important to point out that under the provisions of level 1 there is no place at all for an interpretation that certain products need to be distributed under investment advice. Such an interpretation would be contrary to the MiFID II legislator´s decision that a distribution without investment advice is and will be possible for every product if the appropriateness or execution only requirements according to Article 25 (3) and (4) MiFID II are met. This decision under level 1 may not be sidestepped by level 3 measures.
- **Definition of target market in a standardised way**: The ESMA guidelines should be designed in such way as to allow manufacturers and distributors to carry out a standardised definition of target market on the basis of specific categories (and criteria). The case studies developed by ESMA seem to take a different approach and contain a very descriptive and detailed target market formulation.. This approach taken in the case studies is unworkable because of the large number of financial instruments and the large number of market participants active within the internal market. It could hinder cross-border distribution. Therefore, we highlight the need for the target market to be conducted in a way so that it is possible to be parameterise it.
- **Portfolio approach not to be overlooked:** The EACB is concerned that a too restrictive approach regarding target market at the level of individual financial instruments might complicate the management of the total portfolio of a client and the ability to act in the best interest of the client. In many cases it would be appropriate to have a certain percentage of riskier and more complex instruments in a client portfolio. This is especially relevant with regard to "ability to bear losses" and "risk tolerance" and should be taken into account when defining the target market criteria. We would also like to draw attention to the fact that on the basis of the individual financial instrument, a client may be outside the target market even if the product makes sense to include at portfolio level. For that reason, deviations from the target market that result from proper portfolio diversification

objectives should not be taken as an exception but has a key element for investor protection. In this sense, target market identification should not only consider the product when individually assessed but also when part of a broader investment portfolio.

- **Treatment of corporate issuers:** The EACB notes that MiFID II delegated directive recital 15 contains a wording that is misleading and contradictory with Level I and II directives. According to the recital the investment firm, "[w]hen advising corporate issuers on the launch of new financial instruments, should be considered as manufacturers". This approach is not endorsed in the directive text and should be taken out as it could cause significant uncertainty on roles of manufacturers and distributors. Thus, we understand that banks and investment firms providing services in relation to an IPO should not be considered manufacturers under MiFID II in this context. We do not consider it reasonable that the banks and/ or investment firms (often there are several) that are involved in debt and equity capital market transactions of corporate issuers that are issuing new financial instruments (e.g. an IPO) are considered as manufacturers. The same holds true also for the subsequent trading of the issued shares on the secondary market e.g. on a stock exchange. Such an interpretation would also give rise to other many difficult questions such as for how long those obligations will apply following an issue and how the distributors will even know who is the manufacturer in respect of specific shares. We consider that the only workable solution is that the corporate issuer is considered as the manufacturer. This, in practice, would in many cases mean that it is the distributor that is required to assign a target market based on the public information included in a prospectus or other publicly available information, or alternatively enter into an agreement with the corporate issuer (Article 10(2) third paragraph MiFID II delegated directive).
- **Warning requirement in connection to the target market consideration**: The EACB has a concern with the warning requirement in connection to the target market consideration (see point 42 of the Consultation Paper). We consider that ESMA goes beyond its mandate on this point. The question also arises as to what the client is to be warned about. The target market is not displayed or shown to the client according to the guidelines, so a warning at the point of sale in connection to the target market may only create confusion. The same applies to sales outside the target market, where this is to be indicated to the client in the suitability report. The target market is not part of the suitability and appropriateness test under level 1 and 2.
- **Transitional provisions**: With regard to the entry into force of the product governance requirements, on January 3 2018 the manufacturers/ distributors must have their policies/ procedures/ risk control frameworks in place. In point 40 on page 12 of the background of the draft guidelines, ESMA indicates that manufacturers should assign the target market according article 16(3) of MIFID II following the review process. However with regard to distributors, ESMA indicates that immediately after 3 January 2018, a (provisional) target market must be in place. In practice, this burden on distributors would not be manageable. Hence, lots of products would not be checked for a target market and just disappear from the market. Moreover, such determination of target market by the distributor would probably have to be amended when the manufacturers assigned the target market in the review process. This would impose huge inefficiencies on distributors because they would have to determine target markets for all financial instruments in a short timeframe and twice. The proposed approach will also give much tension on the implementation process because a provisional determination of a target markets for all financial instruments distributed before January 3, 2018, has to take place. This is not adding to the quality of the implementation. We would

recommend that the determination of the target markets for the financial instruments manufactured before January 3, 2018, should be done when the (group of) financial instruments are up for the review process. This will enable manufacturers and distributors to align their target market determination.

