



European Securities and
Markets Authority

MiFID Suitability Requirements Peer Review Report - Annex



Section 1: Questionnaire findings

1. Background information

1. This section contains information on the number of investment firms and credit institutions authorised to provide investment services in EEA Member States (MSs) and an overview of the structure of the market for the provision of investment advice¹.

Number of investment firms

2. There are 14,579 investment firms authorised to provide investment services in the EEA and 13,555 of these are authorised to provide investment advice.

Incoming firms operating on a branch basis (Question 3/3a)

3. In total, 979 investment firms provide investment services on a branch basis in which the competent authority (CA) is the host supervisor. Of these, 577 firms are authorised to provide investment advice. However, the total number is probably higher because the CAs in DE and UK could not provide the exact numbers of such firms.
4. In four MSs (HR, IS, LI and SI) there are no investment firms providing services on a branch basis for which the CA is a host Member State.
5. In many MSs where the CA is the host supervisor, the number of investment firms operating on a branch basis that provide investment advice varies.
6. By contrast in a minority of MSs almost all the investment firms providing investment services on a branch basis where the CA is the host supervisor provide investment advice.

Outgoing firms operating under freedom to provide services (Question 4/4a)

7. In total, 3,369 firms provide investment services under freedom to provide services in which the CA is the home supervisor. This is almost a quarter of all 14,579 EEA investment firms.
8. Of these, 937 firms are authorised to provide investment advice (however this figure does not include firms from DE and UK, because they do not statistically distinguish whether such firms are authorised to give advice).

¹ Tables 1-6 in Section 2 of this Annex provide further details relating to the information in Section 1.

9. In most MSs for which the CA is the home supervisor, only some of the investment firms operating under the freedom to provide investment services in other MSs can provide investment advice (for example: BE, BG, CY, EL, ES, FR, IT, LI, NO and PT).
10. In AT, CZ, EE, FI, IS, LT, LV, MT and NL almost all the investment firms operating under the freedom to provide investment services in other MSs can provide investment advice.

Firms exempted under the Article 3 MiFID (Question 5)

11. In total 59,630 firms provide investment advice under the Article 3 exemption in MiFID. Such firms operate in 13 MSs (AT, BE, CZ, DE, DK, EL, FR, IE, NL, PL, SE, SK, and UK).
12. A large number of these firms operate in six MSs (CZ, DE, FR, IE, SE and UK). With the majority concentrated in DE (40,662), CZ (7,554), FR (4,915) and UK (3,500). In some cases, the reason for this extensive regime is that these firms are subject to the Insurance Mediation Directive (e.g. in DE and SE).
13. In relation to the organisation of supervision of Article 3 firms, DE stated that as BaFin is not the competent authority for supervising firms providing investment advice under the Article 3 exemption, it does not have relevant statistical data. It explained that these firms are under supervision of regional authorities, such as the regional chambers of commerce (IHK), depending on regional (Länder) legislation. The German umbrella organisation of chambers of commerce (DIHK) operates a register of intermediaries (Finanzanlagenvermittler-Register) able to provide investment advice under Article 3 MiFID. According to the DIHK, on 31 December 2014, 40,662 intermediaries were registered. DE added that following recent changes, the national law applicable to firms exempted from MiFID was largely aligned to the MiFID provisions.
14. IE stated that it has 1,102 firms operating under the Article 3 exemption and that the Consumer Protection Directorate within the Central Bank of Ireland undertakes the supervision of these entities and that these firms are required to make annual regulatory reports to the Central Bank in relation to their activities. It added that it continuously monitors these low impact firms through desk-based analysis of key risks in their annual reports, thematic reviews, reactive supervision and spot-check inspections. IE added that for low impact firms, technology has been used increasingly to help supervise this sector in an efficient way.
15. CZ stated that effective supervision of investment intermediaries is complicated by the fact that a very high number of them are registered but in reality not all of them are active. CZ stated that as a result it adopts a risk based approach to such firms. They added that the cancellation of an Article 3 exemption is beyond the Czech National Bank's authority.

16. SE responded that firms that are eligible to provide investment advice in their jurisdiction under an Article 3 exemption mainly consist of insurance mediators and they make no explicit distinction in how supervision regarding insurance mediators and investment firms is organised.

Market structure in terms of firms providing investment advice (Question 6)

17. In AT, BE, DE, DK, EE, ES, FI, FR, HR, IS, IT, LI, LU, LV, MT, NL, SE and SK credit institutions are the dominant firms in the investment advice market
18. For instance, in DE, saving banks have a market share of 31.2% and cooperative banks a share of 14.1% while private banks account for 33.7% although these figures are not specifically related to the provision of investment advice but on a more general basis. In ES, credit institutions represent 90% of the retail clients to whom investment advice is provided, and the most dominant firm has a 52% market share. In FI, the three largest banking groups account for approximately 75% of the market share. In IS, the three largest banks represent 90% of the total market. In IT, the 10 largest banking groups represent 70-75% of the market. In LI, the three major banks account for 80% of the market, while the remaining 12 banks manage only about 20% of total assets. In NL, four large retail banks cover 90% of the market. In SE, around 60-70% of the market share is accounted for by banks.
19. In BG, CY, IE, NO and SI investment firms not including credit institutions are the dominant firms in the market for investment advice market.
20. For instance, in BG, three investment firms have 90% market share. In NO, investment firms have 61% market share.
21. FR stated that there is a growing part of advisory services being provided by new on-line companies which are specialised in investment services and products in FR.
22. In some MSs the dominant firms in the investment advice market are providing services on cross border basis under Article 31 or through the establishment of a branch under Article 32.
23. For instance, in CY, 6 of the dominant firms provide investment services and activities under Article 31. In FI the three largest banking groups provide investment services and activities under Article 31.
24. In DK, EE, LI, MT and SI none of the dominant credit institutions and investment firms provide investment services and activities under Article 31.
25. None of the MSs report branches that provide investment services and activities under Article 32 operating in their jurisdiction as dominant firms.

Market structure in terms of products (Question 7)

26. The amount of information gathered by CAs about products distributed in their MSs varies. Some CAs have no data regarding the distribution of investment products (EL, LU, RO, SI).
27. There is great variety in the dominant types of products distributed in MSs. In some MSs, bonds represent a large portion of investments made by investors. For instance, in CY government bonds are a dominant product. In HU, bonds represent approximately 75% of investment products. In PT, bonds represent 43% of investment products. In AT bonds represent 39% and in IT they represent 33%. Bonds are significant but less dominant in other MSs (e.g. UK 22%, NL 10%, ES 7%).
28. In other MSs equities dominate. For instance, in BG, equities represent 85% of the market. In PT they represent 56% of the market. In SI, 88% of the market. In the following MSs equities account for 10-20% of the market share of investment products: AT 15%, DE 16%, HU 10%, IT 11%, UK 12%.
29. In AT, BE, CZ, DE, DK, ES, FI, FR, IE, IT, NL UCITS are significant products.
30. Structured products and certificates represent 11% of market share of investment products in ES and 1% in PT.
31. Regarding other groups of the investment products, it should be noted that FI refers to unit linked products, SK to currency products, IE, NL and PL refer to the important role insurance investment products play, in the UK life insurance products represents 7% of the market share of investment products and in SE savings accounts represent 20% of the market share of investment products.

