



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurances

BIPAR RESPONSE

Consultation on joint ESMA and EBA Guidelines on the assessment of the suitability of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

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BIPAR is the European Federation of Insurance Intermediaries. It groups 53 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 (WFII).

Introductory comments:

BIPAR welcomes the opportunity provided by EBA and ESMA to comment on the draft guidelines on the assessment of the suitability of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU.

BIPAR represents 53 national associations of insurance and financial intermediaries.

Many of the financial intermediaries who are members of our national associations, are micro to SME-type companies.

Under MiFID, many of these firms fall under “opt-out” national regimes (according to Article 3 of MiFID I and II). Some of these small firms however, are investment firms that do not fall under an Article 3 exemption.

BIPAR believes that it is very important that the Guidelines take a proportionate approach when it comes to micro-size/small firms. Proportionality is indeed mentioned in the consultation paper but we still wonder how to apply all the proposed suitability requirements to the small/ micro-size type businesses we mainly represent.

Responses to the consultation questions:

Q4: Do you agree with this approach to the proportionality principle and consider that it will help in the practical implementation of the guidelines? Which aspects are not practical and the reasons why? Institutions are asked to provide quantitative and qualitative information about the size, internal organisation and the nature, scale and complexity of the activities of their institution to support their answers.

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We support the reference made to the proportionality principle on pages 26-27 of the draft guidelines. As mentioned in our introductory comments, many of the financial intermediaries who are members of our national associations, are micro to SME-type companies. Under MiFID, many of these firms fall under “opt-out” national regimes (according to Article 3 of MiFID I and II). Some firms however, are investment firms that do not fall under the Article 3 exemption.

In paragraph 34 on page 26, it is said that small and less complex institutions “*may implement simpler policies and processes*”. We believe the complementing requirement for competent authorities to apply simpler rules could be clarified, especially since paragraph 36 on page 26 lists the criteria to be taken into account by institutions and competent authorities for the application of the proportionality principle.

Finally, it is not clear to us how the application of the proportionality principle will work in practice and how the guidelines’ proposed suitability requirements will indeed be applied in a proportionate way to small/ micro-size type businesses.

Q5: Do you consider that a more proportionate application of the guidelines regarding any aspect of the guidelines could be introduced? When providing your answer please specify which aspects and the reasons why. In this respect, institutions are asked to provide quantitative and qualitative information about the size, internal organisation and the nature, scale and complexity of the activities of their institution to support their answers.

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See answer to question 4

Q7: Are the guidelines within Title II regarding the notions of suitability appropriate and sufficiently clear?

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See also Q 4. BIPAR wonders how appropriateness will be applied in this respect with the notions of suitability.

In paragraph 77 (page 36), regarding “independence of mind”, the draft guidelines state that members of the management body should not have conflicts of interest that cannot be managed that impede their ability to perform their duties independently and objectively. Paragraph 77 continues and lists situations that can create conflicts of interests that should be considered. We stress the importance of not defining certain situations as conflicts of interest *per se* and, if there are conflicts of interest, to indeed focus on those that cannot be managed.

In this respect, we believe that the proposed rules re. “independence of mind” would be too strict for SMEs and especially for very small investment firms. In a small community of investment firms, many managing directors will have personal, professional or economic relationships (point b) with relevant external stakeholders. Having a good relationship should not necessarily be considered as reducing the independence of mind. We also do not see how political influence or political relationships (point f) are relevant for this evaluation.

Q9: Are the guidelines within Title IV regarding diversity appropriate and sufficiently clear?

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We believe that, due to their size, it may be difficult for very small firms to comply with diversity policy requirements for the management body. Also here, we stress the importance of application of the appropriateness principle and we believe that this regulation should not be relevant for non-CRD investment firms that have one or two managing directors. The burden would be too high.

Q 11: Are the guidelines within Title VI regarding the assessment of suitability by institutions appropriate and sufficiently clear?

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We note the level of detail of the draft guidelines on the assessment, re-assessment and ongoing monitoring of the individual and collective suitability of the members of the management body. This level of detail is likely to be not appropriate for micro-size and small firms.