

Guidelines

Guidelines for the assessment of knowledge and competence

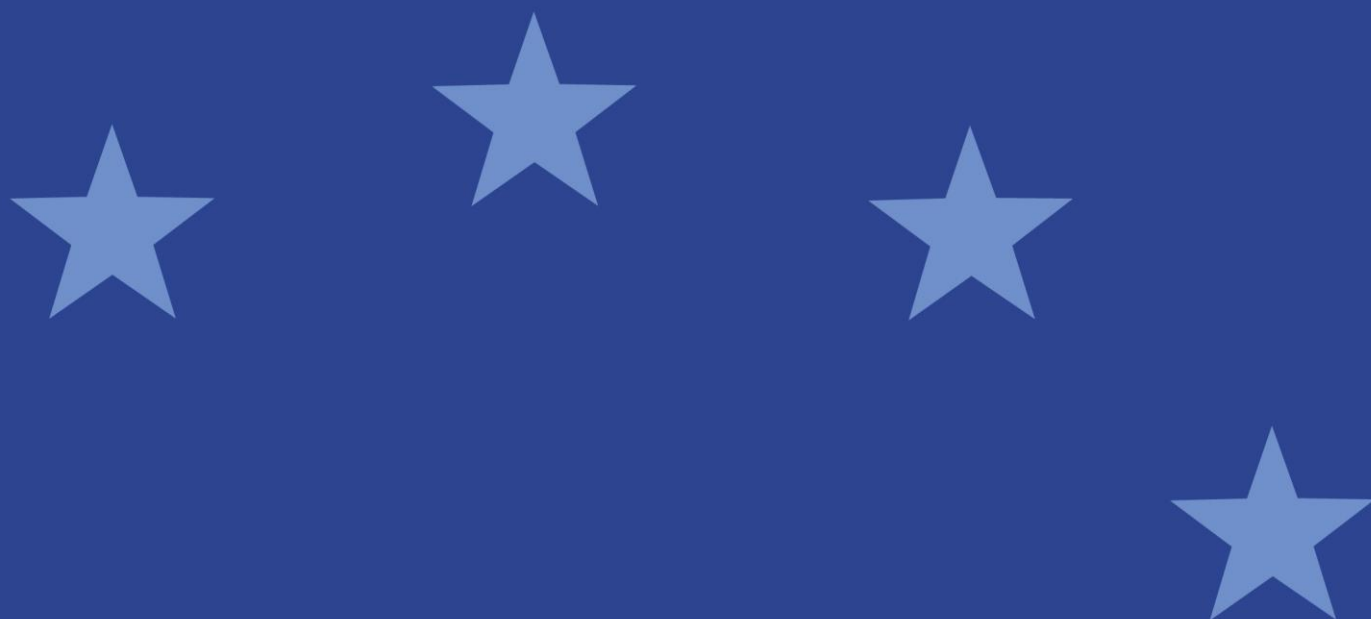


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I. Scope

Who?

1. These guidelines apply to:
 - a. Competent Authorities and
 - b. Firms.

What?

2. These guidelines apply in relation to the provision of the investment services and activities listed in Section A, and the ancillary services listed in Section B of Annex I of MiFID II.

When?

3. These guidelines apply from 3 January 2017.

II. References, abbreviations and definitions

Legislative references

<i>AIFMD</i>	Directive 2011/16/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Manager and amending Directive 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing an European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.
<i>MiFID</i>	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.
<i>MiFID II</i>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive

2002/92/EC and Directive 2011/61/EU (recast).

