



GROUPE BPCE

Coopératifs, banquiers et assureurs autrement.

CONSULTATION REPONSE

DATE 10 JULY 2015

Subject **Consultation Paper, Draft guidelines for the assessment of knowledge and competence.**

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To **ESMA**

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The departments of BPCE & Natixis which have provided the response: Natixis Formation Epargne Financière NFEF, BPCE Department Human Resources/Professional training, BPCE Department of Public Affairs.

Deadline: 10 JULY 2015.

Nb: the comments and the opinions contained in this document were prepared on the basis of various information provided within the time limits. They reflect the position of BPCE as of the date of drafting. They may not in any event constitute a decision or a firm and final commitment by Groupe BPCE.

As the second largest banking group in France, thanks to its two flagship brands, Banque Populaire and Caisse d'Epargne, Groupe BPCE and its 115,000 employees serve 36 million clients, of which 8.8 million are corporate clients. The companies of the group perform their banking activities as closely as possible to the needs of individuals and territories.

With 18 Banques Populaires, 17 Caisses d'Epargne, Natixis, Crédit Foncier, Banque Palatine, BPCE International et Outre-mer, etc., Groupe BPCE offers its clients a full range of products and services: solutions for savings, investment, cash management, financing, insurance, investment, etc.

True to its cooperative status, the group assists them in their plans and builds a relationship with them over time, thus contributing to 20% of the financing of the French economy.

Please find below BPCE's response to the public consultation launched by ESMA for the Consultation Paper, Draft guidelines for the assessment of knowledge and competence.

General comments:

On reading the guidelines, it seems to us that the goal of the directions is to ensure that the level of knowledge and competence of people providing information to clients converges with that of people advising them.

We believe that this goal is unfair and that it does not comply with the directive. In fact, article 25.1 of the directive states that natural persons providing advice or information must have the knowledge and competence required to fulfil their obligations. The text does not require that the knowledge and competence be similar.

Article 25.1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article. Member States shall publish the criteria to be used for assessing such knowledge and competence.

In addition, this convergence would appear to be harmful because it creates confusion about the difference between providing information and providing investment advice. Yet, on one hand, it is a matter of providing general information and, on the other, of providing an investment service.

BPCE has joined with the French Banking Federation (FBF) in requesting that we return to a clear definition of information in order to differentiate it from investment advice, notably in the definition provided in point III.6e, in which the concept of “to market” is not clear. III 6 e. Information about financial instruments, structured deposits, investment services or ancillary services means information directly provided by staff to clients in order to market these investment products or services without providing investment advice.

The issue should only involve the overall sales process given that information provided during a sale is not investment advice. It is absolutely necessary that this point be clarified in order to exclude any notion of sale in the definition of information.

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.

First, we believe that it is necessary to emphasize that the consultation must differentiate between what information and advice involve.

It is important to distinguish information from recommendations and from advice to determine the resulting obligations and the knowledge and competence required:

- Information is defined as an objective presentation of facts and figures without commentary or value judgment;
- Recommendations can be general or personalized. A recommendation is a subjective presentation. A general recommendation is not based on an examination of the client's specific situation and is not presented as suitable for their situation. A personalized recommendation is, by definition, specific to the client or based on an investigation/analysis of their situation;
- Advice is defined as providing personalized recommendations to clients, either at their request, or at the request of the PSI. As for investment advice, it is defined as providing personalized recommendations about one or more financial instrument transactions.

With respect to the terms "knowledge and competence", ESMA explains in [point 8](#) what is meant by "knowledge and competence" in its opinion by using the terms "appropriate qualification and experience". [8. ESMA considers that compliance with knowledge and competence requirements under MiFID II requires acquiring an "appropriate qualification" and "appropriate experience" in order to provide relevant services in accordance with the Directive.](#)

This change in terminology results in a hardening of the level 1 text which goes beyond ESMA powers. The terms "appropriate qualification" and "appropriate experience" appear again in [points 9, 10](#) of the principles and in the draft guidelines, in the definitions in [points III.6.3f, III.6g and III.6h](#) and in the knowledge and competence updates in [points 25.a, 25.b, 25.d](#). If the term "appropriate qualification" were to be kept, it should not be understood as a diploma certification (where we would be confronted with a significant inventory-related issue) but as meaning that the person is expected to have sufficient knowledge and know-how which can be verified with a test.

