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Your ref., Your message of Our ref., person in charge Extension Date

BSBV 64/Horvath 3141 5th Oct 2017

**ESMA - Consultation on certain aspects of the MiFID II suitability requirements**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as legal representative of the entire Austrian banking industry, appreciates the possibility to comment on the above cited consultation document and would like to submit the following position:

We want to emphasise that those parts which do not find a legal basis in the MiFID II as well as the corresponding Delegated Regulation seem excessive and should not be included in the final version of the Guidelines.

**Recital 56**

The above mentioned concerns in praticular Recital 56: It is required that a written policy regarding the suitability assessment has to be handed over to the customer. According to 54 (6) delReg (EU) 2017/565 investment firms have to establish and implement a policy, but there is no obligation to ex ante hand over this policy to the customer or that the customer has to be informed.  
   
**Recital 26**

The required data to obtain the necessary information for the suitability assessment is partly exaggerated, for example in the section "marital status" and "employment situations” (e.g. future loss of job is likely). The significance is questionable or the description is undefined, so these points should be deleted.  
   
**Recital 38**

"For example, more in-depth information would usually need to be collected for potentially vulnerable clients." We believe this requirement is excessive. It should be sufficient if the information necessary to assess the appropriateness and suitability is obtained, no additional and more stringent criterion should be introduced.

**Recital 41**

"Information about a client's financial situation includes information about his investments."  
Here "when necessary" should be added. Banks do not always need this information in detail (list of foreign deposits, for example).

**Recital 68**

These requirements partially correspond to the requirements of the ESMA Product Governance Guidelines, e.g. RZ 71 ("Firms should also assess appropriately ... the level of complexity of products ...."). To avoid redundancies overlaps should be taken into account.

**Recital 83 - cluster risk**

A separate information is required that customers invest in a producs offered through self-placment models. The customer already receives sufficient information in this context, namely on the one hand that he is offered a dependent investment advice, and hence there is a restricted product universe. On the other hand, the customer receives information on bail in. So the customer is in a position to anticipate that own products will be offered to him. Such an additional obligation would lead to a deterioration of dependent advice in relation to independent advice. This separate information obligation should therefore be deleted.

**Recital 87**

Usually there is a myriad of alternatives to each individual possible investment. Regarding dependent advice with a consequently restricted product universe we do not see an obligation to assess alternatives for products offered to retail customers before giving an investment advice and to systematically use this assessment as a basis for recommendations. This would lead to a disproportionate administartive burden in the advice process.

**Recital 91**

"Firms should be able to justify those situations, where…" Here a clarification that this requirement relates only to its own product range (if an own product is more expensive than a foreign product, it should not be justified) would seem appropriate.

**Recital 99 (and subsequent recitals)**

The MiFID II ESMA Guidelines for the assessment of knowledge and competence provide (together with NCA-regulation) sufficient provisions. In the sense of simplification and avoiding redundancies this guideline should therefore be removed.

We ask you to give our remarks due consideration.

Yours sincerely,

Dr. Franz Rudorfer

Managing Director

Division Bank and Insurance