Moreover, we question whether ESMA has the mandate to issue as a guideline (level 3) a so far reaching requirement. The approach followed by ESMA is also contrary to and deviating from the EBA-guidelines on product oversight and governance arrangements for retail banking products (EBA/GL/2015/18). Indeed, the EBA-guidelines will only apply to all products brought to the market after the implementation date thereof respectively to existing products that are significantly changed thereafter.

- **Case studies:** As a general remark, we consider the case studies to be problematic when comparing them to the description of the product governance requirements laid out in the consultation paper. The case studies often go beyond what is asked in the guidelines and should therefore be reconsidered or adapted accordingly.

Responses to the Consultation Questions

Q1: Do you agree on the list of categories that manufactures should use as a basis for defining the target market for their products? If not, please explain what changes should be made to the list and why.

We broadly agree with list of categories with the following remarks:

The applicability of the 6 categories should relate to the services provided. The requirements of MIFID II should be respected. This means that with regard to “execution only” services, only categories (a) and (b) (*to the extent that complex financial instruments are offered*) should be applicable. Point 36 of the Consultation Paper seems to confirm this approach, but it should also be explicitly stated in the guidelines.

Moreover, we would like to make some comments regarding some specific categories as follows:

- *Knowledge and Experience*

It is unclear what is meant by the phrase " knowledge in thematically related areas” (Guideline 16 (b)), page 23) and how these should be conveyed. This phrase is problematic and should be deleted.

It must also be possible for clients to acquire certain securities (for example non-complex products pursuant to Article 25 para 4 MiFID II) without specific knowledge and experience in the financial markets at all (for the simplest mass products such as some types of UCITS). The same is true for investors investing for the first time in more complex products. Otherwise, it would be impossible for new investors to enter the securities business and build up knowledge and experience (or acquire more complex products). We understand that ESMA itself acknowledges that even a mere knowledge (without experience) is sufficient, see Case Study 2 (p. 38, point 2, "some knowledge or experience").

Moreover, it should be clarified whose knowledge and / or experience is important in cases of representation. As a rule, the representative is responsible for the suitability test / adequacy assessment. "Client" in these cases is the representative whereas the target market is aimed at end clients. This could create inconsistencies between target market considerations and suitability (or appropriateness) assessment.

Lastly, the “time period for which clients should already have been active in the financial markets” should be left to the distributors to define.

- *Financial situation, with a focus on the ability to bear losses*

With this target market criterion, ESMA seems to mix “risk taking” or “risk tolerance” with the “ability to bear losses” because it requires to consider whether the client can and wishes to bear losses ("able and willing to afford").

The client’s (subjective) willingness to take risks ("client's risk tolerance") is already taken into account in the target market criterion "risk tolerance and compatibility of the risk / reward profile of the product with the target market". Adding it again in the context of the “ability to bear losses” would means that it would be considered twice.

We would like to note that that this wording of the Guidelines (i.e. "able and willing to afford" (Guideline 16 (c)) was also included in the ESMA Technical Advice of 19 December 2014 (“willing and able to take ", P. 155). Indeed, in the Technical Advice as well, subjective elements and objective elements were mixed together. To address this the Commission omitted the subjective part (“willing") in Article 54 (2), second sentence, lit. B of the draft delegated regulation MiFID II.

It is therefore our understanding that it is only the objective ability of the customer that matters and this should be clarified in the Guidelines.

In addition, regarding the “ability to bear losses” It would be useful to also introduce three broad categories of potential outcomes, which may then be aligned to an end-investor's generic attitude towards loss. These broad categories could be that an investor can:

- Bear minimal loss of capital or only to level specified by the product structure (i.e. structured deposits or financial instruments with a guarantee or floor) “. Only products with 100 % nominal capital protection can fall in this category while minimal losses are the result of entry costs, inflation rate etc. (not depending on the product structure).
- bear losses (financial instruments that do not guarantee a certain level of return)
- bear losses beyond the investment amount (e.g. CfDs, options for non-hedging purposes)

- *Clients’ objectives and clients' needs*

Regarding the category “Clients’ needs”, Guideline 16 (f) lays down that “in accordance with Article 16(3) and Article 24(2) of MiFID II, which introduces the separate concept of “needs of an identified target market of end clients”, the firm should specify aspects of the investment and expectations of targeted clients”.

