

PRESS RELEASE

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ESMA's Product Governance will be unworkable in key areas

ESMA (European Securities & Markets Authority) has recently consulted the industry on the highly important area of Product Oversight and Governance (POG).

FECIF (European Federation of Financial Intermediaries and Financial Advisers) welcomes the main governance requirements detailed by ESMA, which provide necessary guidance for the daily business of practitioners and essential protection for consumers. However, the Federation has serious concerns that the widespread distribution models in many European countries have not been taken into account and that timing issues could create regulatory arbitrage.

FECIF was founded in 1999 and represents almost 250,000 advisers and intermediaries across Europe.

No consideration for the importance of platforms

In particular, according to FECIF, there seems to be little consideration or understanding of "open architecture" platforms, which offer services to both intermediaries and investment companies, increasingly acting as their technology and product providers.

"Everyone needs a consistent approach which takes into account the existing variety of business models and their different characteristics", FECIF Chairman, Johannes Muschik, explained. "MiFID II defines the "target-market" which has to be taken into account by manufacturers of financial instruments within their product governance process. Distributors (including advisors and intermediaries) are obliged to gather all information about the target-market of each financial product that they intend to offer to their clients. There is also the concept of a "distribution strategy". ESMA seems to have introduced a new definition for this, which was not the one intended in the level 1 (MiFID II) text, inferring that manufacturers also need to define "distribution strategies" and distributors need to gather all information about the distribution strategy of each financial product that they intend to offer to clients. ESMA is obviously assuming that there is always a direct relationship between manufacturers and distributors. However, this is not the case".

In many European Member States the most common business models of cooperation between manufacturers and distributors are via "open-architecture" platforms, which often cooperate with thousands of different manufacturers and with hundreds or even thousands of distributors, all at the same time. Distributors contract with open-architecture platforms to become entitled to offer the whole range of financial instruments available on a platform, to their clients.

"It seems apparent that the concept of "distribution strategy" introduced by ESMA will never work within the world of open-architecture". Muschik stated. "Manufacturers are simply physically unable to foresee or oversee the individual distribution strategies of so many distributors, who are usually totally unknown to them - as both parties are solely contracting with the platform and never have any direct interaction at all. This appears to show a lack of understanding of how the market works".

Date of entry arbitrage

Another point of concern for FECIF is the date of entry for the target market. ESMA defines the binding deadline for distributors as 3rd January 2018, but has not stated a specific date for

manufacturers, who should assign target markets following the next product review process cycle that is conducted after the 3rd of January, 2018.

“For the period between that date and the undefined date on which the manufacturers will have to confirm a definitive target market for their products, it seems that the sole responsibility for defining target-markets will be transferred to the distributor,” according to Paul Stanfield, FECIF Secretary General. “This means that the distributor should effectively act as if the manufacturer was an entity not subject to MiFID II product governance requirements. Such an approach for MiFID II regulated entities would be practically impossible!

“What if the distributor defines a target market and the manufacturer determines a different target market at some later stage?” Stanfield asks. “Was the distributor then providing inappropriate advice? Do the clients automatically have a right of cancellation? Should the distributor inform the customer at outset that they believe they have correctly identified the appropriate target market, but do not know for sure whether the manufacturer will determine the same target market, or another, sometime later? None of these scenarios are ones that ultimately protect consumers in an appropriate manner!”

In general terms, FECIF is concerned that a lack of real industry experience often hampers regulators.

As Stanfield puts it: “If you haven’t actually performed an advisory or intermediary role it can be very difficult to fully understand the relevant practicalities – and thus an unworkable framework can result. We will keep on working with regulators to try and ensure that regulation protects consumers in an appropriate and feasible manner.

Ends

About FECIF

FECIF (European Federation of Financial Intermediaries and Financial Advisers) is a Brussels-based non-profit organization, chartered in June 1999 for the support and promotion of the role of financial advisers and intermediaries in Europe. FECIF recently also added the protection of consumers as one of its main objectives.

FECIF represents in excess of 30 trade bodies or industry organisations; via these it acts on behalf of over 245,000 advisors and intermediaries in Europe - and around 640,000 individuals in total.

More Details

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