

BIPAR Response

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ESMA Consultation Paper "Guidelines on certain aspects of the MiFID II remuneration requirements"

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BIPAR is the European Federation of Insurance Intermediaries. It groups 47 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 (WFI).

Introductory remarks

BIPAR welcomes the opportunity provided by ESMA to give its views on the “Consultation Paper Guidelines on certain aspects of the MiFID II remuneration requirements”.

BIPAR is the European Federation of Insurance and Financial Intermediaries. It groups 47 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.

Our ongoing concern is the **proportionality** of these guidelines. As our members are mostly SMEs and micro-type operators, only proportionate requirements which take full account of the size of these firms, will allow them to continue to serve their clients and offer choice to the often smaller (potential) investors.

- In micro- and smaller firms for instance, individual people will have to be able to combine certain functions and this has to be taken into account.
- Contrary to the 2012 consultation paper for the 2013 Guidelines, the current consultation paper does not explicitly refer to the need of reading the Guidelines together with the proportionality principle as set out in the MiFID II framework (now recital 33 and article 34 of the Commission Delegated Regulation (EU) 2017/565). We would appreciate such an explicit statement in the guidelines so that also supervisors will apply proportionality. The 2012 consultation paper in this respect explicitly stated in paragraph 34, p 12: *“When referring to organizational requirements, these guidelines should be read together with the proportionality principle as set out in Article 22 of the MiFID Implementing Directive. This will give firms the necessary flexibility to comply with the guidelines according to the nature, scale and complexity of their business. For example, the guidelines on controls are applicable to small firms as we expect them to have appropriate and proportionate controls”*. We hope that the attention and reference to proportionality will be reflected and clarified in the final guidelines. It should be clarified that proportionality has to be applied in the application and in the supervision of these Guidelines.

Please find below more detail to some of the questions.

BIPAR remains at the disposal of ESMA and looks forward to contributing to future discussions.

Q1: Do you agree that career progression is likely to have an impact on fixed remuneration and that, consequently, firms should define appropriate criteria to align the interests of the relevant persons or the firms and that of the clients in respect of all types of remuneration (not just in respect of variable remuneration)? Please also state the reasons for your answer.

BIPAR reply:

With regard to **career progression**, career progression is indeed likely to have an impact on fixed remuneration, just as many other factors may influence fixed remuneration. We do not believe that Guidelines should enter into this level of detail. Managers should have a wide spectrum of choices (of course within the legal limits) in their management decisions.

Q2: Do you agree with the suggested approach on career progression? Please also state the reasons for your answer.

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Q3: Do you agree that, to align the interests of relevant persons or the firms with the interests of clients on a long term basis, firms should consider the possibility to adjust remuneration previously awarded through the use of ex-post adjustment criteria in their remuneration policies and practices (such as clawbacks and malus)? Please also state the reasons for your answer.

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Q4: Do you agree with the suggested approach on ex-post adjustment criteria? Please also state the reasons for your answer.

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Q5: Do you agree with the added focus and suggested approach on the remuneration policies and practices for control functions and members of the management body or senior management? Please also state the reasons for your answer.

BIPAR reply:

As mentioned in our introductory comments, we have a concern regarding the proportionality of the guidelines: proportionality in the application and in the supervision of these Guidelines. As our members are mostly SMEs and micro-type operators, only proportionate requirements which take full account of the size of these firms, will allow them to continue to serve their clients and offer choice to the often smaller (potential) investors. In micro-firms for instance, individual people will have to combine certain functions, and this has to be taken into account.

In some markets it is becoming difficult to find good candidates for certain functions. Smaller intermediaries are in competition with large entities in terms of people management and their HR systems and remuneration systems need to be flexible and adapted to local market circumstances in order to enable also work-life balance requirements of the employees and personnel. The intermediaries we represent are (geographically) spread, this aspect should be taken into consideration (as an aspect of proportionality in the application and supervision of the requirements).

Contrary to the 2012 consultation paper for the 2013 Guidelines, the current consultation paper does not explicitly refer to the need of reading the Guidelines together with the proportionality principle as set out in the MiFID II framework (now recital 33 and article 34 of the Commission Delegated Regulation (EU) 2017/565).

