

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.

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[Speech by Michel Barnier on German Employers' Day \(Deutscher Arbeitgebertag\) 2017](#)

My thanks to Sven Afhüppe for his introduction.

Thank you Mr Chairman and Steffen Kampeter and your staff.

Ladies and Gentlemen,

For many of you, in your capacity as entrepreneurs, representatives and facilitators of social dialogue, Brexit is a challenge. It is for me too!

We all have an individual responsibility with respect to this challenge: to anticipate, to prepare ourselves and to find solutions.

But it also gives rise to a collective responsibility. We are and we must remain united in our response to Brexit. In order to chart a course, to stick to the principles we believe in and to negotiate an ambitious partnership with the United Kingdom.

Together, we have everything we need to rise to this challenge.

Together, we have built up a very solid sense of unity with governments, the European Parliament, national parliaments and our social partners. Thanks to this, our negotiating positions have been clearly defined ever since the negotiations began.

Together, we have a robust and highly integrated economy. For Germany, 6 % of trade in goods is with the United Kingdom, versus 56 % with the other EU countries. Almost ten times more!

Together, we have elaborated four main freedoms of movement, including the free movement of persons, enabling talent to move freely, which is so important for the dynamism of our economies.

Together, we have and we will keep a single market of 440 million consumers and 22 million undertakings that feel at home in each of our 27 countries as in each one they can find funding, solicit business and bid successfully for tenders.

It is this combination of the ease with which trade can be carried out and trust in the common rules and in our common legal order that makes our internal market our 'Heimatmarkt'.

And together, we can rely on this 'Heimatmarkt' to compete more successfully at international level.

- Thanks to the rules and standards that we adopt within the EU, and which are frequently emulated around the world, which helps our undertakings in their exports.
- Thanks to the free trade agreements that we have already established with 60 countries.
- Thanks also to the size of our market, which makes us a leading partner for China, the United States or Brazil.

Ladies and Gentlemen,

It is our collective responsibility to succeed in these negotiations on the withdrawal, united as 27, then together to put into place an ambitious partnership with the United Kingdom. That is our wish.

In order to do so, the first key is to put things in the right order, as the Member States and the European Parliament have asked us to do, beginning with restoring certainty in those areas where Brexit has given rise to uncertainty:

- We must guarantee the rights of European citizens in the United Kingdom and of British citizens in the European Union. And to protect them in the long term, we must ensure a uniform interpretation of the withdrawal agreement on both sides of the Channel. This means a role for the Court of Justice of the European Union, which has the jurisdiction to interpret concepts deriving from Union law. These concepts will remain the basis for protecting citizens' rights.
- We must be fully accountable to taxpayers, a matter on which the European Commissioner for the Budget, Günther Oettinger, has been keeping a close eye.
- We must find a way to maintain stability and cooperation in Ireland, so any restoration of a physical border must be avoided. The UK has made the choice to withdraw from the single market and the customs union. It should assume the consequences of this choice and take the responsibility to present viable and specific solutions for Ireland.

Such an orderly withdrawal is a pre-condition for trust between the United Kingdom and the Union. And such trust is essential to negotiate our future relationship in the right conditions.

We are not there yet. We are continuing working this week on the three key topics in a constructive spirit to reach genuine sufficient progress.

Ladies and Gentlemen,

The second key to success is upholding the integrity of our single market, which means, in addition to the four indivisible freedoms, our common rules, our institutions and our governing instances.

The United Kingdom is perfectly aware of these rules, since it has played a role in defining them over the past 44 years. It knows only too well that you cannot be half in and half out of the single market.

- You cannot want to end the free movement of persons, while maintaining the free movement of goods or services.
- You cannot want to exit the single market and continue to set the rules for it.
- You cannot withdraw from the customs union and hope to benefit from frictionless trade with the European Union.

In its proposals on the future partnership, the United Kingdom suggests replicating the EU customs system at its own external borders so as to continue to benefit from the advantages of the customs union.

However, that would be tantamount to delegating the application and verification of our rules to a third country, whereas that country would not be subject to the same rules as us or to the same judicial controls.

The integrity of the internal market, our 'Heimatmarkt', is not negotiable, quite simply because the internal market is one of the main assets we hold in common.

Ladies and Gentlemen,

There is a third key to success: building our future partnership with the United Kingdom on common ground rules, a 'level playing field', to which I know the BDA, and each of the undertakings you represent, are very attached.

These ground rules are more difficult to establish since, for the first time, a negotiation with a third country will be less about encouraging regulatory convergence than about containing divergences.

The UK, which is leaving the European Union, will need to tell us whether it will still adhere to the European model.

This is an important decision, because behind the European regulatory framework there are key societal choices we hold dear: our social market economy, health protection, food safety, fair and effective financial

regulation.

There will be no ambitious partnership deal without common ground on fair competition, State aid, guarantees against tax dumping and social and environmental standards.

Ladies and Gentlemen,

Alongside our collective responsibility, as 27, Brexit also gives rise to individual responsibility for each of us.

On 29 March 2019 at midnight, the United Kingdom will cease to be a Member State.

Whatever the outcome of the current negotiations, there will be no business as usual. Simply because, in addition to leaving the European Union, the UK government has decided to leave the customs union and the internal market.

Only the combination of the internal market and the customs union allows frictionless trade between us.

- The internal market without the customs union – in other words the arrangements within the European Economic Area, for example for Norway – still entails a system of procedures and customs controls, among other things in order to check the preferential rules of origin.
- Conversely, a customs union agreement without the internal market – as in the case of Turkey – does not allow the free movement of goods either, since it also implies a system of procedures and customs controls, including controls to check compliance with European standards.