2. Understanding and identification of 'Advice'

Common distribution methods (Question 8)

32. 26 of the 31 respondents were able to identify the most common distribution method used in their jurisdiction. The remaining five jurisdictions (CY, CZ, IS, NO, SE) were unable to determine the most common method but were able to identify the distribution methods generally used in their jurisdiction.
33. Very few jurisdictions were able to provide details of the market share allocated to each distribution method. Four jurisdictions (DE, EE, HU, IT) provided an estimate based on their supervisory activities.
34. 21 jurisdictions (AT, BE, BG, DE, DK, EE, ES, FR, FI, HU, IE, IT, LI, LT, LU, LV, MT, PT, SI, SK, UK) identified face to face as the most common distribution method. One jurisdiction (EL) specified the telephone as the most common method. One jurisdiction (RO) responded that written advice was the most common method. Two jurisdictions

(NL, PL) identified the use of online distribution methods such as the internet and email as the most common.

35. For those jurisdictions that had face to face as the most common distribution method, many made reference to the growth in online offerings.
36. Some CAs responded to the question based on all distribution methods (i.e. including non-advised transactions) whereas others restricted their response to advised distribution methods.
37. DE and UK specifically mentioned the use of 'robo-advice' by firms whereby an IT-system generates advice based on data submitted by the client. Other CAs stated that in their markets the internet was currently being used as a platform for non-advised offerings rather than for personal recommendations.

Approaches to supervising different distribution methods (Question 9)

38. Some CAs (EL, FR, IS, LI, LT, LU, LV, RO, SI) simply confirmed that the rules applied equally regardless of the distribution channel, so no differentiation was required.
39. Other CAs (AT, CY, CZ, DK, EE, FR, HR, HU, IT, PL, SE, UK) provided some further details of the approach that they take to supervising the different distribution methods (e.g. review of procedures and client files, listening to call recordings, interviewing staff).
40. Some CAs (BE, DE, ES, IE,) gave further detail of the approach that they take to supervising the various distribution channels. These CAs confirmed that the rules applied equally to each distribution method but that the level of resource applied to the supervision of each was based upon the risks that each represented.
41. Some CAs (BG, MT, PT) only had one type of distribution method so stated that there was no need to differentiate their approach. One CA (SK) stated that it covered all of its supervised firms during its regular supervisory review cycle so there was no need for additional supervisory work.

Growth in distribution methods (Question 10)

42. Some CAs (BG, ES, LV, RO) did not offer a view on future developments in the distribution methods used in their jurisdictions.
43. Other CAs (BE, CY, EL, FI, IE, IT, LI, LT, LU, SE, SK) did not expect the distribution methods to change in future.
44. Some CAs (DE, DK, HU, MT, PT, SI) expected face to face advice to continue as the dominant distribution method but expected growth in online offerings.

45. Other CAs (EE, FR, HR, NO, NL, PL, UK) stated that the use of the internet would grow but felt that this would mostly be for non-advised sales.
46. One CA (CZ) identified an increase in advice being provided by firms passporting into their jurisdiction.
47. Two CAs (AT, IS) referenced the impact of MiFID II regulations and stated that they expected that the increasing cost of advice would lead to a growth in the use of the internet as a distribution method.

Criteria used to assess when a personal recommendation has been given (Question 11)

48. 17 CAs (EE, EL, ES, FR, HR, HU, IS, IE, IT, LI, LT, LU, LV, MT, NO, SI, UK) referenced the relevant MiFID definitions and CESR publications to set out how they identify that a personal recommendation has been given.
49. Seven CAs (AT, BE, CY, CZ, DK, FI, PL) set out the aspects of a sales process that they associated with a firm giving a personal recommendation. These explanations demonstrated a consistent approach with ESMA/CESR guidance.
50. Three CAs (NL, SE, SK) combined both of these responses by referencing ESMA guidance as well as detailing the approach that they take.
51. Three CAs (HU, RO, PT) outlined their supervisory approach when assessing whether a personal recommendation has been given. One CA (IT) described the criteria adopted in their supervisory practice to assess whether firms comply with all MiFID requirements on investment advice and the relevant CESR/ESMA guidelines and publications.
52. One CA (BG) gave no details of its approach to recognising when a personal recommendation has been made and also gave no details of its supervisory approach.

Where firms provide investment advice using the telephone or face to face, details of monitoring of pre-drafted selling instructions (Question 12)

53. 17 CAs (AT, CY, CZ, DK, EE, EL, ES, FR, HU, IT, LT, LV, PL, PT, SE, SK, UK) conduct this work as part of their normal supervisory activities. Three CAs (DE, LI, LU) responded that this work was also completed by audit firms with oversight from the CA.
54. One CA (IE) conducts this work as part of its normal supervisory activity but also stated that telephone scripts and advice provided over the internet both need to be approved by an individual within the firm that is appropriately qualified. Another CA (NO) also conducts this work as part of its normal supervisory activity but provided further details that it would consider these documents as part of a firm's request for authorisation.
55. One CA (NL) focused its response on non-advised processes that may result in advice being given rather than instructions intended to support the advice process.

56. Five CAs (BE, BG, HR, MT, SI) have not encountered the use of pre-drafted selling instructions. Two CAs (RO, IS) stated that they do not complete this monitoring as it is not relevant to their investment markets.

Sales scenarios that may constitute advice (Question 13)

57. This section consisted of three sales scenarios. The Assessment Group (AG) asked the CAs whether they considered that a personal recommendation had been given in each case. The responses are set out in Table A, although it should be noted that in some cases CA responses differed as a result of different assumptions made by the CA, in relation to the scenarios.

Investment Advice Scenarios

Scenario 1: A firm offers an IT based filtering functionality to its internet-based sales model. This functionality allows clients to filter investment products according to product risk and client investment objectives. Only products that meet the information input by the client are displayed: So if the client chooses ‘high risk products’ then the filter displays a pre-existing list of products to that client. The same results will be displayed for any other client that chooses that category of risk and has the same investment objective.

Scenario 2: A client who is an execution only client of a firm, telephones the firm to request information on investment property opportunities. The investment firm tells the client that emerging market equities are “hot” right now and sends the client the Key Investor Information of the latest UCITS emerging markets fund it is currently selling to clients. The firm has a number of other financial instruments with an underlying investment in emerging market equities available for sale to clients but only the latest KII is sent to the client.

Scenario 3: An investment firm sends a letter to its clients that hold a UCITS fund informing them that in light of the client’s investment in the fund the firm wishes to inform them that they also have an investment certificate with similar features as the fund but offering a higher return.

