



ESMA consultation paper on Guidelines on certain aspects of MiFID II compliance function requirements.

[Link to the paper: Consultation paper on Guidelines on certain aspects of the MiFID II compliance function requirements.](#)

1.- Target audience (potential stakeholders)

This consultation is addressed, in particular, to:

- Investment firms (IFs) and Credit Institutions providing investment services and carrying on investment activities.
- Investment Firms (IFs) and Credit Institutions selling or advising clients in relation to structured deposits.
- Managers of investment funds and alternative investment funds providing investment services.

2.- Information Note

The compliance function is a crucial function within Investment Firms (IFs) and other firms providing investment services and carrying on investment activities as it is responsible for identifying, assessing, monitoring and reporting on the firms' compliance risk, i.e. the risk of a firm failing to comply with its obligations under the MiFID II Directive.

The purpose of this consultation is to gather the opinion of stakeholders with regard to new draft Guidelines on the compliance function that will replace the existing Guidelines on this matter, which were issued in 2012. However, this Consultation Paper builds on the text of the 2012 guidelines, which have been substantially confirmed (albeit clarified and refined where necessary). In addition, it takes into account new requirements under MiFID II.

The new draft Guidelines seek to enhance the clarity of the previous text and foster convergence in the implementation of certain aspects of the new MiFID II compliance function requirements and the level 2 implementing regulations thereof, specifically:

- Articles 22, 26(3) and 27(3) of Commission Delegated Regulation 2017/565, as regards organisational requirements and operating conditions for IFs; and
- Articles 9(6), 9(7), 10(6) and 10(8) of Commission Delegated Directive 2017/593, on product governance.

The new draft Guidelines also take into account the results of supervisory activities conducted by national competent authorities (NCAs) in relation to the application of the compliance function requirements.

ESMA believes that the implementation of these new Guidelines should strengthen investor protection, which is a key objective for ESMA.

The document is structured as follows:

Section 1 contains the executive summary.

Section 2 explains the background to the proposals.

Although the importance of the compliance function was already clear under MiFID I, strengthening the compliance function under MiFID II is a key element to mitigate compliance risk and for a more effective surveillance by NCAs.

MiFID II provisions include some of the recommendations contained in the 2012 Guidelines as mandatory. In addition, MiFID II expanded the role of the compliance function in relation to certain specific matters, such as product governance, the management of complaints or the remuneration policy.

ESMA states that it has deleted from the 2012 Guidelines the text that has been incorporated directly in Commission Delegated Regulation 2017/565 (general guidelines 2, 3 and 9), but the supporting guidelines have been maintained as they provide practical examples and clarification on how the requirements should be applied in practice.

The new Guidelines must be implemented bearing in mind the principle of proportionality laid down in subparagraph two of Article 22(1) of Commission Delegated Regulation 2017/565, i.e, taking into account the nature, scale and complexity of their respective businesses, and the nature and range of investment services provided and investment activities carried on.

The new Guidelines contain the following sections and sub-sections:

- I. Responsibilities of the compliance function
 - Compliance risk assessment
 - Monitoring obligations of the compliance function
 - Reporting obligations of the compliance function
 - Advisory obligations of the compliance function
- II. Organisational requirements of the compliance function
 - Effectiveness of the compliance function
 - Skills, knowledge, expertise and authority of the compliance function
 - Permanence of the compliance function
 - Independence of the compliance function
 - Proportionality with regard to the effectiveness of the compliance function

- Combining the compliance function with other internal control functions
 - Outsourcing of the compliance function
- III. NCA review of the compliance function

Section 3 contains 4 annexes:

- Annex I contains the list of questions included in the consultation.
- Annex II includes a cost-benefit analysis of the draft Guidelines.
- Annex III contains the full text of the new draft Guidelines.
- Annex IV includes a correlation table between the new draft Guidelines and the 2012 Guidelines.

ESMA will consider the responses it receives to this consultation paper in Q4 2019/Q1 2020 and expects to publish a final report, and final Guidelines, in Q2 2020.

3.- Submission of comments

The deadline for submitting comments is **15 October 2019**.

Respondents may send their comments through ESMA's website: www.esma.europa.eu. The paper of this consultation (ESMA35-43-2019) and the response form are available in section [Your input-Consultation](#).

Likewise, please send a copy of your answers to the CNMV to the following email address: Documentosinternational@cnmv.es

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