I don't know if the whole truth has been explained to British businesses on the concrete consequences of Brexit. My responsibility before you and everywhere in Europe is to tell the truth to European businesses.

A trading relationship with a country that does not belong to the European Union obviously involves friction. For example, in the case of VAT returns. Or for imports of live animals and products of animal origin, which are subject to systematic checks at the border of the EU when they arrive from third countries.

In order to prepare for these automatic consequences of Brexit, the real transition period has already started. It is important for all businesses to analyse with clarity their exposure to the UK and to be ready if need be to adapt their logistical channels, supply chains and contractual clauses.

For example, many contracts give jurisdiction to the UK courts to settle trade disputes. Until now, these judgments have been automatically recognised throughout the EU. After Brexit, there is no guarantee that this will still be the case.

And it is equally important for each undertaking to prepare for a 'no deal'

scenario, implying a return to customs tariffs under WTO rules, not to mention increased border control procedures.

In particular, this would result in a sharp increase in transport and storage costs, with a very negative impact on undertakings operating on a just-in-time basis.

For that reason, the 'no deal' scenario is not our scenario. But since it cannot be ruled out, we have to prepare for it.

Ladies and Gentlemen,

By exercising this individual and collective responsibility, we give ourselves every opportunity to strike an ambitious partnership deal with the United Kingdom, not only in terms of trade but also for our security and defence, cooperation between us on police and judicial matters, and in certain economic and social areas.

However, by strengthening our unity and reaffirming our values, we also reiterate our desire to be together, 'unsere Gemeinschaft', which allow us to continue to build our Europe, changing it where needed and focusing more on what really matters in order to go forward together.

The European Commission under Jean-Claude Juncker has proposed substantive improvements to move forward: .

- By building a fully-fledged capital markets union alongside the banking union that will allow more of our undertakings to access the finance they need, not only in their own country but throughout the Union.
- By continuing to build our 'Global Europe', which is preparing to offer our undertakings new opportunities to export to Australia and New Zealand.
- By also building a European defence, in keeping with the wishes of the European Commission, by proposing a European defence fund and through permanent structured cooperation that will now be moulded into shape.

These new developments, among so many others ongoing or still to come, clearly show, to echo the words of Angela Merkel, that the future of the Union is more important than Brexit. 'Die Zukunft der E.U. ist wichtiger als der Brexit'.

European Civil Society rewards real entrepreneurship and quality

employment champions

The EESC has shortlisted five applications from **Belgium, Germany, Greece, Italy and Spain** for its 2017 Civil Society Prize. This year's prize goes to organisations which have distinguished themselves through their work **in supporting the labour market integration of groups requiring specific support.**

The EESC received over 100 wide-ranging and high calibre applications from 25 Member States. This has clearly shown that almost ten years after the start of the economic and financial crisis **entrepreneurship and quality employment** continues to be a major area of action and concern for European Civil Society. Already in its 9th edition, the 2017 Civil Society Prize will reward innovative projects which fight against employment exclusion and remove barriers to participation in the labour market for people in need, such as young people, people from migrant backgrounds, the long-term unemployed, women detached from the labour market, people with disabilities, and people living in poverty.

The five shortlisted applications are:

- **[Discovering hands](#)**, a **German project** which trains blind and visually impaired women, using their superior tactile sense to enhance early breast cancer detection;
- **[DUO for a JOB](#)**, from **Belgium**: an intergenerational and intercultural mentoring programme which offers a free 6-month individual service for young migrant job seekers with people over 50 years of age who have professional experience in a similar field to theirs;
- **[Institute of Robotics for Dependency \(IRD\)](#)**, a **Spanish foundation**, and its project **[Laundry ID](#)** aimed at creating jobs for people with disabilities, in a laundry service which has been redesigned technologically and adapted to their needs;
- **[Progetto Quid](#)** by **Cooperativa Sociale Quid**, from **Italy**: a social cooperative that supports the integration of vulnerable and disadvantaged groups such as asylum seekers and victims of slavery, prostitution and domestic violence into the labour market.
- **[REvive Greece](#)** helps refugees, asylum seekers and migrants to integrate into the receiving countries by teaching them computer programming and connecting them with young European entrepreneurs.

“Almost ten years after the start of the economic and financial crisis, the EU is still struggling with high unemployment. Despite recent improvements, 8.6 % of the active population – almost 21 million people – were out of work in 2016. Several forms of unemployment need tackling as a priority: long-term unemployment, youth unemployment and the unemployment of women, particularly mothers and others with caring responsibilities, who remain under-represented in the workforce”, said EESC President Georges Dassis. “The European Economic and Social Committee’s 2017 Civil Society Prize rewards projects that promote quality jobs and entrepreneurship with the potential to create such jobs. The projects focus on young people, migrants and others finding it hard to get

onto the labour market”.

The ranking of the winners will be announced at the award ceremony on **7 December during the EESC Plenary session in Brussels**. EUR 50 000 will be shared among the five winning projects, with the intention that this money will be reinvested in projects providing further help in the community.

***Background:** The Civil Society Prize, launched in 2006, is awarded for “excellence in civil society initiatives”. Each year, the prize covers a different aspect of the EESC’s activities. In previous years, awards have gone to initiatives that improve the lives of refugees and migrants, combat poverty and social exclusion, support Roma communities, promote sustainable lifestyles and green jobs, encourage networking, education and campaigning, and defend the interests of young people.*

Further details about the 2017 Civil Society Prize are available [here](#).

126/2017 : 29 November 2017 – Judgment of the Court of Justice in Case C-214/16

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