We believe that "clients’ needs" should not be considered as a new and separate concept and, hence, as a (new) parameter that has to be assessed. The overall valuation of the other categories (in particular objectives, financial situation, ability to bear losses, risk tolerance) already enable to evaluate the “client’s needs”. This solution seems in line with Article 25 of MiFID II where “needs” are not mentioned. Indeed, we would like to point out that, although the target market identification is distinct from the suitability assessment, the criteria used in the target market identification would, necessarily, be taken into account in the context of the concrete suitability evaluation of the product for the end client (especially when the investment firm acts both as a manufacturer and a distributor). Thus, we would consider that “clients’ needs” should be deleted from the list of categories. Alternatively, at least, the “clients 'objectives” and the “clients' needs” should be grouped together. “Client needs” always lead to specific “client objectives”. It is not useful to classify age, the tax residence of the client or his market expectations (Guideline 16 (f)) as “clients’ needs” and we do not see how this improves investor protection.

Furthermore, it is unclear why the investment horizon should be an investment objective on its own. As a rule, the investment horizon will be a means of achieving the investment objective (such as accumulation of wealth, retirement etc.). In this context we would like to note that investment horizon is considered in the context of “clients' needs” in the Case Studies (page 37, point 6 and page 38, point 6). At the same time, however, investment horizon is to be a “client objective” (Guideline 16 (e)) and is also taken into account in Case Study 1 within the framework of the context of the criterion “financial situation with a focus on the ability to bear losses”. Therefore we suggest deleting references to “expected investment horizon” in point (e) Clients’ Objectives.

Certain special needs such as “green” or “ethical” investments should only be considered when a client explicitly asks for such type of investment. This is necessary since there are no universal predefined standards on what constitutes “green” or “ethical”.

Q2: Do you agree with the approach proposed in paragraphs 18-20 of the draft guidelines on how to take the products’ nature into account? If not, please explain what changes should be made and why.

The EACB agrees with the identification of the target market in less detail and with a more generic application of the categories for simple, non-complex products pursuant to MIFID II Article 25 (4) (execution only/ mass retail market). Accordingly, it is assumed that no target market description needs to be developed for such financial instruments that go beyond the mere statement "mass-retail market". This approach would be in line with ESMA’s points 39 and 41 of the Consultation, according to which these products are appropriate for the "mass retail market". Indeed, in general, the guidance should not complicate digital distribution of simple mass retail products and should not go beyond level 1 which foresees that these financial instruments do not need to be subject to an “appropriateness test”.

In addition, the EACB considers that it is up to the distributor to determine the distribution strategy and to determine when and how the "execution only" channel should be used for selling financial instruments (see points 21 and 22 of the Consultation Paper). Indeed, we do not agree with the approach that the manufacturer should propose the type of investment services the distributor should provide or to go into details about the "preferred acquisition channel". This would also create confusion between the responsibilities of manufacturers and distributors. For this reason, we would propose to delete paragraph 22 from the Guidelines. If this is not possible, we would suggest to replace the word "should" with "may" in the last sentence.

Finally, it should be borne in mind that the distributor cannot ensure that the product ends up with the correct type of customers. In case of "execution only" and investment advice services it is up to the client to decide which products he will buy (see point 25).

Q3: Do you agree with the proposed method for the identification of the target market by the distributor?

As a general comment, we consider that the distributor should take into account the target market as defined by the manufacturer but should not be required to identify a target market of its own. The EACB does not see the necessity and added value to have the distributor to determine the target market in a more granular way.

Moreover, we would like to make the following comments:

- We question the relevance of paragraph 33, according to which distributors should "conduct a thorough analysis of the characteristics of their client base" based on various databases. In our understanding similar domestic requirements -that de facto gold-plate MiFID I- exist in some countries. In our view, introducing such an extensive and unclear obligation is not in line with Level I and II Directives. Information gathering requirements could potentially complicate digital distribution of financial instruments. This is especially the case in cross-border context.
  Furthermore, transferring information based on anti-money laundering questionnaires etc. would potentially breach anti-money laundering rules and principles. Data protection issues could potentially arise as well in case the client information is used with-out client consent.