Table A: Responses to scenarios

| Country Code | Scenario 1 | Scenario 2 | Scenario 3 |
|--------------|------------|------------|------------|
| AT | No | Yes | Yes |
| BE | No | No | No |
| BG | No | Yes | No |

| | | | |
|----|-----|-----|-----|
| CY | Yes | Yes | No |
| CZ | No | No | Yes |
| DE | No | Yes | Yes |
| DK | No | Yes | No |
| EE | No | Yes | Yes |
| EL | No | Yes | Yes |
| ES | No | No | Yes |
| FI | Yes | No | No |
| FR | No | Yes | Yes |
| HR | No | Yes | Yes |
| HU | No | Yes | Yes |
| IE | No | Yes | No |
| IS | No | Yes | Yes |
| IT | Yes | Yes | Yes |
| LI | No | Yes | No |
| LT | No | Yes | Yes |
| LU | No | Yes | Yes |
| LV | No | Yes | Yes |
| MT | No | Yes | No |
| NL | No | Yes | Yes |
| NO | No | Yes | Yes |
| PL | Yes | Yes | Yes |
| PT | Yes | No | Yes |
| RO | No | Yes | Yes |
| SE | Yes | Yes | Yes |
| SI | No | No | No |
| SK | No | Yes | No |
| UK | Yes | Yes | Yes |

Use of tools to assess whether personal recommendations are given during non-advised sales (Question 14)

58. The responses to this question were quite detailed and varied. For this reason, some CAs appear more than once in the breakdown that follows below.
59. Some CAs (BG, EE, EL, FI, HU, IS, LT, LU, LV, NO, PT, RO, SI, SK) stated that this was assessed as part of normal supervisory work and no other tools were used.
60. Some CAs (BE, CY, DE, DK, HR, IE, MT, SE) outlined their general supervisory approach while highlighting specific elements such as firm visits, specific or tailored questionnaires and assessment of complaints.
61. Some CAs (ES, PL) also contact clients to get their perception of whether advice had been given in the course of the sale. ES also has a legislative requirement for when investment firms wish to include a generic clause in the contractual documentation

indicating that the client recognises that it has not received advice the client must provide a handwritten note confirming that advice has not been provided when purchasing a complex product.

62. Some CAs (AT, DE, LI) referenced the work completed by auditors, who were mandated and supervised by the CA. The CA reviews the auditor's annual report and bases its supervisory actions on the risks identified. Two CAs (AT, DE) also used simulated sales scenarios conversations with the firm's staff to assess whether advice was being given.
63. Some CAs (FR, LT, LV) have completed mystery shopping to help identify whether advice was being given.
64. Some CAs (BE, CZ, DE, IT) assess data submissions by firms and conduct a peer analysis to help identify outliers.
65. Some CAs (BE, DE, UK) identified the use of thematic studies alongside normal supervisory activity.
66. One CA (NL) stated that it had assessed the market and concluded that the largest execution only service providers do not offer investment advice and that when an execution only provider does offer advice it is physically separated from execution only services.
67. Two CAs (BE, FR) has published guidance to help firms identify when advice is given.

Competent Authorities latest overview of different distribution methods (Question 15)

68. Nearly all of the CAs (AT, BE, BE, CY, CZ, DE, DK, EE, EL, ES, FR, FI, HR, HU, IE, IT, LI, LT, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK,) have reviewed the distribution methods within the review period, using a combination of desk based or on-site. Two CAs (LU, IS) did not undertake an overview of this information during the review period.
69. This information is mainly gathered through desk based assessment or through on-site inspections (where the CAs employs a more risk based approach to supervision).
70. In line with the answers to Q8 face-to-face, telephone and emails/online were identified as the most common distribution methods. However, investment advice by video-telephone, mobile facilities, courier/post mail and ATMS/others were also mentioned by CAs.

Investment advice without assessing suitability, and reasons found (Question 16)

71. More than half of the CAs (AT, BE, CY, CZ, DK, EL, ES, FR, HU, IE, IT, LU, NO, PL, PT, RO, SE) observed investment firms providing personal recommendations without assessing the suitability of the financial instrument.

72. The other CAs (BG, DE, EE, FI, HR, LI, LT, LV, MT, NL, SI, SK, UK) did not find any cases where a suitability test was not performed.

Investment advice provided with no authorisation (Question 17)

73. Table B sets out where CAs found cases of investment advice being provided without authorisation.

Table B

| | Member State | Total | Additional comments |
|------------------------------------|--------------------------------------------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CAs with confirmed cases | AT, BE, BG, CY, CZ, DE, ES, FR, IE, LI, LT, LU, NO, PL, PT, RO, SE | 17 | Some of these findings include entities which were not authorised to provide any regulated service while others just lacked the authorisation concerning investment advice. |
| CAs with no confirmed cases | DK, EE, EL, FI, HU, HR, IT, IS, LV, MT, NL, SI, SK, UK, | 14 | |

CAs work to clarify boundaries between informing and advising clients (Question 18)

74. Nearly all CAs carried out some supervisory work to clarify the boundary between the provision of information and provision of investment advice during the review period. Only a few CAs (CZ, FI, IS, LI, LT) responded that they have not done any specific work during the review period. The reasons cited were that they may rely on previous work or previous guidance. IT stated that this work started from the very early stages of MiFID implementation and continues on the basis of guidelines provided over time.
75. Some CAs responded in more detail and referred to internal measures, external communications and combinations of both to clarify this boundary. The AG found that it was not fully clear to what extent this work was published or presented to an external audience.

76. In some CAs (BE, CY, EL, FR, HU, IT, NL, NO, PL, PT, RO, SK) measures raised comprise, among others, publishing ESMA guidelines and CESR Q&As and memos and holding discussions on this issue with the industry.
77. Some CAs performed thematic work (AT, DE, EI, IT, MT, NL, NO, UK), interviewed investment firm's staff (AT, BE, DE, DK, FI, MT, NO, PL, PT, UK) and/or organised conferences (AT, ES, SI). Beside these activities a large number of CAs stated that a lot of work has been done in this area in the course of the day-to-day supervisory work.
78. One CA (EL) carries out supervisory work in response to complaints and had one investigation in the review period.

Ensuring that CA's staff monitor firms' provisions (Question 19)

79. CAs were asked to provide information on how they ensure that their staff monitor that firms have safeguards, procedures and staff training in place in order to distinguish advised and non-advised services, to guide, track and record the interaction between firm's staff and clients and avoid any personal recommendation being made in situations where a suitability assessment is not provided.
80. The question appears to have been interpreted by respondents in two ways: One group of CAs reported on the internal measures to train its staff in order to monitor firms' provisions (AT, BE, BG, CY, CZ, ES, DK, EE, FR, HR, IE, LI, LT, LV, MT, PL, SE, SK, UK), the other group focused more on the requirements concerning the firms' staff (DE, EL, FI, HU, IT, IS, LU, NL, NO, PT, RO, SI).
81. The first group cited internal procedures, provisions and control mechanisms in order to ensure its staff monitor firms. These measures include CA assessment teams comprised of junior and senior staff (e.g. the "four-eye-principle"), checklists and forms, handbooks, internal training, group discussions, periodical team meetings, and requiring staff to have qualifications.
82. The second group focused more on the supervision of measures taken by firms in order to meet the suitability requirements.

CAs assessment of EEA cross-border activities (Article 31 MiFID) (Question 21)

83. The majority of the CAs (AT, BE, CY, CZ, DE, DK, EL, ES, IE, IT, LI, LT, LU, MT, NO, NL, PL, SE, SK, UK) responded that they would assess cases where an investment firm operates under freedom to provide investment service and activities in accordance with Article 31 of MiFID and has a significant client base in other jurisdictions in the same way they do when the firm operates only within the home jurisdiction.
84. Others (BG, EE, HR, HU, IS, LV, PT, RO, SI) did not provide an answer due to the fact that they are not aware of any cross-border activities. FR stated that it has not done supervisory activity focused on this specific segment of French firms' activities yet.

