



# BIPAR Response to ESMA Consultation Paper

## Review of the Guidelines on MiFID II product governance requirements

BIPAR Register ID number: 349128141758-58

7 October 2022

*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.*

*Apart from some large multinationals, the insurance intermediation sector consists 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. The sector is highly regulated and strictly supervised.*

*BIPAR is a member of the World Federation of Insurance Intermediaries (WFII). Founded in Paris in 1937, BIPAR has been established in Brussels since 1989.*

### BIPAR Introductory comments

BIPAR welcomes the opportunity provided by ESMA to give its views on the Consultation Paper: “Review of the Guidelines on MiFID II product governance 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. Many of these intermediaries are non-manufacturing distributors that are micro to SME-type companies. Our comments are given from their perspective and market practice.

Our ongoing concern is the **proportionality** of the 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.

POG is and should remain in the first place a responsibility for manufacturers and distributors should be able to rely on this and not duplicate work.

We note that the distinction between manufacturers and distributors is at times disappearing and the same requirements are expected from distributors as from manufacturers, although their roles, positions and responsibilities are very different. For instance, new paragraph 13 (there is not really a consultation question related to this paragraph) states that: “In general, firms acting as manufacturers and/or distributors should substantiate, and document choices made in the context of their product

*governance arrangements, including with regard to the target market identification and related distribution strategies.” This is a new obligation which applies both to manufacturers and distributors. Distributors should not be obliged to monitor manufacturers and take responsibility for the activities of manufacturers. There should not be a shift of responsibility from manufacturers to distributors.*

We believe that in general, securities should be grouped together and not every individual security should be monitored. Otherwise, it would be impossible to monitor all manufacturers.

Please find below some more detail to some of the questions.

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

### **3.3.2. Guidelines for manufacturers**

#### **Identification of the potential target market by the manufacturer: categories to be considered**

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.

**BIPAR reply: /**

#### **Sustainability**

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.

#### **BIPAR reply:**

Distributors are expected to take into account the same categories as manufacturers for the target market requirements. We understand the logic of aligning the sustainability requirements related to suitability with the sustainability requirements regarding POG/target market. It makes sense to us to align the definition of product governance sustainability objectives with the definition of the client's sustainability preferences of the suitability guidelines. Indeed, suitability must “validate” the sale in the target market, so it is necessary that product governance is consistent with suitability requirements.

We do want to stress again that intermediaries/distributors obtain the information on sustainability in financial instruments/insurance investment products from the information disclosed by the respective product **manufacturers**. Intermediaries should also direct the clients to the websites of the product providers. It is apparent that POG rules play an important role and financial and insurance intermediaries will be needing clear and reliable information and data on different degrees of sustainability. Reliable product information is a necessary requirement for intermediaries/investment firms to execute a proper suitability assessment according to the MiFID II Delegated Regulation ((EU) 2021/1253) and to ensure that “minimum proportion” is recalibrated regularly.

With regard to ESMA’s proposal of a broad interpretation, possibly also applying the rules to products with sustainability factors that are not in scope of SFDR and/or the Taxonomy Regulation, BIPAR is less convinced.

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.

**BIPAR reply:**

We believe that stocks are such a category of financial instruments for which the reference to “minimum proportion” would not be possible. They would either be sustainable or not. At the moment defining a minimum proportion is not possible.

**Identification of the potential target market: differentiation on the basis of the nature of the product manufactured**

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.

**BIPAR reply:** See comments below.

**3.3.3. Guidelines for distributors**

**Timing and relationship of target market assessment of the distributor with other product governance processes**

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.

**BIPAR reply:** ESMA further formalizes the existing 2017 POG guidelines for distributors, for instance by adding the underlined parts:

- ESMA states on p 31, para 34, that *the actual target market identification should occur at an early stage, when the firm’s business policies and distribution strategies are defined by the management body and, on an ex-ante basis (i.e. before going into daily business and/or before deciding whether the product should be included in the firm’s offer).*
- In para 35, ESMA adds: *“The aspects related to this general consistency of products, services and distribution strategies with target clients should be addressed and formalised in the firm’s policy as to the services, activities, products and operations offered or provided”.*
- New para 39 says distributors should consider what distributions strategies should be used for the different client groups, for instance gamification techniques. ESMA also adds that when determining the target market for their services, distributors should also pay particular attention to situations in which a bundle of services will be provided to clients, such as both execution services and the ancillary service of granting loans allowing the client to carry out the transaction.

The new draft guidelines do not seem to reflect the business model of the mostly small intermediaries and advisers BIPAR represents. Indeed, most of these intermediaries or advisers have a limited number of clients which are never “typical”: intermediaries and advisers will serve clients who walk into their offices (often coming to them via “word of mouth” publicity) and will try and serve these clients as best as they can without having a “typical client base”. The whole process starts with the client, not with the product. The clients are the ones that select their intermediary or advisor and not the other way around.

It is therefore not proportionate to demand such detailed and formalized requirements.

### **Identification of the target market by the distributor: categories to be considered**

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.

#### **BIPAR reply:**

In para 46, p 34, ESMA added that: *“To ensure a proper scrutiny of such more complex products, distributors should also determine whether, next to the manufacturers’ target market description, they need access to underlying assessments such as the outcomes of the manufacturer’s scenario and charging structure analyses.*

This new requirement should be deleted as it is not a proportionate additional requirement for distributors.

### **Distribution strategy of the distributor**

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.

**BIPAR reply:** /

### **Portfolio management, portfolio approach, hedging and diversification**

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.

**BIPAR reply:** We agree with the possibility of making a sale outside the positive target market for diversification or hedging reasons when advising a portfolio of financial instruments (or in the case of portfolio management). Such deviations are justified in the context of advice covering the entire asset allocation of the portfolio.

However, it does not seem justified to exclude the categories "knowledge and experience" from this possibility of selling outside the positive target market. The categories "knowledge and experience" are not more or less important than the categories of risk tolerance, ability to incur losses or investment objectives.

**Regular review by the manufacturer and distributor to respectively assess whether products and services are reaching the target market**

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.

**BIPAR reply:** we do not support the addition in paragraph 70 that whenever distributors have relevant information to support reviews by MiFID manufacturers, they should proactively provide it to the manufacturer and not provide such information only at the manufacturer's request. The existing requirement to provide information, for instance on sales, is sufficient.

With regard to paragraph 74, we do agree with the position that when a distributor no longer offers, sells or recommends a product, the distributor is no longer obliged to review the target market for that product, even if a customer can still be investing in that product. Indeed, product governance concerns products that are likely to be offered to customers to avoid misselling, and is not relevant for a product that is no longer marketed.

**3.3.4 Guidelines on issues applicable to both manufacturers and distributors**

**Identification of the 'negative' target market and sales outside the positive target market**

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.

**BIPAR reply:** we have no objections to this clarification.

**Application of the target market requirements to firms dealing in wholesale markets (i.e. with professional clients and eligible counterparties)**

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.

**BIPAR reply:** /

**Annex IV with good practices**

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

**BIPAR reply:** We do not support the suggestion made by one of the participants in the ESMA hearing on the consultation, to also include negative examples in the annex.

**Annex V Case study on options**

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

**BIPAR reply:** We agree that providing case studies can be useful, including for options.