

**ABI's remarks to the ESMA  
Consultation Paper on  
the Draft guidelines for the  
assessment of knowledge and  
competence**

July 2015

## Foreword

ABI welcomes the opportunity to provide its own contribution to this consultation aimed at issuing the Guidelines for implementation of Art. 25 (1) of MiFID II on the criteria for assessing the knowledge and competence of staff of intermediaries involved in client relations in the field of investment services and ancillary services.

This is a crucial issue with regard to the protection of investors. It is therefore important that the Guidelines stimulate an effective improvement in the level of knowledge and competence of staff used for this purpose by firms. To achieve this goal, we believe it is necessary for the Guidelines to take into account the best practices that have so far been developed by intermediaries in implementing the requirements of the current MIFID regulations, as well as of the best national regulations that may have been enacted, also in implementing European legislation.

Therefore, before responding to the specific questions raised by the consultation paper, we think it would be useful to make a few comments of a general nature and also to describe what has been achieved so far in Italy in terms of knowledge and competence of staff of firms in line with the regulatory system and best practices adopted by the banks.

## General remarks

We feel that the provisions of Art. 25 (1) of the MiFID (II) have the purpose of specifically regulating, with reference to staff who maintain contacts with clients, the principles laid down in Art. 5 (1) (d) of the current MiFID L2 with reference to the whole employees of the firm.

With the MiFID II, the legislator in fact felt the need to intervene in this specific field, given the more significantly delicate nature involved in direct relations with clients, with the aim of raising the quality of personnel working in this area, as a safeguard for clients.

Therefore, we believe that the increase in “knowledge and competence” pursued by MiFID II should consider all the areas already outlined by the existing MiFID L2 concerning “the skills, knowledge and expertise necessary”. In our opinion, therefore, it would appear consistent with the formulation of MiFID I and II to interpret “competence” not only as the result of professional experience defined by a period in time, but rather as the result of knowledge, skills, levels of autonomy and responsibility gained as a result of learning processes of a formal and informal nature.

This approach is consistent with the guidelines of the European Union in the field of lifelong learning and certification of competences and in particular with the Recommendation of the European Parliament and of the Council of

23/4/2008 establishing the European Qualifications Framework, a tool that the Member States have had to use since 2012 to compare their own education and training systems, in order to create a stable connection between the reference national systems of educational qualifications and professional status.

Such an approach also appears consistent with the more advanced systems of mapping, assessment and certification of competences and professional roles, used now in many well-developed companies in terms of application of policies on human resource development.

### **Italian regulation and best practices**

1. Italian banks, whose staff has a high level of education (approximately 36% have a university degree; 70% of those hired in 2013 are graduates), have for some time been structuring (and refining) their specific internal policies aimed at governing:

- the level of qualifications, knowledge and competences required for the performance of investment services, differentiated according to the different roles provided by the specific service model;
- the training paths according to the various different roles, which often include a compulsory part supplied by the company and an additional option chosen by the employee within the scope of what is made available by the company. In this context, classroom-based courses and e-learning courses are the usual ones on offer, as well as the possibility of attending certain external courses;
- the tracking/certification of the level possessed by each resource, as well as the training path followed as each phase is completed.

In particular, as regards the differentiation of roles provided for by the specific service model, it should be pointed out that:

- only some larger banks actually make the distinction between personnel assigned the task of giving customers information on investment services and ancillary services and the personnel actually assigned the task of providing these services. One must, indeed, bear in mind that this choice has a significant organisational impact and, therefore, in addition to being necessarily subject to the considerations of the individual intermediary, it is not sustainable for small and medium-sized intermediaries;
- the systematic combination of investment advice with other executive-type investment services is extremely widespread in Italy with a view

to raising client protection, and so banks have deliberately established that all staff involved in the provision of investment services also systematically provide investment advice;

- the banks that have adopted a specific differentiation of roles within the scope of the provision of advisory services combined systematically with other services, have made this kind of differentiation, for example, on the basis of the following elements: i) the client targets with increasing levels of investment objectives and the complexity and/or level of risk of the investments; ii) the type of investment advice given, which may be basic or advanced and, with the prospect of it being also on an independent basis;
- staff access to each role is governed by the possession of predetermined requirements in terms of knowledge, experience and competence. In this context: i) some banks require that access to higher roles is only possible for employees who pass specific internal exams or are registered with the Register of Financial Advisors; ii) some banks provide investment services only through employees registered with the Register of Financial Advisors.