3. Monitoring of compliance with suitability requirements

Monitoring of compliance with suitability requirements, adaptation to distribution methods (Question 22)

85. The supervisory approach to monitoring compliance by firms with the suitability requirements is generally based on on-site inspections. The on-site visits are complemented by desk-based reviews (AT, BE, CY, CZ, DE, EL, ES, IE, IT, LI, LT, LU, LV, PL SK) and thematic reviews. In some cases CAs point out that the supervisory approach is a risk based approach (BE, CY, EE, EL, ES, FI, IE, IT, IS, NO, SE).
86. On-site visits are usually scheduled but CAs may conduct ad-hoc on-site visits caused by the occurrence of certain trigger events (accumulation of red flags that may indicate a breach of MiFID requirements, e.g. by a significant increase in the number of clients' complaints).
87. On-site visits are largely focused on reviewing samples of client files to check the completeness of the information collected the experience of clients, their financial situation and investment objectives, and to make sure that the suitability test takes into account all the above mentioned information. In some jurisdictions such as BE, the scope of on-site visits can be wider.
88. The criteria taken into account for the selection of firms for on-site inspections includes the size of the investment firm in terms of its market share or the level of infringements detected using internal (compliance, audit reports or on-site report) and external information sources (client complaints).
89. CZ, DE, DK, FI, HU, LI, LU, NL, PL, SI, UK said that they do not adapt their approach to monitoring according to the distribution method. On the other hand, AT, BE, CY, ES, FR, IT, NO, may adapt their approach to monitoring according to the distribution method. Many CAs (BG, EE, EL, EL, FI, IE, IS, LT, LV, PT, RO, SE, SK) did not submit information regarding whether and how CAs adapt their approach to monitoring suitability according to the distribution methods.
90. IS has not implemented regulations to recognize the establishment of ESMA and therefore the ESMA Suitability Guidelines have not been transposed into national legislation in any form. However IS does take account of the guidelines in its supervisory work.

Adaptation of monitoring to the complexity of instruments (Question 23)

91. The majority of CAs said that they adapt their approach to monitoring suitability according to the complexity of the instrument. According to most CAs, if investment

firms recommend more complex financial instruments than the expectation is that the information gathering must be designed and adapted to the complexity of the instruments.

92. IE and NO stated that supervisors adjust their supervisory approach in line with the level of complexity of the instruments on offer. The adjustment of the supervisory approach would be evident in the suitability inspection process.
93. BG, PT, SK, stated that complex products are for the most part not offered. In PT the larger market players have agreed not to sell riskier instruments.
94. SI responded that their investment firms do not typically make distinctions when gathering client data whether it be for complex or non-complex financial instruments.
95. Of the CAs which stated that they did not amend their supervisory approach to monitoring suitability based on complexity of the instrument (AT, CZ, DK, LI, LU), one CA, (DK), stated that their expectation on the information gathering by the supervised entity was higher.
96. LU stated that the questions included in the questionnaire do not differ based on the complexity of financial instruments. During the on-site inspection, the CSSF checks that firms collect information on clients' knowledge, experience, financial situation, time horizon and investment objectives. In practice, the CSSF reviews both the content of the questionnaire as well as the completeness and the quality of information collected.
97. CZ stated that it does not differentiate its approach according to complexity of financial instruments as the investment firms are required to collect sufficient information to conduct a proper suitability and appropriateness tests.
98. IT responded that it had implemented an enhanced supervision regime which was dedicated to firms distributing complex products to retail clients. Supervision is also conducted on the basis of a recent recommendation issued in relation to the distribution of complex financial products to retail clients, where specific and detailed guidelines were also provided with respect to suitability requirements. The supervisory approach is based on the pre-set risk indicators as well as through ad-hoc queries.
99. The UK mentioned that where complex products are recommended they also analyse the firm's client categorisation process to ensure that only clients categorised as professionals, are offered complex instruments.

Ensuring that firms have in place adequate arrangements and procedures (Questions 24 and 25)

100. CAs make use of on-site/off-site inspections to verify the implementation of arrangements, procedures and appropriate information gathering on all aspects of

suitability requirements by firms (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, GE, HU, IE, IT, IS, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK).

101. Moreover, a number of CAs (BE, FR, GE, HU, IE, IT, LU, PL SE, UK) said they use supportive documents during their on-site visits, audits, or desk-based supervision including: circulars, guidelines, standard questionnaire/ standardised industry template for client profile (LI), suitability assessment template (UK), inspections templates, quality assessment of investor profiles, handbook, documentation list or suitability work program. In addition some CAs also said they supplement their use of documentation by engaging in simulated sales conversations.
102. IE also provides training for supervisors regarding suitability requirements and issued a supervisory handbook. This enables supervisors to evaluate whether the firm has gathered the essential facts required in order to ascertain suitability.
103. BE facilitates supervisory functions regarding suitability requirements by means of a “documentation list” that contains all the information, data and documents that regulated undertakings must have at hand in order to meet the legal and regulatory requirements, including compliance with suitability requirements. In addition, the suitability work programme is published on the CA’s website to make clear to financial institutions what is expected to be in place in terms of procedures and controls.
104. FI and NO check internal instructions of applicant firms at the time of authorisation.
105. The majority of CAs described the supervisory work carried out over the review period to ensure firms are gathering adequate information on their clients and are making appropriate use of risk profiling/assessment tools. Five CAs did not provide any information in this regard. However, only a limited number of CAs provided supporting examples of this.
106. Only eight CAs (BE, DE, IE, MT, NL, PL, PT, UK) provided samples of information in English. The sample supervisory work included: inspection templates/ documentation completed by supervisors or correspondence with firms after an on-site inspection.

Determination of an appropriate use of tools to match a client profile (Question 26 and 26a)

107. With regard to how CAs determine whether firms are making appropriate use of tools and arrangements to match a client profile with suitable investment recommendations, the majority of CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, HU, IT, LI, LU, MT, NL, NO, PL, PT, SE, SI, SK, UK) verify (through of on-site/off-site controls) and compare the client profile (sample based controls) with the recommended financial instruments by reviewing questionnaires used by investment firms and any other relevant application forms, clients complaints, compliance reports and by checking a sample of client portfolios.

