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Response of the European Structured Investment Products Association (EUSIPA) to ESMA's Consultation Paper on Draft guidelines regarding on MiFID II product governance requirements as of 5 October 2016 (ESMA document reference 2016/1436)

Dear Sir or Madam,

EUSIPA herewith wishes to provide its answer to the above mentioned ESMA Consultation Paper.

The European Structured Investment Products Association was founded in 2009 by the main trade bodies that at the time already represented the interests of structured product issuers in Europe's leading markets. Today's members are the industry associations of the issuers of structured products of Austria, Belgium, France, Germany, Italy, The Netherlands, Sweden, Switzerland and the United Kingdom.
The market volume represented by these associations in invested assets can be estimated at around Euro 450 billion.

EUSIPA itself is an international non-profit association registered under Belgian law and also listed in the EU transparency register. EUSIPA pursues, as an umbrella association for issuer banks, the aim to coordinate transparency initiatives at the European level and to support uniform market standards.

We hope the attached provides sufficient background on our position and are open for any further clarification of the comments made.

Thomas Wulf
Secretary General, EUSIPA

Nikolaus Neundörfer
Chair Legal Committee, EUSIPA

Attachment

Attachment

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.

EUSIPA partially agrees with this proposal.

Generally, EUSIPA is under the impression that these Guidelines better reflect the concerns of the industry. In particular we welcome that ESMA modifies its first proposal to only list 6 categories, instead of 9, which is more suitable for financial institutions from an operational point of view.

In light of the volume of products issued annually, EUSIPA would urge ESMA to propose rules that are easily compatible with automated processes. By defining non-standardized and too granular target market criteria, the access of investors to a wide range of products may finally be limited.

Furthermore, standardization and automation are of paramount importance in order to establish processes which allow for an efficient functioning of the distribution of financial instruments in the wider market space with different distributors.
In practice, IT-interfaces between manufacturers and distributors are indispensable in order to match the criteria used. Using a higher degree of granularity, in particular when using terms not defined by law or not used with the same meaning across the industry, would prevent firms from an efficient automation.

Limiting the number and range of products available to clients contradicts the overall aim of MiFID II to give clients access to a wide range of products, including products from third party product providers.

Limiting the range of products would harm the existing open architecture of financial instruments.

With this perspective in mind, EUSIPA sees the wording of the illustrative examples provided in the Annex 4 of the Guidelines as problematic insofar as it is too narrative and does not lend itself easily to a standardized treatment.

It should neither be overlooked that the definition of a standardized format for the target market description is a prerequisite for a smooth functioning of the two-way communication between manufacturers and distributors – which will take place in a "one-to-many" configuration and refer to a very high number of products. It is in particular important:

- To allow manufacturers to establish the Target Market description in due time in relation to a huge amount of financial instruments concerned so that it can be communicated to all relevant distributors of the product and/or make it publicly available for listed products. In today's markets an automation of this process will be necessary and can only be implemented using standardized "light" narratives.

- To allow distributors to receive or get access to the issuer-established Target Market definition and be able to use it so to identify their own target market and distribution strategy, while integrating them into the appropriateness or suitability assessment processes (wherever relevant).

- Also, to allow distributors to come back to the manufacturer with adequate and exploitable information on product sales made outside its pre-identified Target Market it is necessary to have common standards to identify what is a deviation from the reference Target Market.
  Moreover any such feedback needs to be automatized so to allow a proper analysis and the identification of adequate remedy actions by the manufacturer, where needed.

Finally, EUSIPA also notes that a certain level of standardization in the target market description is also necessary in order to achieve a good comparability among the various asset classes and among the various types of payoffs among each of them.

With regard to all of the before, the exchange of any target-market related information concretely requires speaking a common technical language so to allow the relevant details being shared effectively between relevant manufacturers and distributors thereby enhancing a European Capital Market.

EUSIPA notes that some issues persist:

Considering the definition of each criterion, EUSIPA generally agrees with the list provided.

(a) The type of client to whom the product is targeted

EUSIPA agrees with this proposition to use the MiFID II categories (retail client, professional client, eligible counterparty). EUSIPA believes that if the target market were to be described with generic terms such as "private wealth clients" or "sophisticated clients "the criterion "type of client" become highly unclear as amongst manufacturers there is no commonly accepted description of what a "private wealth client" or "sophisticated client" is.