As far as the training path is concerned, it should be noted that the national collective employment agreement for the banking sector stipulates specific obligations for the provision of training for new employees and, for all employees in general, a training package of 50 hours per year that the company has to make available to employees.

These provisions constitute compulsory minimum staff training/professional development requirements, that banks organise at different levels according to staff roles, and supplement with additional activities, also whenever new external regulations come into effect or there are developments in service models or the introduction of new products or financial instruments, etc. Training objectives are not only of a technical content nature but also concern relations.

In the case of workers hired under a “contract of apprenticeship” (over 63% of which are graduates), the training content is particularly significant and envisages the delivery of 120 hours per year of training – for the entire training contract period of 3 years – that is aimed at their professional development and is specific to each professional profile listed in the national collective employment agreement, including that of “person in charge of commercial activities”.

Tracking the requirements possessed and the training path followed enables intermediaries to monitor and measure the degree of staff competence, experience and knowledge and the associated development path. In this context, some intermediaries have even begun to track employee training of a spontaneous nature.

2. Finally, it should be noted that the Italian banking system has moved proactively to make a contribution towards the construction of the national qualifications framework, in line with the provisions of European law. With the help of banks and trade unions, ABI has developed “the handbook on the certification of qualifications for commercial banks”, which represents a reference model for the mapping of professional roles and their related competences, which has been presented to the Italian Ministry of Employment. Using this manual, 69 different banking qualifications have been mapped, divided into 15 organisational areas, and the following aspects have been defined for each qualification:

- title, aims and main responsibilities and activities;
- the profile of knowledge, grouped into three phases and divided into five increasing levels (phase of theoretical knowledge, phase of knowledge application, phase of developmental knowledge);
- the profile of abilities, grouped into four areas (intellectual, managerial, innovative and relational abilities) and divided into 5 increasing levels;
- the profile of autonomy, divided into four levels;
- the EQF level (according to the ascending eight levels provided for under the European Qualifications Framework).

This model is subject to constant updating in the light of developments in the market and in regulations. It will, therefore, naturally take account of the changes that will be introduced by MIFID II.

3. In Italy, the regulations already require that the possession of appropriate knowledge and competence must be verified before significant services are performed, showing content at a level equivalent to that described in the consultation paper. Since 1991, the Italian regulations have stipulated that financial advisors must be included in the *Albo unico dei promotori finanziari* (APF, Single Register of Financial Advisors<sup>1</sup>). Access is achieved only after the proven possession of certifiable professionalism and good reputation gained through previous professional experience (lasting three years) or by passing an assessment test.

The APF has been active since 1 January 2009. This is an entity formed by the professional associations representing financial advisors and entities authorised to offer off-site financial products and investment services.

The APF is responsible by law (art. 31 of the Consolidated Financial Law) for exclusively and independently dealing, in civil service terms, with the public register and the fulfilment of the tasks associated with and instrumental to

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<sup>1</sup> According to art. 31 (2) of the TUF (Italian Consolidated Law on Finance), financial advisors mean natural persons who, as tied agents pursuant to Directive 2004/39/EC, professionally perform off-site sales activities as an employee, agent or representative. Financial advisor activities shall be performed exclusively in the interests of one party.

the management thereof. The APF operates under the supervision of Consob and, for the benefit of investors, discloses essential information about financial advisors and also performs, amongst other things, the assessment of the requirements for registration in and deletion from the register and ensures the needs of investor protection, by guaranteeing the continuing existence of the requirements of professionalism and good repute as a requisite to remain on the register.

As mentioned, the requirements of good repute and professionalism for entry on the register are governed by regulations issued by the Italian Minister of Economy and Finance<sup>2</sup> and are established on the basis of strict assessment criteria that take account of previous, properly documented, professional experience or on the basis of assessment tests.