108. CAs generally verify whether the tools and arrangements enable firms to gather information of sufficient quality, substance and consistency to generate an adequate client profile to match a suitable investment against for a client. In addition to the on-site and off-site controls CAs said they use a range of other supervisory tools including e.g. thematic reviews, annual reports, and investment minutes. Some CAs (DE, IE, UK) also have the power to appoint a nominated “skilled person” to properly assess the compliance with the suitability requirements.
109. One CA (BE) uses a “documentation list” that contains all the information, data and documents that regulated undertakings must have at hand in order to meet the legal and regulatory requirements, including compliance with suitability requirements.
110. Another CA (IT) receives and regularly reviews periodic information from firms (including annual reports describing firms’ business models and organisation structures, compliance function’s reports) where detailed information it is often found related to the processes and procedures adopted by firms in their interaction with clients, including those used by intermediaries for the purposes of carrying out a suitability assessment.
111. AT assesses whether firms use IT based systems designed to support the suitability matching process. If such tools exist, AT checks whether they are designed in a way that all relevant factors are considered. In this context, AT also reviews if the staff responsible for providing advice possess sufficient skills to understand and use the IT based systems for supporting the matching process.
112. IS stated that they have not carried out any supervisory work in this area.
113. As regards the cost of the financial instrument, CAs responded that this one of many factors they considered in their evaluation of suitability, i.e. if the instrument is not cost effective, this would have a bearing on whether the instrument is suitable for the client. A number of the CAs said they have carried out thematic work on costs: (ES NL, NO, UK).
114. The majority of CAs did not provide any supporting examples of supervisory work carried out over the review period to ensure firms have appropriate policies, procedures and record-keeping in place to demonstrate the suitability of their investment recommendations.
115. A minority of CAs provided some examples of supervisory work however not in English language version (BE, CZ, ES, FR, IT, LU, SE, SK).
116. Of the CAs that did provide samples of supervisory work in English, (DE, IE, MT, NL, PL, PT, UK) they appear to review and evaluate firm policies and procedures and then utilise checklists to evaluate actual client files through an in depth review.

*Determination of an appropriate account of the liquidity of a financial instrument
(Questions 27 and 27a)*

117. The majority of CAs assess the questionnaires used by investment firms and check whether these contain questions that relate to the client holding period. Most CAs undertake some testing of samples of client files in order to compare the preferred holding period information provided by the client with the investment advice given to the client and the features of the instruments recommended, including liquidity. Where complex instruments are being held in client portfolios, CAs ensure (ES for example) that these client portfolios are included in file testing.
118. In some CAs (BE, DE, LU, NO) there are also organised meetings between investments advisors, managers (within management interviews) and the CA's supervisory staff during on-site visits.
119. One CA, (MT), outlined how during in-depth file reviews, product prospectus are obtained and the product liquidity along with all other risks as per the prospectus, would be taken into consideration for the suitability assessment.
120. Only three CAs (CZ, LU, UK) provided samples of supervisory work carried out over the review period to establish that a firm or group of firms has adequately considered liquidity against client holding period assessed.
121. Most of the other CAs did not submit any evidence under this question.

*Determination a firm understands all material characteristics of the financial instrument
(Question 28)*

122. The majority of CAs provided a comprehensive answer to this question (AT, BE, BG, CZ, CY, DE, DK, EL, FR, HU, IE, IS, IT, LI, LV, NL, NO, PL, PT, RO, UK). The approach adopted by CAs typically encompasses one or both of the following tools: verifying that a skilled, qualified person directly provides investment advice and/or verifying whether appropriate training is provided by firms to staff. Some CAs also mentioned their interaction with senior staff as part of their supervisory oversight to assess the understanding of the firm of all the material characteristics of the financial instrument (AT, BE, CY, IS, IT, MT, PT). IT also explained that its approach is based on the monitoring of firms' processes and procedures to ensure a full understanding by firms of the characteristics of the products offered. UK requires firms to issue a letter of suitability to explain to clients how the recommended product is suitable for them.
123. Some CAs in their responses focused on the review of the firm's output, to gauge the firm's understanding of the instrument.
124. ES, NO and SE stated they examine all information produced on the financial instrument to be able to assess whether the firm has clearly understood the instrument.

125. NL said it also looked at the firms' product approval process.
126. A minority of CAs reported a supervisory approach that was either very general or did not precisely address the issue raised in this questions (EE, FI, LT, LU, SK).
127. Most CAs said they did not address the question on the impact of cost on performance. Those CAs which did said that they did added that it would anyway be considered as a general factor to take into account.

Main challenges for CAs (Question 29)

128. Table C sets out the main challenges to effective supervision cited by CAs. The main issue identified was that monitoring adherence by firms to the suitability rules is a resource intensive task requiring a specific skill set.

Table C

| Other challenges to effective supervision |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Cooperation between CAs and other regulatory bodies. • Regulatory arbitrage. • The subjective nature of the suitability assessment in determining whether an investment is suitable. • Providing investment advice without authorisation. • Interpretation of the rules that constitute the suitability requirements. • Proper matching of the investment products (financial instruments) with the client's profile. • Poor information gathering on clients. • Development of new technologies and products: robo advice, mobile devices, electronic platforms. |

Self-assessment of strengths and weaknesses (Question 30)

129. CAs offered other wide-ranging examples of their core strengths including:
- carrying out on-site inspections,
 - making effective use of investment advice minutes
 - incorporating risk-based supervision and 'early warning systems' and mystery shopping into their supervisory approaches;
 - employing high-calibre, experienced staff with an in-depth knowledge of instruments;
 - effective engagement with external stakeholders; and

- imposing a minimum qualification on the staff of firms before they can extend investment advice to clients.

These and CAs other strengths are captured in Table D.

Table D

| Other areas highlighted by CAs as key supervisory strengths | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Issuance of inspection reports containing an explicit list of observed weaknesses. • Use of telephone recordings. • Enhanced selection of complex and high risk financial instruments. • Issuing alerts on complex instruments. • Use of dashboard for assessment of firms and benchmarking firms against peers. • Engaging and influencing stakeholders. | <ul style="list-style-type: none"> • Implementing supervisory tools like risk-based supervision or 'Early Warning' systems. • Enhancing experience and knowledge of the employees through training and certification programs. • Use of mystery shopping. • Ensuring staff have in-depth knowledge of instruments, are high quality, are former industry practitioners. • Collaboration with Ombudsman. |

130. The majority of CAs did not offer a view on what they could do to improve their supervisory oversight in this area. Where views were offered by CAs they were diverse. Table E sets out the range of views received from CAs.

Table E

| Suggestions by CAs to improve supervision | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Increase volume of firms visited • Intensify dialogue with stakeholders • Increase focus of the internal procedures of firms • Ensuring that the IT tools used by firms for monitoring compliance with suitability requirements are in proportion with the size and nature of the firm • Better prevention of the provision of a personal recommendation in the absence of permission to provide | <ul style="list-style-type: none"> • Improve and increase the training of both CA staff and industry staff • Enhance cross-border supervision • Enhance co-operation between CAs • Improve the output of analysis carried out in order to make any subsequent actions more effective and timely. |

Analysis conducted to monitor the non-compliance with suitability requirements (Question 31, 31.a and 32)