Abbreviations

<i>AIFMD</i>	Alternative Investment Fund Manager Directive
<i>CA</i>	Competent Authority
<i>CP</i>	Consultation Paper
<i>EC</i>	European Commission
<i>EU</i>	European Union
<i>ESMA</i>	European Securities and Markets Authority
<i>MiFID</i>	Markets in Financial Instruments Directive

Definitions

4. Unless otherwise specified, terms used in MiFID II have the same meaning in these guidelines. In addition, the following definitions apply:
 - a. Competent authority (or CA) means an authority designated under Article 67 of MiFID II.
 - b. 'Firms' means investment firms, as defined in Article 4(1)(1) of MiFID II, credit institutions (as defined in Article 4(1)(27) of MiFID II) when providing investment services as well as investment firms and credit institutions when selling or advising clients in relation to structured deposits, UCITS management companies and external Alternative Investment Fund Managers (AIFMs) insofar as they are providing the investment services of individual portfolio management or non-core services and only in connection to the provision of these services (respectively within the meaning of Article 6(3)(a) and (b) of the UCITS Directive and Article 6(4)(a) and (b) of the AIFMD).
 - c. 'Staff' means natural persons (including tied agents) providing relevant services to clients on behalf of the investment firm.
 - d. 'Relevant services' means providing investment advice or giving information about financial instruments, structured deposits, investment services or ancillary services to clients.
 - e. 'Giving information' means directly providing information to clients about financial instruments, structured deposits, investment services or ancillary services, either upon the request of the client or at the initiative of the firm, in the context of the provision by the staff member to the client of any of the services and activities listed in the section A and B of Annex I of MiFID II.

- f. 'Knowledge and competence' means having acquired an appropriate qualification and appropriate experience to fulfil obligations in Article 24 and 25 MiFID II in order to provide the relevant services.
- g. 'Appropriate qualification' means a qualification or other test or training course that meets the criteria set out by the guidelines.
- h. 'Appropriate experience' means that a member of staff has successfully demonstrated the ability to perform the relevant services through previous work. This work must have been performed, on a full time equivalent basis, for a minimum period of 6 months. Beyond this minimum period, the CA can differentiate the period of experience required, depending on the appropriate qualification attained by staff and also depending on the relevant services being provided.
- i. 'Investment products' means financial instruments and structured deposits as defined in MiFID II.
- j. 'Under supervision' means providing the relevant services to clients under the responsibility of a staff member who has both an appropriate qualification and appropriate experience. The staff member can work under supervision for a maximum period of 4 years except where a shorter period is determined by the CA.

III. Purpose

- 5. The purpose of these guidelines is to specify the criteria for the assessment of knowledge and competence required under Article 25(1) of MiFID II, in accordance with Article 25(9) of the same Directive.
- 6. ESMA expects these guidelines to promote greater convergence in the knowledge and competence of staff providing investment advice or information about financial instruments, structured deposits, investment services or ancillary services to clients, and competent authorities to assess the adequacy of the compliance with such requirements. These guidelines set important standards to assist firms in meeting their obligations to act in the best interest of their clients and to assist CAs to adequately assess how firms meet these obligations.
- 7. These guidelines establish minimum standards for the assessment of knowledge and competence for staff providing relevant services. Consequently, CAs can require greater levels of knowledge and competence for staff giving advice and/or for staff giving information.
- 8. In complying with these guidelines, ESMA anticipates a corresponding strengthening of investor protection. Annex I includes a number of illustrative examples of how an investment firm might apply the guidelines. These examples

do not form part of the guidelines but instead aim to assist firms in identifying practical examples of how the requirements in the guidelines can be met.

IV. Compliance and reporting obligations

Status of the guidelines

9. This document contains guidelines issued under Article 16 of the ESMA Regulation and required under Article 25(9) of MiFID II. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with the guidelines.
10. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices, including where particular guidelines are directed primarily at financial market participants.

Reporting requirements

11. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, stating their reasons for non-compliance, within two months of the date of publication by ESMA to KCguidelines1886@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.
12. Firms to which these guidelines apply are not required to report to ESMA whether they comply with these guidelines.

V. Guidelines

V.I General

13. The level and intensity of knowledge and competence expected for those providing investment advice should be of a higher standard than those that only give information on investment products and services.
14. Firms should ensure that staff providing relevant services possess the necessary knowledge and competence to meet relevant regulatory and legal requirements and business ethics standards.
15. Firms should ensure that staff know, understand and apply firm's internal policies and procedures designed to ensure compliance with MiFID II. In order to ensure a proportionate application of knowledge and competence requirements, firms should ensure that staff have the necessary levels of knowledge and competence to fulfil their obligations, reflecting the scope and degree of the relevant services provided.