- We consider that investor protection is best promoted via forward looking suitability and appropriateness tests when investment services are offered. Detailed analysis of previously executed trades is burdensome and could potentially produce redundant information. The more tailor made approach from a client perspective is designed to be done in the suitability assessment of products for the individual client. Again, the definition of what is a Target Market and what is a suitability and appropriateness test should not be mixed. In case an appropriateness or suitability assessment is not required on the basis of MIFID II there should not be a requirement for prescribing a detailed target market with appropriateness and suitability criteria.

- We do not agree with the statement in point 32 that deviations from the target market should be exceptional because in general it is the global portfolio that matters. To give an example: Investment firms are increasingly working with standardized portfolios for clients. In such a standardised portfolio for a group of clients it can be justified to have a certain percentage of more speculative products in the portfolio from a portfolio perspective although the risk profile of the client is more conservative (and therefore the clients don't fit in the target market for the individual financial instrument). Because the portfolios are standardised the deviation of the target market may occur quite regular (see also our comments in the introductory remarks).
  In general, since the target market is focused on individual products and their characteristics and since investment advisors are focused on providing investment advice based on a client's portfolio of assets and instruments, there has to be a differentiation. This is irrespective of whether the advisor makes use of a range of pre-defined portfolios or customising more individualised portfolios together with the client. Fundamentally, the suitability assessment is the safeguard for bringing the two together.

- At the same time, to require that sales outside the positive target market should be the "individual case of the client" and documented in the suitability report would preclude investment firms from offering portfolio management services such as predefined portfolios to smaller investors since the individual products within such a portfolio do not consider and handle the individual investor once the investor has been assigned to a suitable predefined portfolio.

- The requirement to report deviations from the target market to the manufacturer should only apply to reoccurring or systematic deviations. The ability of a distributor to provide the manufacturer with information on deviations will depend on the investment services provided. For instance, the requirement does not seem well-adapted to the situation where execution only services are provided, or where a client refuses to provide information on knowledge and experience and decides to invest anyway (i.e. despite warning). Reporting every recurrent deviation (paragraph 65) from the TM is not useful and not foreseen in level 1 texts.

Q4: Do you agree with the suggested approach on hedging and portfolio diversification aspects? If not, please explain what changes should be made and why.

We agree that financial instruments could be suitable to different target markets and for different purposes (for example one for speculative purposes and the other for hedging purposes).

Portfolio diversification and hedging are very important elements when considering impact of target market rules. We generally agree with ESMA´s approach on paragraphs 9–10. Indeed, it is very important to consider the riskiness of the client portfolio as a whole. If the focus is too much on individual products, there is a risk that the global client portfolio might turn out sub-optimal. Too rigid target market rules might hinder the ability to hedge client portfolio etc.

We take note that hedging and portfolio diversification issues are explained only in "Background of the draft guidelines". However, these considerations are not ex-pressed in "Draft guidelines" themselves. We would suggest including the relevant text on page 9-10 (at least paras. 29 and 30) of the official guidelines.

In addition we would like to make the following remarks:

- We do not agree with the statement under point 38 that the distributor generally should only deviate from the distribution strategy of manufacturer to increase client's protection. It is up to the distributor to make its own judgement taking into consideration the requirements of MIFID II. No requirements should be imposed which do not derive from MIFID II. And again, it should be borne in mind that in general it is the global portfolio that matters (see also our response to Q3).
  In general, it should be clarified that the distribution strategy is not a target market criterion, as it can be found in the Case Studies " (page 37, point 8, p. 39, point 8) and as it is implied in point 21. Indeed, point 25 correctly differentiates between the target market and the distribution strategy. The distributor should decide the distribution strategy (see also our introductory remarks).
  At the same time, it is too far –reaching to require determining the acquisition channel in case of sale without advice (paragraph 22 of the Guidelines). The digitalisation of the investment services means that products will increasingly be offered online and this is something to be taken into account.

- Finally, the approach set out in point 21 (manufacturer specifies the dos and don'ts on the website where the product is offered or listed) is to be rejected because it is not practical.

Q5: Do you believe further guidance is needed on how distributors should apply product governance requirements for products manufactured by entities falling outside the scope of MiFID II?