The Law states that the assessment test must be both theoretical and practical in nature and must be organised at least once a year by the APF and is intended to allow one to verify the actual possession by the candidates of the competences required to act as a financial advisor. In Italy, the subjects covered by the test include those indicated in the Guidelines under consultation and, therefore, any other list of requirements would be redundant and detrimental. The test is assessed by the APF, which makes use of examining committees composed of individuals with proven professional competence (Articles 100 and 105 of the Regulation of Intermediaries). The test is subject to annual verification by a Scientific Committee.

For this purpose, a part of the APF website is dedicated to would-be advisors with information on the procedure for becoming an advisor, the on-line application form for sitting the exam, a mock examination, access to the e-Learning platform and the forms for registering with the Register.

Therefore, in order to become registered in the Register and become a financial advisor, one needs to (Art. 99 of the Regulation of Intermediaries):

- a) be in possession of the requirements of good repute, prescribed by Ministerial Decree no. 472 of 11/11/1998 and not to find oneself subject to any situations of impediment referred to in the Regulation;
- b) be in possession of the educational qualifications prescribed by the ministerial regulation;
- c) have passed the assessment test or be in possession of certain professional requirements established by the Organisation on the basis of assessment criteria specified in Ministerial Regulation No. 472/1998.

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<sup>2</sup> Ministerial Decree No. 472 of 11/11/1998: Regulation laying down the rules for the identification of the requirements of good repute and professional competence for entry on the Single National Register of Financial Advisors

In addition to the procedures for entry in the Register, Consob also determines the principles and criteria relating to professional training for financial advisors, establishing that they are obliged to maintain their professional training by taking part in regular courses, which issue attendance certificates on completion. For this purpose, authorised entities have suitable procedures in place to ensure adequate professional training and refresher courses for the financial advisors working on their behalf (Art. 105 Regulation of Intermediaries).

Consequently, the other part of the APF website is dedicated to financial advisors and shows the national and EU legislation that develops and supplements the “basic” information already published in the public area of the portal.

Entities (banks and investment firms) that give assignments to financial advisors are also obliged to ensure that they are properly prepared and trained. In fact, they are jointly liable for the damages caused to third parties by a financial advisor and are themselves required to act fairly, transparently and with due diligence to better serve the interests of their clients and to have appropriate resources and procedures, including internal control mechanisms, to ensure the efficient provision of services and activities (Art. 21 of Consolidated Financial Law and Regulation of Intermediaries). Moreover, within the general organisational requirements, the law stipulates that intermediaries must adopt policies and procedures to ensure that staff are equipped with the qualifications, knowledge and competences needed to perform the duties assigned to them (Art. 5 Joint Consob/Bank of Italy Regulation of 29 October 2007)<sup>3</sup>.

Also for these reasons, the *relevant experience rule* would seriously prejudice the operations of intermediaries which use tied agents in the provision of their services, with serious repercussions on the level of client service and unwarranted economic and legal impacts on *investment firms* and on the individuals who act as financial advisors.

One should note in this regard that financial intermediaries incur significant investment costs to develop a certified and updated network of financial advisors, and the unjustified cost of an additional unnecessary measure, such as that of previous relevant experience should not be added to this. This could in fact have an impact on the training and recruitment of young resources, who are beneficial to and are needed by the financial market.

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<sup>3</sup> For the translation of the TUF provisions, see:  
[http://www.consob.it/mainen/documenti/english/laws/fr\\_decree58\\_1998.htm#Article\\_31](http://www.consob.it/mainen/documenti/english/laws/fr_decree58_1998.htm#Article_31)  
*Regulation of Intermediaries:*  
[http://www.consob.it/mainen/documenti/english/laws/reg16190e.htm#Article\\_100](http://www.consob.it/mainen/documenti/english/laws/reg16190e.htm#Article_100)



With reference to the offer of investment services through financial advisors, one would hope that national authorities will be acknowledged their autonomy in the assessment of competences and knowledge, given that the Italian regulations in this segment are especially rich and comprehensive.