(b) Knowledge and experience

EUSIPA globally agrees with this proposition but needs to have further clarification. For example, a specification should be made whether investors need to have specific knowledge about the product's family characteristics and/or about the technical characteristics of the product (for example, an investor could have an extensive knowledge about common stocks but less knowledge of complex structured product that have stocks for underlying).

We think it is important to stipulate uniform sub-categories applicable for all manufacturers and distributors in order to allow manufacturers and distributors to take advantage of this category. Again, introducing a regime that allows the use of different terms and descriptions for the same subject, will negatively affect the functioning of automation and comparability of the products. It should be considered also that any additional specification as regards knowledge and experience would require data gathering by the distributor. This however could in practice turn out to be very difficult, as many customers tend to refuse cooperating in such a process for various reasons, among others data protection.

Furthermore, we would like to note that the introduction of detailed sub-categories in this category would lead to requirements at the level of the manufacturer similar to those which apply for suitability and appropriateness test at the level of a distributor. According to recital 71 of MiFID II product governance obligations "should apply without prejudice to any assessment of appropriateness or suitability to be subsequently carried out by the investment firm in the provision of investment services to each client, on the basis of their personal needs, characteristics and objectives". It is our understanding

that this means that product governance on the on hand and suitability and appropriateness checks on the other shall be regarded as two separate processes. It would be disproportionate to apply overly granular criteria on the level of the product manufacturer. Moreover, this would also mean that performing such extensive checks on the level of the manufacturer would render the respective check on the level of the distributor meaningless.

In this context EUSIPA would also like to mark-up that only limited information about knowledge and experience will be available in case of non-advised investment services. As the manufacturer will have to establish the target market on the basis of the information which is to be expected at the side of the end customer (only), it would not make sense to add additional criteria to the target market of the manufacturer when the distributor is not in a position to reconcile such information with information about its customers.

EUSIPA wishes it to be clarified that knowledge can always substitute experience and vice versa. This means a client does not necessarily build knowledge exclusively by having already invested in a product; on the contrary, this kind of experience may be very selective and not result in the acquisition of knowledge of all relevant product features. On the other hand, a client may have comprehensive theoretical knowledge or that comprehensive knowledge can be imparted via the delivery of product information previous to a first time investment.

(c) Financial situation with a focus on the ability to bear losses

EUSIPA partially agrees with this proposition. We note however that the examples provided are more focused on a distributor perspective. From a manufacturer perspective, the ability to bear losses must be only theoretical and based on the mechanism of the product. (Such question would be, for instance, whether there is a guarantee or a protection of the capital invested.)

In addition, there should be no inclusion, optional or mandatory, of a maximum proportion of net investable assets as part of a product's target market description.

Whilst the maximum proportion of net investable assets does play a role within the context of a customer's investment strategy it has no relevance for his/her ability to bear losses.
Another consideration that should be taken into account in this context is that the financial situation of a client is not only defined by its net assets, but also by the sum of the overall assets the client is invested in, e.g. real estate, owned company stock etc. Focusing solely on net assets would distort the view on the financial situation of the client. Consequently, the financial situation of any investor depends on multiple criteria that make it very difficult for the manufacturer to come to a final judgement.

Also, the reference value for such expression of a maximum proportion will be of a relative nature and vary from client to client depending on different sizes of amounts to be invested, size of portfolios etc.
Therefore, this target market criterion can only be applied operationally practicable if it remains focused on the clients' ability to bear losses. The corresponding analysis must be conducted at a product level and be strictly standardized. It should be distinct from the individual assessment of each client's financial situation or his/her investment strategy.

Therefore, this category seems most suitable to define the target market if the features of a product are exclusively based on the ability to bear losses.

(d) Risk tolerance and compatibility of the risk/reward profile of the product with the target:

EUSIPA partly agrees with this proposition since it should not be a requirement to rely on PRIIPs.

It should be left to the firm to determine a way to categorize its products, choosing between a risk-oriented attitude or a conservative one that would be applicable to all products, PRIIPs or not PRIIPs, or, alternatively, to choose to rely on PRIIPs risk indicator where relevant and another way to categorize risk (tolerance) for non- PRIIPs products.

In any case, the PRIIPs risk indicator could be used only for financial products subject to the PRIIPs Regulation, meaning "packaged retail and insurance-based investment product" sold to retail investors.

(e) & (f) Clients' Objectives and Clients' Needs:

Basically EUSIPA agrees with this category and its description in the Draft Guidelines. We understand that the category "Clients' Objectives" would in particular cover the sub-categories "investment objectives" and "investment horizon". In order to ensure a smooth interaction between manufacturers and distributors and to ensure comparability of the products across Europe we would propose to limit any sub-categories to those criteria.