131. General desk-based supervision was a tool used by around half of CAs (AT, BE, CY, CZ, DE, DK, ES, IE, IT, LI, LU, NO, PL, SE, SK, UK) for the monitoring of non-compliance with suitability requirements during the review period.
132. The majority of CAs (AT, CZ, DE, DK, EL, ES, FR, HU, IE, IT, LI, LT, LU, MT, NL, NO, PL, PT, RO, SI, SK, UK) conducted general routine on-site visits to monitor the compliance with suitability requirements during the review period.
133. Seven CAs (BE, CY, EE, LV, FI, IS, SE) did not carry out general routine on-site visit(s) to monitor the occurrence of non-compliance with suitability requirements by firms during the review period, though (EE) indicated it carried out a general routine on-site visit but not in a review period.
134. Non-routine or ad-hoc on-site visits were also conducted by a majority of CAs (AT, BE, CZ, CY, DE, DK, EL, ES, FR, IT, LU, LT, MT, NL, PL, RO, SE, UK).
135. The majority of CAs (AT, BE, DE, DK, ES, IT, LT, RO, SI, SK, MT, NL, NO, PL, PT, SE, UK) conducted thematic review exercises to monitor compliance with suitability requirements in the review period.
136. Other supervisory tools used as methods to monitor the occurrence of the non-compliance with the suitability requirements by firms include:
 - i. mystery shopping campaign,
 - ii. conducting a survey to assess how firms provide services to elderly retail clients,
 - iii. meeting with firms,
 - iv. verification of information requirements,
 - v. monthly data reporting by firms,
 - vi. skilled person report,
 - vii. additional tools of management interviews and customer complaints.
137. The vast majority of CAs did not cite/use other supervisory tools.
138. The percentage of the market covered through these tools varied greatly from 5% (UK) to over 90% (NL, PT, SE).

Findings of non-compliance (Table 3 from questionnaire)

Guideline 1

139. 17 CAs (AT, BE, CZ, DE, ES, FR, HU, IE, LT, LU, NL, NO, PL, PT, RO, SE, UK) submitted information regarding instances of non-compliance concerning Guideline 1.
140. A minority of CAs either stated that the instances of non-compliance recorded did not occur during the review period or did not provide data (BG, CY, DK, EE, EL, FI, IT, IS, LI, LV, MT, SI, SK). (LV) stated that in the review period, inspected firms did not provide investment advice.
141. CY stated that the information regarding instances of non-compliance in table 3 is not available due to the fact that the vast majority of the investigations conducted involve firms not authorised to provide investment advice.
142. All of FR responses in table 3 included details of findings related both to MiFID entities and to Article 3 exempt entities.
143. One CA, (EE), said they did not find any instances of non-compliance with Guideline 1 during the review period (though three instances were identified between 2010-2011).

Guideline 2

144. The majority of CAs identified instances of non-compliance concerning Guideline 2 (AT, BE, CZ, DE, DK, ES, FR, HU, IE, IT, LI, LT, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK).
145. Nine CAs (BG, CY, EE, EL, FI, IT, IS, LV, UK) either stated that they did not identify any instances of non-compliance during the review period or did not provide data.
146. A CA (EE) submitted information that there were not instances of non-compliance with Guideline 2 during the review period (though three instances were identified between 2010-2011).
147. Two CAs (BG, LV) stated that inspected firms did not provide investment advice during the review period.

Guideline 4

148. The majority of CAs (AT, BE, CZ, DE, DK, EL, ES, FR, HU, IE, IT, LI, LT, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) identified instances of non-compliance concerning Guideline 4.
149. Seven CAs (BG, CY, EE, FI, IS, LV) either stated that no non-compliance were identified in the review period or they did not provide data.

150. A CA (EE) did not identify any instances of non-compliance with Guideline 4 in the review period (however three instances were identified between 2010-2011).

151. Two CAs (BG, LV) stated that inspected firms did not provide investment advice during the review period.

Guideline 5

152. The majority of CAs (AT, BE, CZ, DE, DK, ES, FR, HU, IE, IT, LT, LU, NL, PL, SE, SI, SK, UK) reported instances of non-compliance concerning Guideline 5.

153. A minority of CAs (BG, CY, EE, FI, IS, LI, LV, MT, NO, PT, RO) either stated that they did not identify any instances of non-compliance in the review period or did not provide data.

154. A CA (EE) did not identify any instances of non-compliance with Guideline 5 in the review period (however three instances were identified between 2010-2011).

155. Two CAs (BG, LV) stated that inspected firms did not provide investment advice during the review period.

Guideline 6

156. The majority of CAs (AT, BE, DE, DK, ES, FR, HU, IE, IT, LI, LT, MT, NL, NO, PL, PT, SE, SK, UK) submitted information regarding instances of non-compliance concerning Guideline 6.

157. The minority of CAs (BG, CY, EE, EL, FI, IT, IS, LV, RO, SI) either stated that they did not identify any instances of non-compliance in the review period or did not provide data.

158. Two CAs (BG, LV) stated that inspected firms had not provided investment advice during the review period.

Guideline 8

159. The majority of CAs (AT, BE, CZ, DE, DK, ES, FR, HU, IE, IT, LI, LT, LU, MT, NL, NO, PL, PT, SE, SK, UK) identified instances of non-compliance concerning Guideline 8.

160. Ten CAs (BG, CY, EE, EL, FI, IS, LV, RO, SI) either stated that they did not identify any instances of non-compliance in the review period or did not respond to the questionnaire in relation to Guideline 8. One CA, (LV), stated that inspected firms did not provide investment advice during the review period.

161. A CA (EE) submitted information that in the review period there were not instances of non-compliance with Guideline 8 (however three instances were identified between 2010-2011).

Guideline 9

162. Slightly more than a half of CAs (AT, BE, CZ, DE, DK, EL, ES, HU, IE, IT, LI, LT, LU, NL, NO, PL, PT, SE) detected non-compliance concerning Guideline 9. One CA, (LV), stated that inspected firms did not provide investment advice during the review period.
163. 13 CAs (BG, CY, EE, FI, FR, IS, LV, MT, RO, SI, SK, UK) either stated that they did not identify any instances of non-compliance in the review period or did not respond to the questionnaire in relation to Guideline 9.

Information aids to supervision staff (Question 33)

164. The majority of CAs (AT, BE, BG, CZ, DE, ES, FR, HU, IE, IT, LU, PL, PT, SE, SK, UK) provided examples of the information aids (toolkits/on-site visit templates/supervisory briefings) facilitating effective monitoring of the MiFID suitability requirements.
165. However, most of the examples provided were submitted in national languages except (DE, IE, MT, NL, PL, PT, UK). A small number of CAs did not provide information in this regard (DK, FI, IS, LI, NO) while DK and NO stated that no information was provided because it was not available in English.

Main problems in relation to compliance with suitability requirements (Question 34)

166. A broad range of issues were mentioned by CAs as examples of the problems they encountered in relation to compliance with the suitability requirements.
167. The main problems based on the responses by the majority of CAs (AT, BE, CY, DK, EE, EL, ES, FR, HU, IT, LT, LU, RO, SE, SK) were:
- i. gathering of information about clients (especially for complex products),
 - ii. insufficient updating of client information,
 - iii. inadequate policies or procedures which would enable fulfilment of suitability requirements,
 - iv. poorly designed templates,
 - v. insufficiently trained staff.
168. Some CAs (CZ, LV, NO) indicated a problem with the distinction between advised and non-advised services and with the understanding of investment advice in practice for example the distinction between generic information and investment advice. PT mentioned conflict of interest as an issue for non-independent advice. Two CAs (DK, IT) highlighted the over-reliance by some firms on self-assessment by the client. DE indicated that according to national law, documentation of the recommended investment products need to be further improved. FR noted the issues of cross-border

distribution, the prevalence of unregulated instruments in the current low interest rate environment and the use of automated tools as primary issues in relation to compliance with the suitability requirements. The UK raised concern over inadequate consideration of cost, due diligence and over reliance on risk profiling tools.

