

TO ESMA:

Madrid, October 15, 2019

**Ref: Guidelines on certain aspects of the MiFID II compliance function requirements.  
Consultation Paper**

To whom it may concern:

The Consejo General de Economistas of Spain, as a public law corporation at the service of Economists and citizens in general, and as a corporation representing 80% of the Financial Advisor Entities (Empresas de Asesoramiento Financiero - EAF) registered with the CNMV, appreciates the opportunity to respond to ESMA's consultation paper Guidelines on certain aspects of the MiFID II compliance function requirements.

Our comments mainly refer to the Investment Advisory Service, as the members of our registry are exclusively Financial Advisory Entities.

**Q1: Do you believe that guideline 1 should be further amended and/or supplemented?  
Please also state the reasons for your answer.**

**No. We consider that this is enough specified. We regard that the indication of establishing a work programme of the compliance function is appropriate, both to identify its risks and for their monitoring.**

**Q4: Do you agree with the addition to paragraph 26?**

Yes. We consider it opportune fundamentally in those areas in which the **the compliance function** has detected the existence of default risks, being able to contact clients or a sample of clients, to know in depth the problem and to be able to solve it.

**Q5: Do you agree with the suggested general content of the compliance function reports (paragraph 31 of the guidelines)? Please also state the reasons for your answer.**

Yes, We consider that the structure proposed in paragraph 32, can be of great utility when preparing the compliance function reports .

**Q6: Do you agree with the suggested content of the compliance function reports in relation to product governance arrangements (paragraph 32 of the guidelines)? Please also state the reasons for your answer.**

The suggested content of the reports is very adequate for the entities that manufacture the product. In the case of distributors, mainly in cases where they distribute the product outside the objective market.

In the case of the investment advisory activity we don't see it so relevant, we consider it more important that the regulatory compliance report reflects whether the suitability of the product for the client to which it has been recommended has been analyzed.

**Q7: Do you agree that the information that should be included in the compliance function reports should be proportional to the complexity and level of risks of the financial instruments manufactured and/or distributed by the firm? Do you believe that additional criteria should be taken into account? Please also state the reasons for your answer.**

Yes, it is essential, but not only must be proportional to the complexity and the risk level of the financial instruments produced and/or distributed by the firm, but also to the nature and scale of the service provided.

**Q8: Do you believe that further guidance is needed to clarify how firms should address the potential conflicts arising from the combination of the complaints management function with the compliance function? What practical solution could be envisaged?**

No, we consider that in small entities the combination of the claims management function with the compliance function is possible. In large entities or those which provide many services, the functions should be separated.

**Q9: Do you believe that further topics/areas should be included in the compliance function reports?**

No. In any case it depends on the entity of the services it provides and the type of clients and products with which it works.

**Q10: Do you agree with the approach taken for the review of guideline 4? Do you believe that guideline 4 should be amended and/or supplemented further? Please also state the reasons for your answer.**

No. We consider it positive that examples of policies have been included in which the compliance function should participate actively.

**Q12: Do you agree with the creation of a new guideline solely focused on the skills, knowledge, expertise and authority of the compliance function? Please also state the reasons for your answer.**

Yes. We consider that the division into two guidelines perfectly clarifies, by one side, the organization of the compliance function, by the other side the requirements that must be met.

**Q13: Do you agree with the additions to guideline 6 (formerly part of guideline 5)?**

Yes

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

In our opinion this is essential. In smaller investment firms, with a small range of activities, it is essential to apply the proportionality principle established in article 22 (part 4) of the Delegated Regulation MIFID II and in section 17 of this document "The guidelines apply to companies taking into account the nature, scale and complexity of their respective activities, as well as the nature and range of services and investment activities carried out in the course of their activities"

So that, we consider that the regulatory compliance function, in an investment company that can benefit from the exemption for reasons of proportionality, this doesn't require it to be a full-time or exclusive job. That means that, it is essential for small entities that the regulatory compliance function can perform other functions in the entity.

**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.**

We have it in the answer 16.

**Q21: Do you agree with the amendments made to guideline 12? Please also state the reasons for your answer.**

We believe that what is exposed in point 92 is appropriate, regarding an annual questionnaire with information on compliance, taking into account the principle of proportionality, the questionnaire was standardized and adapted to the type of entity.

Yours faithfully



Victoria Nombela

Secretaria Técnica Economistas Asesores Financieros

Consejo General de Economistas de España