

ESMA Consultation paper

Draft guidelines for the assessment of knowledge and competence

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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.

AFG Formation, the training entity of the French Asset Management Association and CFPB, the training organization for the banking industry, have been accredited by the French regulator, AMF, (Financial Markets Authority/Autorité des Marchés Financiers) to organize a certified examination. Each year, we have more than 4 000 exam AMF takers and around 2 500 certificate holders. We are one of the top 3 awarding bodies for this certification.

The AMF has created since 2010 a compulsory professional certification which concerns nine positions (sales person, compliance and internal control officer, compliance officer for investment services, investment analyst, trader of financial instruments, asset manager, clearer of financial instruments, head of financial instrument clearing, head of post-trade services).

AFG Formation-CFPB are in favor of a three years of appropriate experience at the date of the application of the guidelines. The three years should be spent in the financial sector (investment services, asset management or wealth management) and could include experience in one or several firms and in any of the positions identified in these guidelines. We think that experience in different firms with different approaches help to gain knowledge and competence. The three consecutive years might discriminate some types of employees like maternity or paternity leave or many staff members who are working part-time. We recommend a less restrictive rule.

A person who has passed to the professional certification of the AMF must be considered to fulfill the appropriate knowledge and competence and should be exempted of any other assessment.

Q2:ESMA proposes that the level and intensity of the knowledge and competence requirements should be differentiated between investment advisors and other staff giving information on financial instruments, structured deposits and services to clients, taking into account their specific role and responsibilities. In particular, the level of knowledge and competence expected for those providing advice should be of a higher standard than that those providing information. Do you agree with the proposed approach?

We understand that a differentiation in the intensity of the knowledge and competence requirements between investment advisors and other staff giving information could have sense. In France, the AMF's professional certification does not make any difference between information and advice because it concerns the same staff. This staff informs and advises on investment instruments.

Indeed, a customer service employee who does not provide information or advice on financial instruments or carry out the client's instructions does not come under the definition of a sales person.

Along the same logic, the accountant that provides information on the holdings of a client within an employee savings plan communicates information that is available on the internet and is not involved in the sales process. These staff should remain out of the scope of MIF Directive and not subject to the knowledge and competence requirements of article 25.

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

AFG Formation-CFPB globally agree with the curriculum of the draft guidelines, we found that the requirements for staff giving information about investment products and those for giving investment advice are relevant. But it seems necessary to clarify some items:

The curriculum

- **21/23 f:** AFG Formation-CFPB think that 21/23 f should refer to basic knowledge on this topic;
- **23 g:** We think that this topic is not relevant because too far from the day-to-day activities of staff giving information or advice. But if it is necessary to keep it, we recommend limiting it to the fundamentals of portfolio management and benefits of diversification regarding individual investment alternatives.

Assessment, maintenance and updating of knowledge and competence

- **25 b:** French firms must train annually their staff to mandatory training courses especially on compliance matters.
So we suggest that ESMA leaves to the NCAs to adjust the periodicity of the assessment.
- **25 c:** French firms have to respect the Labour code: all new employers have a maximum of 6 month delay to get the French AMF certification. Firms must ensure and record that all their new employees have succeeded to this exam otherwise the employees cannot give information or advice to the clients. We think that this rule should be maintained in France.

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?

The French professional certification curriculum covers more topics that the ESMA requirements for staff giving investment advice. So AFG Formation-CFPB suggest that ESMA refers to this curriculum.

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

French regulation provided a good and complete regulation about the assessment of knowledge and competence. Clearly the introduction of new requirements will impact the organization, many existing procedures will have to be reviewed and rewritten and will be very onerous. If the rules evolve, it will mean new costs of adaptation.

The cost of the staff members who will train the inexperienced members of staff should be taken in account in the assessment of the global cost of the guidelines.

The nature of the reporting to address to the NCA's could have also an influence on the costs.

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

Any evolution of the regulatory architecture for financial advice in France will have an impact on the costs of the stakeholders. AFG Formation-CFPB believe that the French system is far ahead and does not need to be changed.