16. The compliance function should assess and review compliance with these guidelines. This review should be included in the report to the management body on the implementation and effectiveness of the overall control environment for investment services and activities.

V.II Criteria for knowledge and competence for staff giving information about investment products, investment services or ancillary services

17. Firms should ensure that staff giving information about investment products, investment services or ancillary services that are available through the firm have the necessary knowledge and competence to:
- a. understand the key characteristics, risk and features of those investment products available through the firm, including any general tax implications and costs to be incurred by the client in the context of transactions. Particular care should be taken when giving information with respect to products characterised by higher levels of complexity;
 - b. understand the total amount of costs and charges to be incurred by the client in the context of transactions in an investment product, or investment services or ancillary services;
 - c. understand the characteristics and scope of investment services or ancillary services;
 - d. understand how financial markets function and how they affect the value and pricing of investment products on which they provide information to clients;
 - e. understand the impact of economic figures, national/regional/global events on markets and on the value of investment products on which they provide information;
 - f. understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
 - g. understand issues relating to market abuse and anti-money laundering;
 - h. assess data relevant to the investment products on which they provide information to clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data;
 - i. understand specific market structures for the investment products on which they provide information to clients and, where relevant, their trading venues or the existence of any secondary markets;
 - j. have a basic knowledge of valuation principles for the type of investment products in relation to which the information is provided.

V.III Criteria for knowledge and competence for staff giving investment advice

18. Firms should ensure that staff giving investment advice have the necessary knowledge and competence to:
- a. understand the key characteristics, risk and features of the investment products being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions. Particular care should be taken when providing advice with respect to products characterised by higher levels of complexity;
 - b. understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;
 - c. fulfil the obligations required by firms in relation the suitability requirements including the obligations as set out in the Guidelines on certain aspects of the MiFID suitability requirements¹;
 - d. understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against potential changes that may have occurred since the relevant information was gathered;
 - e. understand how financial markets function and how they affect the value and pricing investment products offered or recommended to clients;
 - f. understand the impact of economic figures, national/regional/global events on markets and on the value of investment products being offered or recommended to clients;
 - g. understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting;
 - h. understand issues relating to market abuse and anti-money laundering;
 - i. assess data relevant to the type investment products offered or recommended to clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data;
 - j. understand specific market structures for the type investment products offered or recommended to clients and where relevant their trading venues or the existence of any secondary markets;

¹ <http://www.esma.europa.eu/system/files/2012-387.pdf>

- k. have a basic knowledge of valuation principles for the type of investment products offered or recommended to clients;
- l. understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives.

V.IV Organisational requirements for assessment, maintenance and updating of knowledge and competence

- 19. Firms should set out the responsibilities of staff and ensure that, where relevant, in accordance with the services provided by the firm and its internal organisation, there is a clear distinction in the description of responsibilities between the roles of giving advice and giving information.
- 20. Firms should:
 - a. ensure that staff providing relevant services to clients are assessed through the successful completion of an appropriate qualification and having gained appropriate experience in the provision of relevant services to clients;
 - b. carry out an internal or external review, on at least an annual basis, of staff members' development and experience needs, assess regulatory developments and take action necessary to comply with these requirements. This review should also ensure that staff possess an appropriate qualification and maintain and update their knowledge and competence by undertaking continuous professional development or training for the appropriate qualification as well as specific training required in advance of any new investment products being offered by the firm;
 - c. ensure that they submit to their CA, on request, records concerning knowledge and competence of staff providing relevant services to clients. These records shall contain information that enables the CA to assess and verify compliance with these guidelines;
 - d. ensure that when a member of staff has not acquired the necessary knowledge and competence in the provision of the relevant services, this staff member cannot provide the relevant services. However, where this member of staff has not acquired the appropriate qualification or the appropriate experience to provide the relevant services or both, this staff member can only provide the relevant services under supervision. The level and intensity of supervision should reflect the relevant qualification and experience of the staff member being supervised and this could include, where appropriate, supervision during clients meeting and other forms of communication such as telephone calls and e-mails;
 - e. ensure that, in situations under letter d., the staff member supervising other staff has the necessary knowledge and competence required by these guidelines and the necessary skills and resources to act as a competent supervisor;