EUSIPA does not see the usefulness to make a distinction between clients' objectives and clients' needs. We propose to merge those two linked categories. As examples provided in Consultation Paper do not reflect the explanations given in the Guidelines, EUSIPA is of the opinion that it is not operationally relevant to distinguish clients' objectives and clients' needs.

The category "Clients' Needs" addresses particular needs, which may additionally apply. It is our understanding that such needs do not necessarily need to be mentioned in a target market description, if there are no such particular needs.

> For example, in the case of a "plain vanilla" bonus certificate, there is usually no particular ethical or green component. Furthermore, it is not targeted towards clients of a particular age or a country of tax residence and does not offer a currency protection. Consequently, we would assume that no such need is to be specified when defining the target market for the product. As this category may be left blank in a target market description, we would propose to consider the needs as optional elements of the category "Client's Objective" and to delete the category "Clients' Needs".

In addition to the above, it is to be noted that the use of further criteria does not provide for such advantages as are intended by ESMA. The mentioned examples and other criteria of such kind do not provide for reliable information for any market participant or investor as these terms are not defined.

Examples are the criteria "green investment" and "ethical investment". There is no common or reliable definition or standard of what a green or ethical investment needs, in legal terms, adhere to. Manufactures would have to decide by themselves if they consider a product to comply with "green" or "ethic" criteria. Hence, we are convinced that such additional criteria are not suitable for a reasonable differentiation.

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.

EUSIPA agrees with this approach and does not find a need for ESMA to provide further details.

In particular, EUSIPA supports ESMA's view that the process to identify a target market should take the nature of each product into account. We welcome the view that, for more common products, it will be possible to identify the target market categories on the basis of a common approach for all financial instruments of the same type. A certain level of harmonization is essential in order to avoid unnecessary burdens for manufactures which intend to design a broad range of products for the market.
In our view, this is a really important and critical point. When a manufacturer produces products for the mass retail market, e.g. structured products, the manufacturer often produces a large number of products containing similar or identical features (e.g. pay-off structure), but such products may differ in certain details (e.g. the barrier level). As it would not be possible to conduct a target market assessment in each single case again, it should be possible to allocate certain issuances of products to product types that already went through the required approval procedures.

However, it could be expressed more clearly that for non-advised services relating to simpler and more common products (see paragraph 17 of the Draft Guidelines) the target market could potentially include all the firm's clients for this service.

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

EUSIPA partially disagrees with the ESMA approach.

We basically understand ESMA's position requiring distributors to focus on general consistency of the products to be offered and the related services to be provided. In particular, ESMA requires distributors to put a particular focus on the investment services through which the products will be offered to their respective target markets. ESMA expects that particular attention is paid to those products characterized by complexity/risk features or by other relevant features (paragraph 26 of the Draft Guidelines). In addition, ESMA's approach requires distributors to decide which products are going to be recommended and which products will be made available to clients at their own initiative through execution-only services (paragraph 27 of the Draft Guidelines). All in all, ESMA seems to prefer the distribution of more complex products and products with greater risks only by means of advised investment services (i.e. "investment advice" or "portfolio management" services), rather than by non-advised services (i.e. via "execution only" services or services providing for an "appropriateness test" only).

In the view of EUSIPA there should be no automatic dependency between the nature of a product (or its complexity/risks) and the investment service that would be most appropriate for a client. We are not aware of any empiric research that has proven such dependency so far.

We are concerned by ESMA's statement that investment advice and portfolio management services allow for a higher degree of investor protection, compared to other services provided under the appropriateness regime or under the execution only regime. Such a generic statement does not acknowledge the nature of different clients and their needs as well as the nature of different products and may lead to unnecessary restrictions of distribution of certain products in practice. In some markets,

such as Germany, France, Sweden, Italy and Holland to name but a few, it is quite common that structured products are accessible to retail investors via online brokerage services. Most of the investors who use the online brokerage execution services (i.e. "with appropriateness test" or "via execution only") are quite sophisticated and do not require and do not wish to receive any investment advice.
Complexity and the risks of a product should in that context be strictly looked at separately as these items are not related.
It should certainly remain possible for investors to buy also products which are more risky (e.g. warrants with a leverage factor), but provide also chances of higher returns. Pursuing the approach suggested by ESMA could end up in completely shutting down this market segment and creating an indirect product ban, what is certainly not in the interest of investors.

