VERBAND FINANCIAL PLANNERS

ESMA Consultation paper on certain aspects of the MiFID II suitability requirements

Österreichischer Verband Financial Planners (OVFP) is the premier organisation in Austria for setting and keeping highest quality standards in financial advice and financial planning, and is also active in financial education of consumers. It is part of FPSB Europe and member of EFPA Europe.

For OVFP consumer protection and advice in the client's best interest is paramount. This is the rationale for OVFP to respectfully submit the following comments.

OVFP is very much in line with the intention of the ESMA consultation paper to set clear guidelines for advice in the client's best interest which includes suitability as a crucial element. It is our deep-rooted conviction that advising clients on the best suitable financial instruments is key, while always keeping in mind the client's best interest.

Given the fact that preparations for the implementation of MiFID II into the respective national legal acts is already finished and the industry is very far in the process of implementing legal requirements into operational practice, with only three months left until the news requirements become active, we as OVFP as well as a large part of our members, advisors and planners, are concerned that new requirements are set up at a rather late stage. To our knowledge software implementation already in place will have to be changed in 2018 in order to meet the new guidelines.

Seen aside from these concerns we are very pleased to learn that ESMA is determined to introduce suitability requirements also for digitalised financial services advice (robo advice as well as digitalised portfolio management). This is a very important step towards a level playing field between human and digital advice/portfolio management.

Please find below the comments of OVFP on the consultation paper:

Q1: Do you agree with the suggested approach on the information to be provided on the suitability assessment and specifically with the new supporting guidelines on robo-advice? Please also state the reasons for your answer.

It goes without saying that information has to be up-to-date, accurate and complete. We highly welcome the integration of Robo advice into this guideline. Some irritation however was raised by the wording of V.I para 18 that firms should avoid stating or giving the impression that it is the investor who decides on the suitability of a financial instrument. This is absolutely correct in the case of robo advice. But given a face-to-face advice it contradicts the MiFID II paradigm of an investor making informed investment decisions. Perhaps a clarification that para 18 is directed to robo advice would be helpful.

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Q2: Do you agree with the suggested approach on the arrangements necessary to understand clients and specifically with how the guideline has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.
OVFP is very happy that behavioural biases are mentioned not only in this guideline but throughout the CP. We are of course very positive with the suggested guideline. Regardinf the emphasis on theses biases it would have been useful to include at least basics of behavioural finance into the criteria for assessing knowledge and competencies of investment advisors (ESMA 2015-1886).
For certified financial advisors like EFA® or certified financial planning professionals like CFP® the requirement laid out in para 26 is part of their daily business. Here the guideline requires information on personal circumstances like marital status etc. However for advisors in retail business this will be a big barrier as the advice process is in most cases assisted by IT systems. Here again the timing is not very favourable.
With respect to the assessment of the risk a client might lose his job we are quite sceptical that this requirement is realistic. This is especially true in the light of employment situations changing very quickly.

Q3: Do you believe that further guidance is needed to clarify how firms should assess clients' ability to bear losses?
No, we do not see any need for further guidance.

Q4: Do you agree with how the guideline on the topic of 'reliability of client information' has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.
OVFP agrees in general. We just have some concerns on practicability and would like to comments on two topics:
Annex III Para 44 aims on objective criteria giving examples. But even in these cases firms will remain dependent on the adequacy and correctness of client's information.
We welcome the use of the wording 'risk perception' in para 45. But for OVFP the next logical step is missing, as ESMA should require a scientifically valid and reliable tool for assessing client's risk perception, based on the findings of cognitive psychology.
At this point OVFP would like to emphasize again the importance of behavioural finance in financial advice. As laid out in our answer to Q2 the question has to be raised again why this topic had not been included in the criteria for assessing knowledge and competence of investment advisors.

Q5: Do you agree with the suggested approach on the topic of 'updating client information'? Please also state the reasons for your answer.
Yes, OVFP agrees.

Q6: Do you agree with the suggested approach to conduct the suitability assessment for a group of clients, especially where no legal representative is foreseen under applicable national laws? Please also state the reasons for your answer.
Being a certifying organisation, we cannot comment on this topic.

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Q7: Do you agree with the suggested approach on to the arrangements necessary to understand investment products for the purposes of suitability assessment? Please also state the reasons for your answer.
OVFP agrees in general. There is just a question why reliance solely on data providers should be detrimental (annex III para 72). Perhaps the phrasing is misleading. Of course firms have to understand the products they offer to their clients. And they should have a procedure for that. But to our perception it doesn't make a difference if information is provided directly by the product provider or via a data provider, give this latter source is reliable.

Q8: Do you agree with the additional guidance provided with regard to the arrangements necessary to ensure the suitability of an investment? Please also state the reasons for your answer.
OVFP agrees. Especially Annex III para 85 is seen as very important as it addresses automated advice. Just for clarification we suggest that the wording of the first sentence of para 86 be changed into 'Firms providing robo advice should **in addition** adopt …'. This would give more power to the requirements of para 85 which have to be followed by robo advisors as well.

Q9: Do you agree with the suggested approach for ensuring that firms assess, while taking into account costs and complexity, whether equivalent products can meet their clients' profile? Please also state the reasons for your answers.
OVFP is afraid that these requirements of this guideline would present a very high burden for firms with respect to product governance. It has to be stated that an obligation for product governance for distributors is nowhere stated in text of MiFID II Directive. This was introduced on level 2.

Q10: Do you agree with the suggested approach for conducting a cost-benefit analysis of switching investments in the context of portfolio management or investment advice? Please also state the reasons for your answer.
In general we agree. But it has to be kept in mind that all these cost-benefit analyses are just estimations as the future performance of any financial instrument is unknown – and this should be communicated clearly to the client!

Q11: Do you believe that further guidance would be needed with regard to the skills, knowledge and expertise that should be possessed by staff not directly facing clients, but still involved in other aspects of the suitability assessment? Please also state the reasons for your answer.
As already mentioned further guidance on including basics of behavioural finance would be helpful. OVFP would also appreciate some degree of harmonisation of the continuing professional development requirement. Austria for example requires 15 hours per year for advisors, Spain 30 hours per year, and Germany doesn't mention CPD requirements at all, at least by now.

Q12: Do you have any further comment or input on the draft guidelines?
No, we are fine with the guideline as is.

Q13: 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)? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.
As a certifying organisation we cannot judge costs and resources. But our concern has to ne voiced again that these draft guideline shave been released almost too late as the industry is by now already in the process of implementing their solutions to meet the requirements of MiFID II legislation.

We do hope that our comments are helpful and would appreciate if they could find due consideration.

Yours sincerely

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