



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurance

BIPAR RESPONSE

ESMA Consultation on draft Guidelines on certain aspects of the MiFID II suitability requirements

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BIPAR is the European Federation of Insurance Intermediaries. It groups 53 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.

Besides some large multinationals, the insurance intermediation sector is composed of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services.

BIPAR is a member of the World Federation of Insurance Intermediaries (WFII).

Introductory comments:

BIPAR welcomes the opportunity provided by ESMA to comment on its draft Guidelines on certain aspects of the MiFID II suitability requirements.

BIPAR represents 53 national associations of insurance and financial intermediaries.

Many of the financial intermediaries who are members of our national associations, are micro to SME-type companies.

Under MiFID, many of these firms fall under “opt-out” national regimes (according to Article 3 of MiFID I and II).

Guideline 1 and supporting Guidelines (Information to client about the purpose of suitability assessment) - p 39

Q1: Do you agree with the suggested approach on the information to be provided on the suitability assessment and specifically with the new supporting guidelines on robo-advice? Please also state the reasons for your answer.

BIPAR response:

According to paragraph 19 of the supporting Guidelines on p 40: “Firms should not use disclaimers (or other similar types of statements) aimed at limiting their responsibility for the suitability assessment in any way. “

We agree that firms should not try via disclaimers to renege on their legal obligations. However, it should not be prohibited to inform the client about situations where there is no responsibility. We believe that wording in the draft Guidelines may have to be adapted in order not to create legal uncertainty in this respect.

Guideline 2 and supporting Guidelines (Arrangements necessary to understand clients) - p 41
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Q2: Do you agree with the suggested approach on the arrangements necessary to understand clients and specifically with how the guideline has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.

BIPAR response:

In the supporting Guidelines, p 43, paragraph 26, point d) the new Guidelines refer to “*the fact that a client **might** lose his job*”. The previous 2012 Guidelines stated: “*the fact for a client to lose his job*”. We believe the previous wording was better.

The new wording seems to put a responsibility on the firm to assess whether the client is in a situation where he **might** lose his job.

Q3: Do you believe that further guidance is needed to clarify how firms should assess clients’ ability to bear losses?

BIPAR response: /

Guideline 4 and supporting Guidelines (reliability of client information) - p 48

Q4: Do you agree with how the guideline on the topic of ‘reliability of client information’ has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.

BIPAR response: /

Guideline 5 and supporting Guidelines (updating client information) - p 50

Q5: Do you agree with the suggested approach on the topic of ‘updating client information’? Please also state the reasons for your answer.

BIPAR response: /

Guideline 6 and supporting Guidelines (client information for legal entities or groups) - p 52

Q6: Do you agree with the suggested approach to conduct the suitability assessment for a group of clients, especially where no legal representative is foreseen under applicable national laws? Please also state the reasons for your answer.

BIPAR response: /

Guideline 7 and supporting Guidelines (arrangements necessary to understand investment products) - p 55

Q7: Do you agree with the suggested approach on to the arrangements necessary to understand investment products for the purposes of suitability assessment? Please also state the reasons for your answer.

BIPAR response:

On p 57, paragraph 74, the supporting Guideline states: *“74. The elements used for the classification of products for the purposes of suitability assessment should be consistent with those used for the purposes of the identification and assessment of the target market in accordance with requirements on product governance.*

In the “Background” on p 16, paragraph 33 this is also mentioned: *“it should be clearly understood that the consistency of input and parameters adopted for products profiling that ESMA requires between suitability assessment and product governance arrangements, reflect the specific responsibilities of manufacturers vs. distributors under product governance requirements. “*

BIPAR believes that care should be taken that in aiming for consistency, the respective (different) responsibilities of manufacturers and distributors in the product governance field are reflected and do not lead to a shift of responsibilities between the two.

Guideline 8 and supporting Guidelines (arrangements necessary to ensure the suitability of an investment) - p 57

Q8: Do you agree with the additional guidance provided with regard to the arrangements necessary to ensure the suitability of an investment? Please also state the reasons for your answer.

