

ESMA publishes MiFID compliance function peer review results

The Review found a high level of compliance by the majority of EEA national competent authorities (NCAs) with the Guidelines, although significant weaknesses were identified in the supervisory approaches of Cyprus, Iceland and the Netherlands. Additionally, the Review identified a number of good practices by a number of NCAs in their supervision. ESMA will follow up regarding the points of insufficient compliance and partial compliance with the relevant NCAs.

Peer Review

The ESMA Supervisory Convergence Work Programme 2016 included a peer review on the Guidelines to assess compliance by the NCAs, identify good practices and potential areas for improvement.

The work involved assessing the approaches of thirty-one EEA NCAs to supervising investment firms' compliance functions, against the Guidelines requirements, and covered the period from 1 July 2014 to 30 June 2016. The assessment also involved on-site visits of the NCAs from Austria, Cyprus, Denmark, France and Slovakia.

The Review positively assessed 27 NCAs regarding the supervision of how the compliance function performs risk assessments, monitors compliance obligations and provides reports to senior management. While 22 NCAs were positively assessed on their supervision of the compliance function's advisory role, which includes support for staff training, day-to-day assistance for staff and participating in the establishment of new policies and procedures within the investment firm.

ESMA found diversity in the supervisory approaches applied by NCAs, showing a different reliance on the compliance function as a key source of information on the firms' compliance with MiFID requirements. For many authorities the compliance function was generally not the main target in supervisory reviews but an ancillary target of supervision of firms' obligations under MiFID.

Good practices identified

Good practices identified during the peer review will help in enhancing supervisory convergence across EEA NCAs. Key good practices identified included:

- the pre-screening by NCAs of compliance officers;
- clear communications by NCAs of expectations to the compliance function at the authorisation stage; and
- NCAs undertaking on-site visits shortly after the firm's authorisation, in particular for riskier firms.

The report provides a detailed assessment of the effective application of the Guidelines and the capacity of the NCAs to respond to market developments. It also assesses the capacity of NCAs to achieve high quality supervisory outcomes, including the adequacy of resources.