As long as transposition (by the AMF into French law) of the guidelines does not substantially modify the competences required in [article 25 of appendix IV](#), Groupe BPCE believes that it has had a first approach to the training required to master the knowledge needed to exercise the position of investment services advisor in place since October 2013. This offering will no doubt be enriched based on regulatory and market changes which may be provided at a later date.

The Natixis *Formation Epargne Financière* training programme called "*Dispositif de Maintien des Connaissances*" (DMC) covers the obligations described in [articles 24 and 25 of directive 2014/65/EU](#) and in [position 2013-02 of the AMF and ACPR recommendation 2013-R-01](#) on requirements regarding knowledge of clients within the framework of life insurance contract and financial instrument sales. This system is intended for employees who are in sales positions¹ as meant by the AMF and working in the retail market. It covers a major portion of the knowledge which has to be mastered to become an advisor, as meant in point N°2 of these guidelines. The cartography of knowledge covered by the DMC is included in the appendix to the response (DMC cartography by NFEF).

Conversely, the DMC system does not currently provide a way to meet the obligation for minimal experience required in the draft. In our opinion, it will therefore have to be completed with a management tool to monitor the experience acquired throughout the entire learning period.

¹ A salesperson is any natural person responsible for informing or advising PSI customers under the authority of which or on behalf of which they act to carry out transactions on financial instruments (Art 313-7-1 RG AMF)

The criteria used to evaluate the experience acquired should be expressed as an observable completed activity rather than as a period of time in a position.

For example, the experience acquired could be proven by:

- ☐ Client discovery (their personal situation, assets and taxes, their understanding of financial instruments, etc.);
- ☐ Understanding of the client's investment needs (acceptable risk, the length of investment requested, the match between the investment/service and the client's knowledge, etc.);
- ☐ Formalising of the sale (traceability of all aspects of client needs analysis, the sales proposal and information about the product characteristics, the recommended investment period, risk sensitivity, the theoretical average return, etc.).

Ideally, and subject to the AMF's ability to define standard educational content and evaluation methods (together with the market) to "certify" the competences expected at the national level, experience acquisition should be planned both intra- and inter-company.

However, following the AMF verification example, if internal evaluation models specific to each company are admitted, total transportability of the model within a given bank group or a network affiliated with a central body should be put in place².

With respect to III 6 h: *Appropriate experience means that a member of staff has successfully demonstrated the ability to perform the relevant services through recent work. This work must have been performed, on a full time equivalent basis excluding breaks, for a minimum period to be specified by the NCA or another national body identified in the Member State. This period of time can be differentiated depending on the appropriate qualification attained by staff and also depending on the relevant services being provided.* Groupe BPCE believes that the obligation to have five consecutive years of experience cannot be applied within a given company without creating serious discrimination against young women, if maternity and the *Congé Parental d'Education* (parental leave) were a reason to suspend the employment contract "excluding breaks". This would also significantly limit professional mobility regardless if it is geographical between companies or functional between business lines. This would make staff employability more fragile.

Lastly, the best efforts obligation, set at five years of experience, is completely arbitrary and does not correspond to the experience actually acquired in terms of the client typology managed by advisors. What is more, Groupe BPCE tends to prefer a duty to achieve a given result, measured by observable, real and traceable competences.

In addition, in point 25 pages 16 and 17, ESMA states that as long a person has not acquired the appropriate knowledge and competence, they cannot engage in any sales activities, meet with clients or even communicate with clients. 25.d. *ensure that when a member of staff has not acquired the necessary knowledge and competence in the provision of the relevant services, this staff member cannot provide the relevant services until the staff member acquires appropriate experience and an appropriate qualification.*

² Central body as meant in article L.511-30 of the monetary and financial code

25.e. ensure that, where the staff member does not have any appropriate experience in the provision of relevant services to the client, the inexperienced staff member is trained by another member of staff until they are deemed to have gained the appropriate experience.

If that statement from ESMA implies a 5-year obligation for advisors concerned to work in tandem. This measure is not operationally feasible since it would cause a cost escalation of salary expenses and therefore an additional burden for credit institutions competitiveness.

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?