BIPAR response:

Regarding concentration risk, in the Background, p 24, paragraph 74 says that: *“74. This does not entail that firms can only adopt open architecture models, but that, when selling own products, conflicts of interests have to be managed or prevented in accordance with Article 23 of MiFID II.”*

Footnote 12 says: *“MiFID II itself does recognize that, when providing investment advice, the range of instruments analysed by the firm can be restricted to those issues(d) by itself, or by other entities having close links or any other legal or economic relationship with them (based on par. 4 (a) (ii) of Article 24).”*

This reasoning is less developed in the Guidelines themselves. BIPAR believes it would be useful that this explanation is better reflected in the (supporting) Guidelines themselves too.

Guideline 9 and supporting Guidelines (costs and complexity of equivalent products) - p 61

Q9: Do you agree with the suggested approach for ensuring that firms assess, while taking into account costs and complexity, whether equivalent products can meet their clients' profile? Please also state the reasons for your answers.

BIPAR response:

The supporting guideline paragraph 89 states: *“... For firms with a restricted range of products, or those recommending one type of product, where the assessment of ‘equivalent’ products could be limited, it is important that clients are made fully aware of such circumstances. In this context, it is particularly important that clients are provided appropriate information on how restricted the range of products offered is, pursuant to Article 24(4)(a)(ii) of MiFID II.”*

BIPAR supports the clarification given in footnote 46: *“In accordance with MiFID II, firms are therefore not expected to consider the whole universe of possible investment options existing in the market in order to comply with the requirement under Article 54(9) of MiFID II Delegated Regulation.”*

We believe however that this clarification applies to all firms (not only those where the range of products is restricted).

Guideline 10 and supporting Guidelines (costs and benefits of switching investments) - p 62

Q10: Do you agree with the suggested approach for conducting a cost-benefit analysis of switching investments in the context of portfolio management or investment advice? Please also state the reasons for your answer.

BIPAR response:

On p 63 in paragraph 94 of the supporting guidelines, it should be clarified (as done in paragraph 92) that the firm looks at the “**expected**” benefits of switching.

Guideline 11 and supporting Guidelines (qualification of firm staff) - p 64

Q11: Do you believe that further guidance would be needed with regard to the skills, knowledge and expertise that should be possessed by staff not directly facing clients, but still involved in other aspects of the suitability assessment? Please also state the reasons for your answer.

BIPAR response:

As explained on p 28 of the Background, paragraph 86: *“In order to avoid any overlap between these two sets of ESMA’s Guidelines, it has been followed the approach to remind firms that, for client-facing staff, they should refer to the mentioned detailed Guidelines on knowledge and competence.”*

This is further specified in the supporting Guidelines on p 65, paragraph 101.

BIPAR wishes to point out that the MiFID II knowledge and competence requirements are not amongst the requirements that are applicable “analogously” to opt-out firms (article 3 of MiFID II) and the above-mentioned knowledge and competence guidelines are not applicable to them either.

Guideline 12 and supporting Guidelines (Record-keeping) - p 66

Q12: Do you have any further comment or input on the draft guidelines?

BIPAR response:

- As a general comment, BIPAR wishes to point out that a lot of emphasis is put in the Guidelines on checking the knowledge and experience of the client. BIPAR agrees that this is important but believes it would be helpful to clarify somewhere in the (supporting) Guidelines that clients can also buy an investment product when they have no experience (yet).
- With regard to Guideline 3 and its supporting Guidelines dealing with the extent of information to be collected from clients (proportionality), we would like to comment on paragraphs 34 and 35. ESMA refers to complex or risky products where firms should carefully consider whether they need to collect more in-depth information about the client. The Guidelines continue and give examples for illiquid financial instruments. We can understand the reasoning for illiquid products. Regarding the category of “risky products” however, we believe that this is an unclear description as many investment products are risky when considering them as individual products. We would suggest that either this category is removed from the Guidelines or the clarification is improved with examples of which instruments are relevant.

On p 48, paragraph 41, the supporting Guidelines state that: *“41. Information about a client’s financial situation includes information regarding his investments. This implies that firms are expected to possess information about the client’s financial investments he holds at this firm on an instrument-by-instrument basis. Firms should also encourage clients to disclose their financial investments they hold with other firms in detail, if possible also on an instrument-by-instrument basis.”*

BIPAR believes that it should be very clear that regarding the requirement in the last sentence, a firm can indeed only encourage clients to disclose their financial investments they hold with other firms in detail.

- There seems to be a typo in the reference to the application date of the Guidelines. On p 36, paragraph 4, reference is made to paragraph 11 of the document. This should be paragraph 12.

Q13: 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)? 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.

BIPAR response: /