



**Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken · BVR**

Schellingstraße 4
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Berlin, 7 October 2022

Comments

ESMA Consultation – Review of the Guidelines
on MIFID II product governance requirements

EU Transparency Register No 22330076571-75

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The **National Association of German Cooperative Banks (BVR)** is the umbrella association for the cooperative banking sector in Germany. Germany's local cooperative banks form one of the most extensive banking service networks in Europe, with 772 institutions and 8,074 branches.

Q1: Do you agree with the suggested clarifications on the identification of the potential target market by the manufacturer (excluding the suggested guidance on the sustainability-related objectives dealt with in Q2)? Please also state the reasons for your answer.

For the answer to this question, please refer to the comments submitted by the GBIC. The GBIC is the joint committee operated by the central associations of the German banking industry. These associations are us, the BVR, for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

Q2: Do you agree with the suggested approach on the identification of any sustainability-related objectives the product is compatible with? Do you believe that a different approach in the implementation of the new legislative requirements in the area of product governance should be taken? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

Q3: What are the financial instruments for which the concept of minimum proportion would not be practically applicable? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

Q4: Do you agree with the suggested guidance on complexity in relation to the target market assessment and the clustering approach? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

In addition, we as BVR have the following comment: We reject the requirement in paragraphs 24 and 25 of the draft that the target market is to be determined more granularly for complex products. On the one hand, there is the problem here, also addressed by ESMA, that there is no clear definition of complexity, but only the differentiation between complex and non-complex, which is relevant for the question of whether a product may be marketed without an appropriateness test but is inappropriate in the context of product governance. The strong emphasis on complexity and associated obligations thus creates a great level of legal uncertainty.

In our view, this problem can be mitigated by focusing not on a more granular target market definition, but on a particularly careful and - if necessary - narrow definition of the target market for products that are particularly complex and/or risky. This is also consistent with the requirement in paragraph 26 of the draft guidance that products such as CfDs should have a correspondingly narrow target market. A more granular determination of the target market (in the sense of determining additional criteria) is not necessary for this purpose, as the special features of the CfD mentioned as example can be taken into account via the existing target market criteria client category, knowledge and/or experience, investment objective and risk-return profile.

Q5: Do you agree with the suggested guidance on the assessment of the general consistency of the products and services to be offered to clients, including the distribution strategies used? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

Q6: Do you agree with the suggested guidance on the identification of the target market by the distributor? Please also state the reasons for your answer.

We agree that manufacturers and distributors should use the same categories. This is paramount since those categories are disclosed to the end clients in the PRIIP KID and using the same methodology is key for the data transfer between manufacturer and distributor.

Regarding the categories that ought to serve as the basis for determining the target market, we observe that paragraph 42 relates to paragraph 19. We believe that this paragraph should also refer to paragraph 20, which adds sustainability-related objectives as part of the client's objectives and needs to be included in the definition of a target market.

We consider the reference to the possibility of clustering similar products in paragraph 47 to be positive. This helps the sales offices to make the large number of target markets plausible. Without such a clustering option, this undertaking would simply be hopeless.

Q7: Do you agree with the suggested approach on the determination of distribution strategy by the distributor? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

Q8: Do you agree with the suggested approach on the deviation possibility for diversification or hedging purposes when providing investment advice under a portfolio approach or portfolio management? In particular, do you agree that a deviation from the

target market categories “type of client” and “knowledge and experience” cannot be justified for diversification or hedging purposes, neither in the context of investment advice under a portfolio approach, nor portfolio management? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

Q9: Do you agree with the suggested approach on the requirement to periodically review products, including the clarification of the proportionality principle? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

Q10: Do you agree with the suggested approach on the negative target market assessment in relation to a product with sustainability factors? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

Q11: Do you agree with the suggested updates on the application of the product governance requirements in wholesale markets? Please also state the reasons for your answer.

Please refer to the comments submitted by the GBIC.

Q12: Do you have any comment on the suggested list of good practices? Please also explain your answer.

Please refer to the comments submitted by the GBIC.

Q13: Do you have any comment on the suggested case study on options? Please also explain your answer.

Please refer to the comments submitted by the GBIC.