The 2012 consultation paper in this respect explicitly stated in paragraph 34, p 12: *“When referring to organizational requirements, these guidelines should be read together with the proportionality principle as set out in Article 22 of the MiFID Implementing Directive. This will give firms the necessary flexibility to comply with*

the guidelines according to the nature, scale and complexity of their business. For example, the guidelines on controls are applicable to small firms as we expect them to have appropriate and proportionate controls".

In the current consultation paper, p 25, point 35, the draft text states that: *"As such, the remuneration of control functions' staff should be based on function-specific objectives. In addition, the variable part of the remuneration of staff in control functions, if any, should not be linked to quantitative commercial performance of relevant persons whose remuneration they are in charge of designing and/or controlling. Where the remuneration of the control functions' staff includes a component based on the firm's commercial performance (e.g. sales volume), the risk of conflicts of interest may increase and should be properly addressed through the use of appropriate qualitative performance or adjustment criteria.*

For micro- and SME- size intermediaries we suggest making a specific reference to the need for a proportionate application and supervision here. The development of SMEs is also on the Commission's agenda/work programmes. Attracting good people and having flexibility in the employment conditions are important factors.

Q6: Do you believe that guideline 1 should be further amended and/or supplemented? Please also state the reasons for your answer.
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Q7: Do you agree that the remuneration policy should not only be reviewed on a periodic basis but also upon the occurrence of certain ad hoc events as described in new general guideline 2? Please also state the reasons for your answer.

BIPAR reply:

Point 39 (page 26) states that *"it should be reviewed upon any **relevant** amendment to the business activities or structure of the firm. Where the review reveals that the remuneration policy does not operate as intended or that there is a residual risk of detriment to the firm's clients stemming from it (crystallised or not), the remuneration policy should be amended in a timely and efficient manner".*

We want to stress the importance of the word "relevant" amendment. This is important for proportionality reasons.

In the same line, we stress the importance of point 43, page 27, which states that: *"**Depending on the size of the firm and complexity of its business model and of the investment services and activities provided**, the review of the remuneration policy may also require the involvement of other control functions (such as the risk management and/or internal audit functions) to ensure that appropriate performance and risk adjustment criteria are used.*

Q8: Do you agree that the persons involved in the design, monitoring and review of the remuneration policies and practices should have access to all relevant documents and information to understand the background to and decisions that led to such remuneration policies and procedures? Please also state the reasons for your answer.
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Q9: Do you believe that guideline 2 should be further amended and/or supplemented? Please also state the reasons for your answer.
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Q10: Do you agree with the amendments made to guideline 3? Please also state the reasons for your answer.

BIPAR reply:

In draft guideline 3, ESMA proposes to add to point 49 re. outsourcing the part in bold: *49. When outsourcing the provision of investment services, firms should have in mind the best interests of the client. Where a firm is seeking to use another firm for the provision of services it should check that the other firm’s remuneration policies and practices follow an approach consistent with these guidelines. **In addition, firms should avoid setting overly complicated outsourcing or distribution structures (including through the use of tied agents) which may make it difficult for the firm to monitor the compliance risks with these guidelines and with the conflicts of interest and conduct of business policies and procedures in the area of remuneration or increase the risk of detriment to clients’ interests.***

When ESMA refers to distribution structures, it should be clear that where the distributors are themselves regulated at national level by the (national implementation of) the MiFID II framework, it is not up to the manufacturer/ provider to “supervise” the distributor. This distributor will be subject to supervision already on his/her own account. An issue that may need study in this respect is when certain tasks are outsourced to service providers (for example call centers) outside the EU.

Q11: Do you believe that guideline 3 should be further amended and/or supplemented? Please also state the reasons for your answer.

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Q12: Do you agree with the deletion of Section V.III. of the 2013 guidelines? Please also state the reasons for your answer.

BIPAR reply:

Where guidance has become obsolete, it should indeed be deleted.

Q13: Do you agree with the arguments set out in the cost-benefit analysis in Annex IV? Do you think that other items should be factored into the cost-benefit analysis and if so, for what reasons?

BIPAR reply:

In the cost-benefit analysis (BIPAR note, this is Annex II, not Annex IV) ESMA lists amongst the benefits on p 16, point 9.f): “restoring investors’ confidence in financial markets”.

MiFID II has strengthened the legislative framework and is not a standalone framework but is accompanied by a whole set of other recent European rules that apply to the financial sector and to the intermediaries BIPAR represents. We believe negative language such as “restoring confidence” is no longer at its place. Alternative wording could be that Guidelines **contribute** to confidence.