

European Securities and  
Markets Authority – ESMA  
Paris

## **ESMA/2015/753 – Comment to Draft guidelines for the assessment of knowledge and competence**

July 4<sup>th</sup>, 2015

Finanzplaner Forum is the network of nearly 4,000 certified advisors in Austria, Germany, Luxemburg and Switzerland. Finanzplaner Forum aims also on having discussions and close relation to the competent authorities, be it in Europe or in the respective four countries. For Finanzplaner Forum as the network of certified financial advisors and financial planners the best possible knowledge and competencies are key in order to best protect consumer's interests. This was the rationale for Finanzplaner Forum to having submitted in March 2015 together with Österreichischer Verband Financial Planners a draft proposal for qualifications based on Art 25 (1) MiFID II.

Finanzplaner Forum very much applauds the intention and the content of the ESMA draft guidelines. As already stated best qualified advisors are paramount for ensuring advice in the client's best interest. Finanzplaner Forum was especially pleased to learn about the ethical component within the draft guidelines. However, this ethical requirement should be laid down in a more pronounced way. By now, it seems to be 'hidden' in V.I number 13 of the draft guidelines where business ethics standards are mentioned. It is only in Annex V in an example relating to para 24 that the firm is required to adopt a code of ethics. It would be a logical step to require advisers to abide by that code of ethics.

Please find below the comments of Finanzplaner Forum on the draft guidelines.

**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.**

Finanzplaner Forum is convinced that five consecutive years of appropriate experience will satisfy the proof of knowledge and competence. However it is important to emphasize that the 'same relevant services' as stated in the draft guidelines are the two services of giving investment advice and of providing information on financial instruments. E.g. having served in an investment firm's back office does not fulfil the requirement of appropriate experience.

Finanzplaner Forum believes that five consecutive years have not to be made in the same investment firm, it could be different firms as well. However, working in one investment firm should at least be for one year.

The assessment of knowledge and competence should not be conducted by the respective investment firm, but by an independent third party. Considering this grandfathering clause Finanzplaner Forum would like to emphasize that qualifications comprising a higher level of knowledge and competencies as required by these draft guidelines and having the obligation for continuing professional development and abiding by a code of ethics in order to obtain recertification shall be deemed to fulfil all the requirements set out in these guidelines.

**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?**

There is no doubt that giving investment advice requires much higher knowledge and competence than just informing about financial instruments. Finanzplaner Forum is aware of the fact that the differentiation between providing information and giving investment advice is rooted in Art 25 para 1 MiFID II. However, Finanzplaner Forum has some problems with this differentiation because in practical life the borderline is very thin. It is only a small step from providing information on financial instruments to giving investment advice. Recognising that some investment firms would be comfortable with this differentiation, Finanzplaner Forum in contrast recommends to keep the difference in knowledge and competence as small as possible.

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

Finanzplaner Forum welcomes the requirements set out in these draft guidelines.

**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?**

In its opening statement to this comment Finanzplaner Forum has already pointed out that there should be much more emphasis on the obligation for ethical behaviour. Finanzplaner Forum suggests an amendment of V.IV Organisational Requirements para 24. by the following sentence 'Firms should also make sure that staff giving investment advice abide by a code of ethics that requires them to demonstrate ethical judgment, intellectual honesty and impartiality, and act in the best interest of the client in providing professionals services'.

For those giving investment advice an additional training of competencies in customer relation and customer communication should be mandatory.

ESMA should consider the requirement that, while training could be done by the firm itself, the assessment should be performed by an independent third party. This would prevent any conflicts of interests.

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

Finanzplaner Forum as a trade body is not able to provide exact numbers on costs related to the implementation of these guidelines. However, there will be one-off costs caused by verifying the knowledge and competencies of grandfathered people, by training and assessing those not having enough appropriate work experience, and by integrating the monitoring of all these requirements into the compliance function.

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

For sure, additional costs will arise from ongoing training and assessing the learning outcome.

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In our comments we have tried to combine the consumer's best interest with the practitioner's view and would appreciate due consideration of our remarks.

Yours sincerely

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