ESMA proposes that the competence and experience of employees be differentiated, that is:

- ✓ On one hand, staff providing investment advice on financial instruments, which should have a higher standard of knowledge and competence;
- ✓ On the other, staff providing information on financial instruments only, for which requirements are lower.

Using the same arguments as those developed by the FBF, Groupe BPCE confirms the market's request to remove from point 20 of these guidelines the obligations for client knowledge required of employees who only provide information. In fact, ESMA includes in points 20 and 21 of the draft guidelines (pages 14 and 15) obligations for knowledge and competence for providing information which are very similar to the obligations required to provide investment advice (points 22 and 23).

Therefore, as stressed by the FBF, the difference between information provider and advisor is based on the concept of personalized information which is only provided by the advisor. It would therefore be preferable to remove from point 20 the obligations required of the information giver related to individual knowledge of the client as well as the reference to taxes and the context of the transaction in point 20b "...including any general tax implications and costs to be incurred by the client in the context of transactions..." and to remove points 20c "understand the total amount of costs to be incurred by the client in context of transactions in an investment product" and 20e "understand the total amount of costs to be incurred by the client for investment services or ancillary services".

In addition, the document states in point 24 that banks must have procedures that clearly differentiate the responsibilities of people providing advice from those who simply provide information. This is unclear given the similarity of the obligations incumbent on each, as described above. "24. Firms should set out the responsibilities of staff and ensure that, where relevant, in accordance with the services provided by the firm and its internal organisation, there is a clear distinction in the description of responsibilities between the roles of providing advice and providing information."

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

In France, there are already clear systems in place via certification and the AMF and ACPR Position and Recommendation of 1 October 2013.

III.6.h. Appropriate experience means that a member of staff has successfully demonstrated the ability to perform the relevant services through recent work. This work must have been performed, on a full time equivalent basis excluding breaks, for a minimum period to be specified by the NCA or another national body identified in the Member State. This period of time can be differentiated depending on the appropriate qualification attained by staff and also depending on the relevant services being provided.

It would be desirable in point 20b to “understand the key characteristics, risk and features of the investment products available through the firm, including any general tax implications and costs to be incurred by the client in the context of transactions. Particular care should be taken when giving information with respect to products characterised by higher levels of complexity” to replace “available through the firm” with “investment products on which they provide information to clients”. In particular, it is particularly difficult to foresee that the information giver may provide information about fiscal impact, considering that tax impact is highly dependent on the client. Taxation is a topic which can typically only be addressed by advisors and not by information providers unless to tell clients they might be concerned by tax benefits or disadvantages.

In addition, “to clients” should be added to point 21.e because there is no reason why they should know the clients outside of their portfolio.

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?

Groupe BPCE agrees with the competences defined by ESMA in point 25 of Appendix 4. It does not want the list to be completed at the time the guidelines are transposed into French law.

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

An analysis of NFEF DMC tool feedback with costs could be carried out. It would be a simple assumption that could be presented as a unit price per employee.

The assumption would not include all of the costs and expenses related to tool implementation (e.g.: tool development costs, training, etc.).

It would be timely to think in terms of inventory and flow. This latter point would include new arrivals.

The DMC system costs €98 without tax as configured today, with a 10% discount based on the volume provided by the entity, i.e., €88 without tax per registration.

NFEF based on the DMC Unit Price x 60,000 employees.

Note: depending on the obligation requirements, the tool will have to evolve and be further developed to include other modules, which will result in additional costs.

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

Primarily licensing, maintenance and upgrade fees for modules and additional development.

Additional comments the BPCE Group would like to include:

With respect to new arrivals (point 25 pages 16 and 17): The FBF wants the current certification system to be maintained. It wants new employees be able to start working within the first six months of their arrival to have the time to pass the certification, to have sufficient knowledge and competence to be in compliance with MIF 2.

Likewise, the review on "at least an annual basis" of training needs is excessive. FBF wants a two-year time frame. A quiz like the one developed for anti-money laundering could be used. "25.b. review, on at least an annual basis, staff development and experience needs, and regulatory developments and take action necessary to comply with these requirements. Firms should ensure that staff maintain and update their knowledge and competence by undertaking professional development or training in the appropriate qualification."

With respect to the time period granted to companies for implementation, which is under 18 months (January 2017), it should be noted that companies must build new modules and train their client relations advisors. Therefore, we are asking that a more suitable time frame of two years minimum be granted, up to the companies.