EUSIPA disagrees with the footnote 16 which seems to contradict the explanations given in that § 39 when ESMA says that "even firms providing investment services under appropriateness or execution-only regime, could be in the position to conduct a more thorough assessment of the target market". EUSIPA feels that under execution only regime, by nature, no thorough assessment of the target market should be required. Under the appropriateness regime, the assessment is limited to the sole categories of knowledge and experience, as stated in § 39. EUSIPA proposes hence to delete the footnote 16.

EUSIPA absolutely disagrees with the following approach "distributors should conduct a thorough analysis of the characteristics of its client base, […] and should use any information and data deemed reasonably useful and available for this purpose" (Paragraph 33 of the Draft Guidelines; paragraph 27 of the Background of the Draft Guidelines.).
This approach is opposed to the principle of proportionality and the over-all approach regarding common products and/or execution only service where only a limited amount of information on clients is required and so available for manufacturers. In addition, the note in paragraph 27 of the Background of the draft Guidelines seem questionable from a data protection perspective where is indicated that distributors for determination of the target market could use data that was collected for other purposes for example anti-money laundering prevention.

For EUSIPA, ESMA's concern is already dealt with in §35 when it deals with the definition of product assortment of distributors and the fact that they should take into due consideration products characterized by complexity/risk features or significant conflicts of interests. As stated in that paragraph distributors should, in that respect, conduct a product assortment by taking into due consideration the manufacturer's target market and distribution strategy.

If all the six criteria should be used in all the three distributions types (i.e. execution-only, appropriateness, suitability), EUSIPA would recommend for each situation to operate a distinction between matching and disclosure criteria as follows:

1. Execution-only: All criteria are disclosure-only.

2. Appropriateness:
   a) Matching criteria:
      i. type of clients
      ii. level of knowledge and experience

   b) Disclosure criteria:
      iii. risk appetite
      iv. ability to bear losses

v. objectives/needs

3. Suitability: all criteria are matching criteria
4. Portfolio management: all criteria are matching criteria

For simple products such as stocks or bonds that are eligible to execution-only, EUSIPA considers that generic target market descriptions common to the entire product class are an acceptable solution if ESMA intends to apply the six criteria to them.

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.

EUSIPA agrees with the importance to clarify the approach taken on hedging and portfolio diversification. Products used in that context represent a significant proportion of the total of transactions carried out and are essential for many investors.

EUSIPA does not agree with the requirement that investments for diversification purpose "should not occur on a regular basis" (Background of the draft guidelines, Paragraph 32.). Indeed, a product could be used to diversify the portfolio of several clients. The diversification purpose should be defined regarding the proportion of the investment inside the clients' portfolio. Moreover, "regular basis" could be differently defined by National Competent Authorities across the European Union and thus create unfair competitive advantages as it is a highly subjective criterion. EUSIPA proposes hence to delete this sentence.

Furthermore, EUSIPA considers that deviations from the target market for diversification purposes should not be reported by the distributor to the manufacturer. Indeed, such information is not relevant for manufacturers as the deviation is neither linked to a wrong definition of the target market nor an inappropriate sale of the product by the distributor. EUSIPA proposes to mention this point in the Guidelines.

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

We would like to emphasize that in legal terms as well as market practice the "manufacturer" is not necessarily identical with the "issuer" of structured products. Neither do Level 1 nor 2 require the "manufacturer" to be the "issuer" (see definition of manufacturer in paragraph 6 of the Draft Guidelines). Particularly in the context of cooperation agreements within a group structure, it is common that products are issued by a special purpose vehicle or a group entity (not subject to MiFID II) while the structuring and other contributions in the value chain are provided by another group entity which may take over the responsibility as product manufacturer. For this reason, the Guidelines should make clear that a distributor's obligation to define the target market is applicable only in case of structured products for which no entity subject to MiFID II assumes the role as manufacturer. Typically, in situations mentioned above, the entity underwriting or placing the products issued by a firm not subject to MiFID II will assume the obligations as manufacturer and can deliver appropriate target market information (see also recital 15 of Commission Delegated Directive of 7 April 2016 (C(2016) 2031 final)).