- f. ensure that the supervision provided is tailored to the services to be provided by that staff member and cover the requirements of these guidelines relevant to those services;
- g. ensure that the supervisor takes responsibility for the provision of the relevant services when the staff member under supervision is providing relevant services to a client, as if the supervisor is providing the relevant services to the client, including signing-off the suitability report where advice is being provided;
- h. ensure that the staff member, who has not acquired the necessary knowledge or competence in the provision of the relevant services, cannot provide those relevant services under supervision for a period exceeding 4 years (or shorter if required by the CA).

V.V Publication of information by Competent Authorities

- 21. When a list of the specific appropriate qualifications that meet the criteria of the guidelines is not published by the CA or other national bodies identified in the Member State, the CA must publish the criteria of these guidelines as well as the characteristics that an appropriate qualification needs to meet in order to comply with those criteria.
- 22. CAs should also publish: (i) information on the period of time required to gain appropriate experience; (ii) the maximum period of time under which a staff member lacking appropriate qualification or appropriate experience is allowed to work under supervision; and (iii) whether the review of staff member's appropriate qualification should be carried out by the firm or an external body.
- 23. Information in paragraph 21 and 22 shall be published on the website of the CA.

VI. Annex I

Illustrative examples of the application of certain aspects of the guidelines

Examples relating to the scope of the guidelines

The following examples set out instances where a staff member would not fall within the scope of the guidelines:

- employees only pointing out where clients can find information;
- employees distributing brochures and leaflets to clients without giving additional information with regards to its content or providing any follow up investment services to those clients;
- employees who only hand over information such as KIID at the client's request without giving any additional information with regards to its content or providing any follow up investment services to those clients; and
- employees who perform back-office functions and do not have direct contact with the clients.

Examples relating to the scope of the guidelines

Firm should consider that regarding the distinction between staff providing information and staff providing investment advice, that the Q&A issued by CESR² be taken into consideration.

General example relating to part V.I:

A firm provides regular mandatory training to staff in the area of MiFID conduct of business, and organisational requirements.

General example relating to part V.I:

The firm adopts a code of ethics to set forth the standards of business conduct and behaviour necessary for the proper provision of relevant services and obtain written acknowledgements from staff that they have read, understood and complied with it.

Examples relating to part V.I, V.II and V.III:

A firm provides regular mandatory training to staff in the features and characteristics, including potential risks, of the products offered by the firm. This comprises training about products newly offered by the firm.

² http://www.esma.europa.eu/system/files/10_293.pdf

A firm ensures staff are familiar with the situations in which conflicts of interest arise and how to apply the rules regarding the management of conflicts of interest.

A firm ensures staff are familiar with the situations as to when a firm may pay or receive an inducement and the relevant legal requirements regulating inducements.

Examples relating to part V.III and V.IV

A firm regularly monitors the suitability assessments provided by staff to assess whether the staff member has considered all aspects of the suitability requirements, against the specific details of the investment product.

A firm regularly monitors that relevant staff giving advice demonstrate:

- ability to ask appropriate questions to the client to understand her/his investment objectives, financial situation and knowledge and experience;
- ability to explain the risks and rewards of a particular product or strategy to the client;
- ability to compare selected products with regards to terms and risks, to be able to select the product best suited to the client profile.

Examples relating to part V.IV

The firm documents staff roles and responsibilities and evaluates their performance against key set criteria contained in the description of responsibilities.

Investment firms communicate publicly, in a way that is consistent and meaningful to clients, their criteria for demonstrating how staff comply with these guidelines.

Continuous or on-going professional development is required in order for staff to hold the “appropriate qualification”. This ongoing assessment will contain updated material and will test staff on their knowledge of, for example, regulatory changes, new products and services available on the market. This ongoing assessment:

- may involve training in the form of courses, seminars, independent studies or learning; and
- includes verification questions demonstrating that staff has necessary knowledge and competence.

Investment firms verify the relevance of continuous on-going development being provided to staff providing relevant services.