Lastly, in the example on pages 14 and 18, ESMA states that employees must sign the company's code of ethics. "III.14. Firms should ensure that staff providing relevant services possess the necessary knowledge and competence to meet relevant regulatory and legal requirements and business ethics standards". "The firm adopts a code of ethics to set forth the standards of business conduct and behaviour necessary for the proper provision of relevant services and obtain written acknowledgements from staff that they have read, understood and complied with it".

Assuming that the "code of ethics" corresponds to the code of deontology and contains **provisions on forbidden behaviour and obligations for employees and includes sanctions, the standards belong at least in part in the company rules** and must follow a similar implementation procedure. The procedure consists in obtaining the opinions of the works council, or failing this, of the employee representatives, as well as those of the CHSCT for matters within its remit. It should then be submitted to the labour relations board and forwarded to the health and safety inspector for review.

Company rules should be communicated via posting in the company (enforceable on employees one month following the submission date).

The provisions of company rules, adopted in the proper way, are enforceable on employees and the employer. Their individual consent is not required.

Note that certain Caisses d'Epargne and Banques Populaires have an ethics charter in their company rules and that others do not have a specific charter, but have included rules in their company rules.

ANNEX

Dispositif Maintien des Connaissances (DMC) - Natixis Formation Epargne Financière

		Position Conformité BPCE				Textes réglementaires couverts
Thèmes	Items	Niveau de connaissances	Répartition des 50 questions	Nombre de bonnes réponses attendues	Taux de réussite	
Thème 1			27	23	84%	
Le client et les bonnes pratiques déontologiques	1.1 Le recueil des informations relatives à la connaissance du client (découverte client) Données personnelles : sexe, âge, adresse, situation familiale... Données patrimoniales Données financières Expérience financière Classification	M	7	6	86%	Position AMF 2013-02 Recommandation ACPR 2013-R-01
	1.2 L'obligation de vigilance (LCB/PP - abus de marché)		3	3	100%	Point 8 article 23 - Consultation ESMA 2015/753
	1.3 La primauté de l'intérêt du client Le devoir de conseil, adéquation profil client/produit, service : dans le cadre d'un RDV, le démarchage, la vente à distance/ l'adéquation client et produit ou service		5	4	80%	Article 31-3 RG AMF Article 25 Directive 2014/65/UE
	1.4 Les informations et les documents à donner au client		3	2	67%	Article 24 Directive 2014/65/UE
	1.5 La fiscalité du Particulier		3	3	100%	Point 7 article 20 b - Consultation ESMA 2015/753
	1.6 Le dossier client sur le poste de travail (DRC/préparation du RDV/données absentes et à mettre à jour)		3	2	67%	Article 25 Directive 2014/65/UE
	1.7 La traçabilité, l'archivage (documents à demander au client)		1	1	100%	Article 25 Directive 2014/65/UE
	1.8 La protection des données et des avoirs du client, le traitement réclamations client		2	2	100%	
Thème 2			14	10	71%	
Les titres financiers	2.1 Les différentes typologies de titres financiers	C	5	3	60%	Point 8 article 22 - Consultation ESMA 2015/753 Article 25 Directive 2014/65/UE
	2.2 Les différents types de risques		4	3	75%	Point 8 article 22 - Consultation ESMA 2015/753
	2.3 Les différents types d'ordres		2	2	100%	Point 8 article 22 - Consultation ESMA 2015/753
	2.4 Les titres financiers distribués par le Groupe		3	2	67%	Point 8 article 23 - Consultation ESMA 2015/753
Thème 3			9	6	67%	
L'environnement économique et réglementaire	3.1 Le cadre de tutelle	A	4	3	75%	
	3.2 Les bases de l'économie		2	1	50%	Point 8 article 23 - Consultation ESMA 2015/753
	3.3 Les marchés financiers et les indices		3	2	67%	Point 8 article 23 - Consultation ESMA 2015/753
Total			50	39	78%	

Niveau de connaissances M : connaissances à maîtriser (Connaissances indispensables et incontournables)
Niveau de connaissances C : Connaissances nécessaires
Niveau de connaissances de niveau A : Connaissances à comprendre et à mettre en perspective dans la relation client.