The members of EACB do no see the need for further guidance on how distributors should apply product governance requirements for products manufactured by entities falling outside the scope of MIFID II, as long as it is clear that for non-complex instruments the distributor (such as bank or investment firm providing on-line trading on listed shares) should be able to rely on publicly available information without additional "information gathering process". Distributors will develop their own methodology of determining a target market, how to apply and how to distribute these products.

Having said that the EACB does not agree with the approach taken in point 40. In particular, with regard to the entry into force of the product governance requirements on January 3 2018, the manufacturers/ distributors must have their policies/ procedures/ risk control frameworks in place. In point 40 on pages 12 of the background of the draft guidelines, ESMA indicates that manufacturers should assign the target market according article 16(3) of MIFID II following the review process. However with regard to distributors, ESMA indicates that immediately after 3 January 2018, a (provisional) target market must be in place. In practice, this burden on distributors would not be manageable. Hence, lots of products would not be checked for a target market and just disappear from the market. Moreover, such determination of target market by the distributor would probably have to be amended when the manufacturers assigned the target market in the review process. This would an unnecessary burden on distributors because they would have to

determine target markets for all financial instruments very soon and twice. This will also give much tension on the implementation process because a provisional determination of a target markets for all financial instruments distributed before January 3, 2018, has to take place. This is not adding to the quality of the implementation. We would recommend that the determination of the target markets for the financial instruments manufactured before January 3, 2018, should be done when the (group of) financial instruments are up for the review process. This will enable for manufacturers and distributors to align their target market determination.

Please note that ESMA has not been given a mandate to determine the (non) application of MIFID II to products that were manufactured before the entry into force of MIFID II. The approach followed by ESMA is also contrary to and deviating from the EBA-guidelines on product oversight and governance arrangements for retail banking products (EBA/GL/2015/18). The EBA-guidelines will only apply to all products brought to the market after the implementation date thereof respectively to existing products that are significantly changed thereafter.

Q6: Do you agree with the proposed approach for the identification of the 'negative' target market?

It is unclear why ESMA is introducing the concept of a "grey" target market, which is neither found in Level 1 or Level 2. In general, it is more sensible to determine only the positive target market, and we do not really see a need to explicitly define a negative target. A positive description gives the right indication. There can be reasons to sell outside the target market for example because of the portfolio approach (see our response to Q3). Lack of clarity could occur because of justified deviations on the one hand and negative target markets on the other hand.

Q7: Do you agree with this treatment of professional clients and eligible counterparties in the wholesale market?

We agree with the distinction of professional/ eligible clients as intermediaries and professional/eligible clients as end clients. In order not to hamper wholesale business, it is important that a high level and proportionate approach is allowed with regard to the product governance requirements for professional and eligible counterparties. The six categories as described on page 5 and 6 for determining the target market may not be suitable to be used with professional clients and eligible counterparties are deemed to have the necessary knowledge and expertise when they invest. Moreover, as rightfully stated, the product governance requirements in article 24 paragraph 2 of MIFID II are not applicable on eligible counterparties.

Q8: Do you have any further comment or input on the draft guidelines?

When it comes to Guideline 40, we do not agree with what is described as "more prudent". It is prudent to meet the MIFID II requirements to distribute financial instruments on an execution- only basis (with

appropriate test if necessary) when the relevant information is available to the clients to use it for their needs and objectives (see also our relevant introductory remarks).

In paragraph 72 of the consultation paper, the guidelines highlight the distinction between per se professional clients and elective professional clients. Even though MiFID makes this distinction, there is no need to presume missing knowledge and experience for elective professional clients. This distinction will possibly create additional administrative costs without any clear benefit to the client.

Q9: What level of resources (financial and other) would be required to implement and comply with the Guidelines (market researches, organisational, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? If possible please specify the respective costs/resources separately for the assessment of suitability and related policies and procedures, the implementation of a diversity policy and the guidelines regarding induction and training. When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

The target market requirements will indisputably create huge (one- off and ongoing) costs (implementation of these guidelines at distribution level, training of sales staff, adapting procedures to inform manufacturers of deviation from the Target Market, enhancement of suitability tests, draft Target Markets for products manufactured by entities not subject to MIFID II, impact on K&E questionnaire, risk profiles, online platforms, etc.), the EACB and in particular its members do not have time to collect concrete data, because all resources are geared towards the implementation of MiFID II.

Contact:

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

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