Accordingly, paragraph 52 should read:

"Where a product has not been designed in accordance with the MiFID II product governance requirements, in particular if no entity assumes the responsibility as product manufacturer according to MiFID II, this may affect the information gathering process or the target market identification:"

In paragraph 6, the definition of manufacturer should be clarified as follows:

"'Manufacturer' means, in accordance with Recital 15 and Article 9(1) of the MiFID II Delegated Directive, a firm that manufactures an investment product, including the creation, development, issuance or design of that product, including when advising corporate issuers on the launch of a new product. In case of more than one entity involved in the creation and launch of an investment product, an entity involved may assume the whole responsibility as manufacturer. In particular in case of products issued by a group entity not subject to the MiFID II product governance requirements, but structured, underwritten or placed by another group entity subject to the MiFID II requirements, the latter may assume the role as manufacturer. Distributors may rely on information provided by such manufacturers."

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

EUSIPA is fundamentally opposed to this approach. In a situation where a product should not be sold to some categories of clients, such categories should be explicitly disclosed in the definition of the target market itself (using the "Client type" and "Knowledge and experience criteria") so to alert distributors and clients regarding the precise scope of investors for who the given product is designed..
EUSIPA understands that "negative" target market definition is not meant to be the exact opposite of a positive one and products could be sold to investors inside this "negative" target market (Draft guidelines, Paragraph 62.). For EUSIPA, the difference between "negative" target market and the area between "positive" and "negative" target market however is not clear as products could be sold to investors belonging to one or the other of those (*de facto* three) categories.

EUSIPA is in particular fully opposed to the systematic use of a "negative" target market.
In line with the proportionality principle, the negative target should, if at all, only be used in very exceptional situations where the sale of a product could potentially be detrimental to a specific category of investors and to whom consequently the product should never be sold but not on a case-by-case basis.

EUSIPA disagrees with ESMA's approach to define the negative target market, referring to the statements made by ESMA in paragraphs 58 et seqq. of the Draft Guidelines. In paragraph 59 ESMA considers that where a positive target market has been stipulated there will be automatically opposing characteristics for investors for whom the product is not compatible and that a firm could define the negative target market by stating that the product is incompatible for clients being outside the positive target market. From our view there is no advantage defining one and the same thing by using positive criteria. Doing so would not create any added information value for distributors or clients. Instead, the description of the target market (positive and negative) would be doubled in lengths and, as a result, it would become more confusing to read and hence difficult to handle. We therefore strongly recommend not make it compulsory to define a negative target market that does not provide for further criteria. Rather, it should

be at the option of the manufacturer or distributor to define an additional negative target market wherever such is useful.

More fundamentally, EUSIPA would like to hint at the impossibility to define a negative target market for certain if not many products. We refer to the wording of art. 9 (9) of the MiFID II level 2 "Commission Delegated Directive with regard to (…) product governance obligations (…)", which states that as a part of the process for identifying the target market "the firm shall identify any group(s) of clients for whose needs, characteristics and objectives the financial instrument is not compatible", suggests itself that the identification of a negative target market may not give results in case of all products. Any process of the identification of "any group(s) of clients" may lead to a result that for a given product there is no such a group of clients for whose needs, characteristics and objectives the product is not compatible. This can be derived also from the official German language wording of above clause which uses the phrase "(…) bestimmt die Firma *etwaige* Kundengruppen."

Market reality strongly supports this argument as many products, in particular those designed for a broad retail investor audience, are unlikely to be found a negative target market for, as such products are deliberately constructed to be compatible with nearly all investor types. This is especially relevant for products aiming at diversifying retail portfolios (so to minimize the overall risk exposure in a retail portfolio).

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

EUSIPA agrees with paragraphs 66 to 69 of the Guidelines but totally disagrees with the other paragraphs related to professional clients and eligible counterparties.

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

EUSIPA is concerned that despite the MIFID level provisions (Art 25) stating that the product governance requirements should apply without prejudice to the MIFID2 regulation on the assessment of appropriateness and suitability, the current draft ESMA consultation could lead to a fundamental change in the way products may be distributed. It would notably restrict their ability to be marketed in an execution-only or an appropriateness mode.

For the latter, EUSIPA notes that in line with the proportionality principle, the appropriateness diligence, which allows a filtering of clients based on their level of knowledge and experience, should remain a possibility for the distribution of moderately complex products (e.g. warrants, certificates) that are currently targeting a population of experienced ("educated") investors.

EUSIPA is also concerned that these guidelines seem to be essentially fitting a distribution model where the manufacturer and distributors have a direct relationship and due to such are in a position outline their mutual responsibilities in a written agreement. The guidelines are likely to pose many difficulties when being implemented for listed products and for distributors working in open architecture.

