



Österreichischer Verband Financial Planners

European Securities and
Markets Authority ESMA
103 rue de Grenelle
75345 Paris Cedex 07, France

Wien, 2015-07-03

**Re: ESMA – CP Draft guidelines for the assessment of knowledge and competence –
ESMA/2015/753**

Österreichischer Verband Financial Planners (thereafter OVFP) is the certification body in Austria certifying financial advisers and financial planners. Its mission is to serve the public by certifying advisors and planners that are best educated, having passed a rigorous exam, being obliged to undergo continuing professional development and to abide by a code of ethics in order to being re-certified on an ongoing basis. OVFP is an affiliate of Financial Planning Standards Board Ltd., and thus part of FPSB European Forum, as well as an affiliate of European Financial Planning Association AISBL. In these capacities, OVFP is certifying EFA® European Financial Advisors and CFP® CERTIFIED FINANCIAL PLANNER professionals.

It goes without saying that the highest possible knowledge and competencies for investment advisors are key in order to best protect consumer's interests. This was the rationale for OVFP to having submitted in March 2015 together with Finanzplaner Forum a draft proposal for qualifications based on Art 25 (1) MiFID II.

OVFP 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. OVFP was especially pleased to learn about the ethical component within the draft guidelines. However, this ethical requirement should be drafted 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 Österreichischer Verband Financial Planners OVFP 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.

OVFP 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. Serving for five years e.g. in back office does not fulfil the requirement.

OVFP believes that five consecutive years of experience 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. While considering this grandfathering clause OVFP would like to highlight that qualifications, comprising more 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 gain recertification (e.g. CFP®, EFA ®), shall be deemed to fulfil all the requirements set out in these guidelines.

Being aware of the fact that the above mentioned designations might be too high a level for retail financial services OVFP is willing and ready to introduce a designation fulfilling all the requirements of this draft guideline, as laid out in our proposal dated 20 March 2015.

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 higher knowledge and competence than just informing about financial instruments. OVFP 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, OVFP 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. While recognising that some investment firms would be comfortable with this differentiation, OVFP recommends in the client's best interest 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?

OVFP agrees with 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 OVFP has already pointed out that there should be much more emphasis on the obligation for ethical behaviour. OVFP 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 professional services'.

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

In addition 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 help preventing any conflict of interests.

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

OVFP as a certification 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 competence 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 as a result of these proposed guidelines?

For sure, additional costs will arise from ongoing training and assessing the learning outcome. However we are convinced that by modern means of training these costs could be significantly reduced.

On behalf of the Executive Board of Österreichischer Verband Financial Planners I would like to thank for the opportunity to comment on this very important topic and do hope that our deliberations will find due consideration.

Yours sincerely



Prof. Otto Lucius, CFP®, EFA®
Chairman

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