(Question 34 [second part]: improvements)

169. CAs set out a range of areas where improvements had been made to address these issues. This range is set out in Table F.

Table F

| Improvements made by CAs |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • MT set up a new conduct supervisory unit. • PT signed agreement with bank association so that only trained agents would sell complex products. • AT, NL, PL, UK, have published guidance and engaged with industry which has assisted industry in complying with such requirements. • FR has increased supervision of independent investment advisors. • DE has sought to improve the quality of documentation maintained by firms relating to advice. • CZ made improvements through issuing of FAQs related the ESMA Guidelines. • LI made improvements by asking investment firms to revise procedures and arrangements related to suitability requirements. • SK made improvements by providing recommendations on gathering information relating to clients' objectives and financial situation. • LV made improvement through giving evidence that investment firms ensure distinction is made between advised and non-advised sales. • IE made improvements through a suitability thematic review which highlighted recurrent suitability issues and the expectations of the CBI around these. • IT issued a communication that required firms to put in place measures to ensure compliance with the suitability guidelines. |

Deployment of supervisory tools for monitoring the suitability requirements

Triggers of supervisory tools (Questions 35 – 42)

Use of internal tools and number of firms under table 3 (from questionnaire) which have been identified as having supervisory issues and brief explanation of the identified supervisory issue

170. 25 CAs (AT, BE, CY, DE, DK, EE, ES, FI, FR, HR, IE, IS, IT, LI, LT, LV, MT, NL, NO, PL, PT, SE, SI, SK, UK) make use of day-to-day supervisory contact with firms/trade associations whereas 6 (BG, CZ, EL, HU, LU, RO) do not. A number of CAs (AT, CY, EE, LT, NL, PL, SI, SE, SK) did not provide the number of firms mentioned under table 3 having supervisory issues identified through the use of day-to-day supervisory contact with firms/trade associations. And when a number has been provided, this ranges between 0 (BE, HR, DE, DK, FI, IS, LI, LV, MT, NO, PT, SK), 1 (ES) to 100 (FR) and 200 (UK) but only in the case of DK, MT and NO is it clear that these numbers relate to firms which have been identified as having supervisory issues under table 3. SE also explained that all their supervisory issues are derived by their risk based supervisory approach, rather than a specific supervisory tool.
171. 30 CAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, HR, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PT, PL, RO, SE, SI, SK, UK) make use of on-site inspections (planned and unplanned), whereas 1 (BG) does not. Many CAs did not provide the number of firms, mentioned under table 3 as having supervisory issues identified using on-site inspections (planned and unplanned). Where a number has been provided, this ranges between 0 (FI, HR, LV), 1 (LI), 2 (EL, LT, MT, SK), 6 (PT), 8 (CZ, IE), 9 (DK), 10 (LU, RO), 11 (NO), 17 (IT), 22 (ES, PL), 28 (HU) and 100 (FR,), but only in AT, DK, EL, ES, MT, NO, PT, and SI cases the relevant CAs have responded clearly that the numbers provided relate to firms which have been identified as having supervisory issues under table 3.
172. 24 CAs (AT, BE, CR, DE, DK, EE, ES, FR, HU, IE, IS, IT, LI, LT, LV, NL, NO, PL, PT, RO, SE, SI, SK, UK) carried out on a number of firms or sector or market thematic reviews, whereas, 7 (BG, CY, CZ, EL, FI, LU, MT, NO) did not. MT carried out thematic reviews through the review period but there were not specifically related to the issue of suitability, whereas LU did not find it necessary to carry out a thematic review specifically related to the issue of suitability during the review period. Many CAs did not provide the number of firms under table 3 having supervisory issues identified using thematic reviews. Where a number has been provided, this ranges between 0 (HR, HU, IE, LV), 1 (IT, SK), 3(ES), 5 (DK), 8 (LT), 19 (PL), to 71 (PT), but only in the case of NO is it clear that the number (0) provided relate to firms which have been identified as having supervisory issues under table 3. Only PT clarified that the number provided does not relate with the number of firms provided in table 3. Moreover, PL responded that it has identified, the supervisory issue of ‘unreliable information provided to clients’ using a thematic review.
173. 15 CAs (BG, CZ, EL, ES, FI, HU, IT, LI, LT, LU, LV, NL, PL, RO, SE, SI, SK) do not make use of case-by-case review by a third party or “skilled person”, whereas 14 CAs

(AT, BE, CY, DE, DK, EE, FR, HR, IE, IS, MT, NO, PT, UK) make use of such reviews. Many CAs did not identify the firms (under table 3) as having supervisory issues identified by using case-by-case review by a third party or a “skilled person”. Where a number has been provided by CAs, this ranges between 0 (HR, DK, NO) to 1 (IE, MT, UK), but only in the case of NO the relevant CA has responded clearly that the numbers provided relate to firms which have been identified as having supervisory issues under table 3. Moreover, only MT clarified that it had used one of the four big audit firms in order to act as inspector for the MFSA, with the intention to detect whether mis-selling took place.

Use of internal risk analysis, internal system/clients’ complaints, external auditors, mystery shopping and other internal tools and number of firms under table 3 (from questionnaire) which have been identified as having supervisory issues and brief explanation of the identified supervisory issue

174. 22 CAs (AT, BE, BG, CY, CZ, DE, DK, ES, HR, IE, IS, IT, LI, LU, LV, NL, NO, PT, PL, SE, SI, UK) make use of internal risk analysis, whereas 9 CAs (EE, EL, FI, FR, HU, LT, MT, RO, SK) do not. A number of CAs (AT, BE, CY, IS, PL, SE) did not identify the number of firms (under table 3) as having supervisory issues identified using internal risk analysis. IT stated that supervisory issues were identified in firms through internal risk analysis but did not provide any figures. In some cases a number has been provided but only in the case of MT, is it clear that the numbers provided relate to firms which have been identified as having supervisory issues under table 3. Some CAs (CZ, DE, ES, PT, SE) have responded that this specific tool along with other supervisory intelligence tools are used in their risk-based supervisory approach. Moreover, SE commented that since their supervisory approach entails more than one supervisory tool of internal and external origin, it is difficult to pinpoint a specific number or examples to each one of the listed tools. DK identified the following supervisory issues by using specific supervisory tool: selling of complex products without having obtained sufficient client information to be used for suitability tests. Moreover, PL identified the following supervisory issues by using this supervisory tool: unreliable questions that are used for checking client’s profile, using the self-assessment methods for determining client’s profile, inappropriate scoring system that award the client for relevant information.
175. 30 CAs (AT, BE, BG, CR, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LI, LU, LV, MT, NL, NO, PT, PL, RO, SE, SI, SK, UK) make use of internal systems/clients’ complaints, whereas, 1 (LT) does not. Many CAs (BE, EL, HU, SK) did not provide the number of firms under table 3 having supervisory issues identified by using internal systems/clients’ complaints. Where a number has been provided by CAs, this ranges from 0 (BG, HR, IT, IS, LI, LV) to 1 (IE, RO), 2 (ES), 3 (DK) and 300 (UK), but only in the case of MT the relevant CA has responded clearly that the numbers provided relate to firms which have been identified as having supervisory issues under table 3. Some CAs (DE, ES, IE,) responded that complaints are a trigger for suitability inspections. 1 CA, (DK), responded that it identified the following supervisory issues with said

supervisory tool: failure to update client information, failure to complete suitability tests before providing investment advice, poor record keeping, poor arrangements to understand and adequately use client information when providing investment advice.