## Answers to Specific 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 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.**

In view of the above, we disagree with the provision that stipulates that only those who, at the time of entry into force of MiFID II, have gained no less than five consecutive years' experience in the provision of investment services would be considered in possession of the necessary requirements. This clause, in fact:

- considers the criterion of competence in a restrictive manner, identifying it only in terms of experience, thereby departing from the previously applicable requirements of MiFID I, L2 regarding “the skills and experience”;
- consequently, it is not suitable to prove the necessary requirements for personnel involved in client relations.

A clause like this would be inconsistent with the solutions adopted in Italy that are in compliance with best practices and with the afore-mentioned rules regarding the Register of Financial Advisors.

We believe, therefore, that this clause needs to be reconsidered and its definition entrusted to the NCA in accordance with the national rules on the procedures for implementing the Guidelines. Alternatively, one could indicate a period of time for “practical experience” of 3 years (instead of 5) or 3 years during the last 5 years, that need not to be continuous and may have been made in more than one firm. Obviously, the experience gained would need to be properly documented by the intermediaries where the person had provided the services.



In addition, a financial advisor should be considered to possess an appropriate qualification regardless of the years of actual experience gained, since the financial advisor examination should already have ensured a high level of knowledge and competence.

**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 for those providing information. Do you agree with the proposed approach?**

We believe it essential that the differentiation between staff providing information and those performing investment services must only be considered as something potential, since it is associated with aspects relating to the strategic choices of the single intermediary based on its own service model and the principle of proportionality.

Based on the experience gained so far by banks that provide such a differentiation of activities, we would like to emphasize that, although the staff responsible for providing information should have slightly different knowledge, experience and competences from those of staff assigned to providing investment services, such elements do not necessarily need to be lower.

Given that the differences in knowledge and competences required by the two professional roles appear almost negligible and insignificant, we believe that it would be more efficient and less expensive to provide for a single training program for both roles.

**Q3: What is your view on the knowledge and competence requirements proposed in the draft guidelines set out in Annex IV?**  
**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 believe that in order to substantially improve the requirements of personnel involved in client relations working for intermediaries, the Guidelines should:

- expand the range of accepted certifications regarding level of knowledge qualifications, since the joint provisions of paragraph 2 point 9 (Background and principles) and 6 point, letter g) of paragraph 3.4 (Draft Guidelines) seem to allow only a “primary university degree

in economics with specific exams focusing on financial markets, or (ii) other recognised qualifications complemented by courses identified in financial services that capture the requirements of the guidelines”;

- reconsider the requirement of competence more comprehensively as it appears restrictive to base it solely on the length of experience gained in providing a particular service. We would ask, therefore, for the Guidelines: i) to recognise that experience is a constitutive element of competence, but must be combined with an assessment of skills and to allow the possibility of adjusting the length of minimum required experience in line with the level of abilities gained, as well as, of course, the differentiation of roles adopted by intermediaries where applied; ii) to assign value to experience even if it is not continuous and/or it is gained with various intermediaries;
- consequently, also reconsider the proposal referred to in paragraph 25, letters d-i) of the Draft Guidelines which establishes that personnel who have not reached the minimum required experience (which in the transition phase would be set at 5 years) would be unable to provide the relevant service unless they were systematically supported by a trainer, since such experience would be seen as a partial interpretation of the concept of competence (see general remarks). In this regard, also taking into account the difficult practicability of the proposal with regard to small banks, we believe that intermediaries should independently be able to define the minimum period of training or other alternative methods to assess the achievement of the specified competences and their maintenance over time;
- acknowledge the authoritativeness and the level of guarantee of the regulatory framework that governs the activity of financial advisors in Italy and provides certification of the appropriate knowledge and competence of the financial advisor registered with the register.

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

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

Since it is out of line with the best practices currently adopted in Italy and with the Italian rules governing financial advisors, the approach proposed by the Draft Guidelines would have an extremely significant impact on banks operating in Italy and, indeed, could lead to an operational block of considerable proportions for all intermediaries, especially in the transition phase due to the proposed criterion of five consecutive years of experience required for staff.

To hold down costs, it might be appropriate to avoid making NCA fix strict certification criteria regarding the acquisition and periodical checks on

competences, leaving the responsibility of identifying the criteria and rules for certifying the specified requirements to the intermediaries themselves, in accordance, nevertheless, with the proposed general principles.