Examples given in the Annex 4 of the Consultation Paper are too narrative and so not operational. Indeed, manufacturers and distributors need to have synthetic description in order to automate this process.

EUSIPA is interested in the interaction between MiFID II Product Governance requirements and rules on data protection. Regarding the fact that such rules differ from a country to another, clarification is needed on whether those requirements are considered as "legal requirements" that would allow firms to compile and process such information without being in breach of rules on data protections (including sensitive information sharing between manufacturers and distributors).

Further comments:

- **Articulation of the distribution strategy of the manufacturer and its definition of the target market (paragraphs 21 and 22 of the Draft Guidelines)**

  We refer to the statements made by ESMA in paragraphs 21 et seq. of the Draft Guidelines as well as to paragraph 8 of the case study 1 (as set out in Annex 4). The requirements set out in MiFID II and the delegated directive supplementing MiFID II with regard to product governance require the manufacturer to define a distribution strategy in relation to a product.

  ESMA is considering that beyond the distribution strategy a choice should be made as regards (i) the investment service that is to be used by the distributor and (ii) the acquisition channel for the distribution of the manufactured product.

  We believe that this goes beyond Level 1 and Level 2, in particular in relation to the following aspects:
  Investment advice is not the only investment service suitable for products characterized by complexity/risk features.
  In case study 1, ESMA expresses the view that investment advice may be the investment service which is most appropriate when structured products are sold to retail clients. ESMA assumes that investment advice could be most suitable in order to evaluate whether or not a client fits into the target market.
  Such approach would mean that in case of products characterized by complexity/risk features distribution could only take place through investment advice as the only permissible investment service for a distribution. There is no objective reason to assume that solely the investment service investment advice would lead to the best result for a retail investor. As stated above, it is a fact, that in some countries, a broad range of online banks make financial products (including structured products) accessible to clients via execution services without advice. Those clients, who already meet the knowledge and experience requirements that are set out in the appropriateness test, make the investment decision on their own terms. These clients also prefer to have no interaction with any advisor of the bank/investment firm when concluding transactions in financial instruments.
  Excluding these clients by introducing the requirement of mandatory investment advice via the target market definition will deny those clients access to a broad range of services and financial products. Also, offering investors a choice as regards distribution channels is desirable, as it enhances competition among the variety of distribution channels that already exist today. Any limitation of distribution channels may instead violate fundamental rights of these clients and also of manufacturers and distributors.

Once again, we would like to stress the fact that suggesting to sell more complex products and products providing for greater risks only via advised sales and requiring distributors to have detailed knowledge about the clients knowledge and experience before distributing a product (even if they usually provide services free of advice) may have the effect of a "product ban" for more complex products and products providing for greater risks.
We strongly recommend ESMA to reconsider its approach, which might lead to a massive disruption of current distribution practices.

- **Acquisition channels are to be designed by distributors, not by manufacturers**

  ESMA is of the view that the manufacturer should specify the "specific design of the acquisition channel".

  There is no advantage, if the manufacturer suggests a specific design of an acquisition channel to be used by the distributor. Distributors know much better their clients and what kind of products fit for them. In addition, the acquisition channel needs to fit for products of different manufacturers. In practice, the distributor business model will not allow to take into account the suggestions of different manufacturers and the permanent re-design of the acquisition channel. Lastly, it is not the responsibility of the manufacturer to take care for the requisites on the side of the distributor. In our view, this would go far beyond the requirements of MiFID II and infringe fundamental rights of manufacturers.
  Furthermore, the additional criteria and implied hierarchy mentioned as part of a non-advice distribution strategy (face-to-face, telephone, online) should not be part of target market or distribution strategy. Each communication channel delivers the same product information, which makes them equal and clients should not be denied access to a product based on their preference for interaction.
  We strongly urge ESMA not to take such position and in particular not to apply this to all structured products.

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.

For the implementation of the MIFID2, costs will be twofold:

- One-off costs (IT + implementation costs) that may be broken down as such:
  - Initial IT investments
  - procedural enhancements (business, compliance and legal)
  - Consultancy fees
  - Trainings costs
  - Legal costs, including the repapering with distributors

- Running costs:
  - Running IT costs (technology and use of product data)
  - control and compliance costs
  - Information exchange

As regards IT costs, in addition to the development of analytical tools, EUSIPA wishes to stress the importance of setting up of new platforms for information exchange between manufacturers and distributors and also the cost of data (access to new product information repositories to be developed).

* * *

END OF SUBMISSION