

Warsaw, 14 October 2019

DZ.05.054.GW.2019

*European Securities and Market Authority
103 Rue de Grennelle
75007 Paris France*

Dear Sir or Madam,

Please find below comments and remarks from the Bank Gospodarstwa Krajowego as regards the consultation on Guidelines on certain aspects of the MiFID II compliance function requirements.

Yours faithfully

Bank Gospodarstwa Krajowego (hereinafter: Bank) is a state development bank whose mission is to support the social and economic development of Poland and the public sector in the fulfilment of its tasks.

Bank is a financial partner actively supporting the entrepreneurship and making effective use of development programmes. It is the initiator of and the participant in cooperation between business, public sector, and financial institutions.

Bank Gospodarstwa Krajowego would like to thank for the possibility to comment the draft ESMA guidelines on certain aspects of the MiFID II compliance function requirements (hereinafter: Guidelines).

Due to recent rapid growth of regulatory changes with reference to financial sector, compliance risk has become one of the most significant ongoing concerns for all financial institution executives. Activities aimed at mitigating compliance risk are of great importance also for our Bank. From this point of view proposed revised set of guidelines in the field of compliance function is positively assessed by Bank.

Proposed changes generally derive from the MiFID II Delegated Regulation and aim at adjustment to that regulation. In Bank's opinion new Guidelines address sufficiently the most important aspects associated with identification, assessment and monitoring of compliance risk. Especially supplementary reference to 'any national implementing provisions' and indication

of mandatory compliance reports required under the MiFID II Delegated Regulation as a monitoring tool (General guideline 2) seems reasonable. Bank also fully agrees with inclusion of remuneration policy and product governance policies and procedures as important aspects of firm activity/organisation with should be consulted with compliance function within its advisory and assistance obligations (General guideline 4). In our opinion this approach is consistent with the MiFID II Delegated Regulation. Moreover, Bank sees merit in revising General guideline 5 and addition of new general guideline 6 relating to the *'skills, knowledge, expertise and authority of the compliance function'*. In addition, new wording of general guidelines 7 – 11 also does not raise uncertainties.

Nevertheless, Bank would like to express certain concerns with regard to a scope of draft General guideline 3 dedicated to reporting obligations of the compliance function, especially with regard to content of the compliance function reports.

First of all, Bank is of the opinion that this guideline should directly emphasis proportionality principle. It should be stated that when preparing written compliance report to senior management the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business should be taken into consideration. This aspect is not directly underlined in this particular guideline.

Secondly, from our point of view not all information required by the Supporting guideline 32 should be included in compliance report to senior management. Supporting guideline 32 among others requires to include in the report information on manner of monitoring and reviewing. In our opinion rather adequate policies and procedures designed to detect any compliance risk implemented in the firm should determine how the compliance function monitors the development and review of the obligations under Directive 2014/65/EU and national implementing acts and how possible risks of failure by the firm or its staff to comply with these obligations are discovered at an early stage, but not the compliance reports. In Bank's view, approach presented in the Supporting guideline 32 would cause unnecessary repetition of information in two different types of documents, i.e. policies/procedures and compliance reports.

Lastly, in our opinion the scope of compliance function ad hoc reports might differ from reports prepared on annual basis. Usually ad hoc reports are presented to senior management on account of specific findings, identification of significant compliance risk, important regulation changes and et cetera. Therefore, no necessity to present all information required by the Supporting guideline 32 within ad hoc reports prepared by compliance function. We would like to suggest to provide addition direct explanation in this regard in the Supporting guideline 32 or 36 in order to clear underline that the scope of ad hoc report may be different than the scope of annual compliance report. Bank also would like to suggest to add an additional remark in the Supporting guideline 32 that information presented by the compliance function to the senior management more frequently than once a year could be excluded from the annual compliance report.

Dyrektor
Departament Zgodności

Anna Trytek
Compliance Officer