



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurances

BIPAR RESPONSE

ESMA Consultation Paper Guidelines on certain aspects of the MiFID II compliance function requirements

15 October 2019

BIPAR Register ID number: 58041461167-22

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BIPAR is the European Federation of Insurance Intermediaries. It groups 50 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.

Besides some large multinationals, the insurance intermediation sector is composed of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services.

BIPAR is a member of the World Federation of Insurance Intermediaries (WFII).

BIPAR welcomes the opportunity provided by ESMA to comment on its *“Consultation Paper on Guidelines on certain aspects of the MiFID II compliance function requirements”*.

Many of the financial intermediaries/advisors who are members of BIPAR’s national member associations, are micro to SME-type companies, providing advisory services to their clients. We have focused our input on this consultation paper on the application of the proportionality principle in the framework of the draft guidelines.

Q16: Do you believe that guideline 9 should be further amended and/or supplemented? Please also state the reasons for your answer.

Q17: Do you agree that, subject to the proportionality principle, a firm should consider establishing and maintaining a core team of compliance staff whose sole area of responsibility is MiFID II? Please also state the reasons for your answer.

Q18: Do you believe that guideline 10 should be further amended and/or supplemented? Please also state the reasons for your answer.

The draft ESMA guidelines contain some reference to the proportionality principle as set out in article 22(1) second paragraph of the MiFID II Delegated Regulation, adding that the guidelines: *“apply to firms taking into account the nature, scale and complexity of their respective business, and the nature and range of investment services and activities undertaken in the course of their business”*.

BIPAR believes however that for draft guideline 9 (“proportionality with regard to the effectiveness of the compliance function”) and draft guideline 10 (“combining the compliance function with other internal control functions”) it may be useful for the guidelines to be more specific on the application of proportionality.

We believe that the level of risk should be taken into account when applying the proportionality principle.

Also, for small or micro-sized firms, it should be clear that it is **de facto** impossible having:

- a full-time position for compliance tasks (guideline 9, new paragraph 69: *“A firm may fall, for example, under the proportionality exemption if the performance of the necessary compliance tasks does not require a full-time position due to the nature, scale and complexity of the firm’s business, and the nature and range of the investment services, activities and ancillary services offered”*.) or
- a core team within compliance staff members whose sole area of responsibility is MiFID compliance (guideline 10, new paragraph 78: *“If appropriate to the nature, scale and complexity of the business, and taking into account the nature and range of investment services and activities undertaken by a firm in the course of that business, the firm should consider establishing and maintaining a core team within the compliance function staff members whose sole area of responsibility is MiFID compliance.”*).

We believe that this aspect of proportionality could be reflected in the final guidelines more explicitly.