176. 14 CAs (AT, BE, CY, CZ, DE, ES, IE, IS, IT, LI, LU, MT, NO, PT) make use of external auditors, whereas 17 CAs (BG, HR, DK, EE, EL, FI, FR, HU, LT, LV, NL, PL, RO, SE, SI, SK, UK) do not. 3 CAs (HR, EL and PL) have responded that they do not make use of this supervisory tool because it is not provided in their national law. Many CAs (BE, HR, CY) have not provide the number of firms under table 3 having supervisory issues identified by using external auditors. Where a number has been provided by CAs, this ranges from 0 (ES, IE, IS, MT, PT, UK), to 1 (IT), 7 (AT) and 14 (LU), but only in the case of MT, the relevant CA has responded clearly that the numbers provided relate to firms which have been identified as having supervisory issues under table 3. Moreover, DE reported as follows: the following figures are estimated and based on a random survey of 2610 cases while in total 281 (10.8%) of these cases have been found defective: Guideline 1: 1 case of surveyed cases; Guideline 2: About 37 cases of surveyed cases; Guideline 4: About 3 cases of surveyed cases; Guideline 5: About 1 case of surveyed cases; Guideline 6: About 1 case of surveyed cases; Guideline 8: About 1 case of surveyed cases; Guideline 9: About 237 cases of surveyed cases.
177. Nine CAs (BE, CY, FR, HR, HU, IE, LT, LV, RO) make use of mystery shopping, whereas 21 CAs (AT, BG, CZ, DE, DK, EE, EL, ES, FI, IS, IT, LI, LU, MT, NL, PL, PT, SE, SI, SK, UK) have not made use of mystery shopping. DK, EE and PL do not have a legal basis for mystery shopping, whereas BG, HU, SE and UK have not used mystery shopping during the review period, and IT responded that as an alternative to mystery shopping it interviews clients. Two CAs (BE, FR) did not provide the number of firms under table 3 having supervisory issues identified by using mystery shopping. And where a number has been provided by CAs, this ranges from 0 (HR, IE, LT) to 1 (CY), but only in the case of MT, is it clear that the numbers provided relate to firms which have been identified as having supervisory issues under table 3. IT responded that it interviews clients, directly during on-site inspections, or through the firms' compliance officers acting on behalf of the CA (CONSOB). RO indicated that recently it made use of mystery shopping including the application of a suitability test. The outcome of the exercise was that firms only collected general information regarding the social and financial background of the client, investment experience and studies, the client declaring as his own responsibility the level of financial knowledge. Moreover, CY responded that the use of mystery shopping identified the supervisory issue of provision of investment advice without authorisation.
178. Eight CAs (AT, BE, CY, CZ, FR, IS, IT, LU, UK) make use of other internal tools, whereas 13 (BG, EE, EL, HU, LI, LT, LV, MT, NO, PT, SI, SK) do not and 10 CAs (DK, ES, FI, HR, IE, NL, PL, RO, SE) have not provided a response. But the other supervisory tools, which are described below, have not been used by the respective CAs in order to identify supervisory issues related to the number of firms mentioned under table 3.

Thematic reviews for the assessment of the nature and level of firms' compliance with MiFID suitability requirements

179. A large number of CAs (BE, CZ, DE, DK, ES, FI, FR, HR, IS, IT, MT, NL, NO, PT, UK) follow risk-based supervision and make an extensive use of thematic reviews which are seen in many cases as a key part of their supervisory approach to ensure firms' compliance with conduct of business rules (among those rules the suitability requirements rules are included). Accordingly, in most cases, relevant thematic work is prioritised based on the analysis of risk-based supervision conducted.
180. Many CAs (AT, DE, ES, IE, IS, LI, PT, SI, SK) have responded that they carried out thematic reviews on specific topics (the topic of suitability assessment is also included) on the basis of relevant changes in their legislation or an increase in the number of supervisory issues concerning this conduct of business area. In addition, thematic reviews on specific topics (the topic of suitability assessment is also included) have been conducted for other reasons, for example the number of complaints received (AT, BG, CY, EL, ES, FI, IT, LI, MT, NO, PT), number of infringements or potential market problems (BE, BG, CY, DE, DK, EL, ES, FI, IE, LI, LT, NL, NO, PL), the assessment of current or emerging risks relating to an issue or product across a number of firms within a sector or market (DE, NO, UK), an annual risk or annual supervisory plan (AT, EE, ES, FI, IT,), market trends and inputs coming from the exchange of views and information at an international level (CY, DE, IE, IT, SE), an ad hoc basis (DE, EE, MT), because of aggressive sales techniques (FI, NO) and the distribution methods used (FI, FR). A number of CAs (BG, HR, CY, CZ, EL, HU, IE, IS, LU, LV, MT) responded that there were no thematic reviews carried out specifically on suitability specifically during the review period.

Risk prioritisation and assessment tools to identify areas of regulatory compliance, criteria used and how suitability was assessed

181. Most of the CAs use risk prioritisation, assessment tools and models based on different sources of information, including: news articles (DE, DK, ES, HU, LI, MT, NO, PL, UK) academic literature (DK), interaction with business and/or consumers associations/ombudsman (DE, DK, FI, IT, PL), information from other CAs (ES, HU, IT, PT), consumers' complaints (BG, CZ, CY, DE, DK, EL, ES, FI, HU, IS, IT, LI, LT, LV, NO, PL, PT, RO, SE, SK, UK), difficulties experienced during supervisory actions and visits (AT, BG, FI, HU, LI, NO, PT, UK), legislative changes (DE, FI, NO, PT, SI), thematic reviews (HU, IT, LI, NO, SK), size of firms (BE, CY, EL, FI, IS, NO, SK, UK), annual strategic plans (ES, HU, IT, NO), audit and specialist intervention reports (AT, DE, HU, LI, UK), annual compliance reports (FR, IT), information provided by the firms themselves (HU, IE, IT, UK). Moreover, most of the CAs responded that if complex products and products with high risks are offered to investors then they shall investigate the relevant supervised entities in further detail in order to verify compliance with suitability rules by firms (EL, ES, IE, IT, LT, SE). Very few CAs have developed specific assessment tools: DE for example has a system called FIS comprising an employee and complaints register, LU compares investment firms in order to set risk

prioritisation and determine which areas related to MiFID require intensive supervision, whereas NL has a risk analysis section that independently addresses and investigates potential risks and can enrich the risks identified by the supervisory staff.

CAs supervisory approach regarding ensuring compliance of investment firms for which they are the home supervisor and which operate on a cross border basis in accordance with Article 31 of MiFID

182. 15 CAs (AT, BE, CY, DE, DK, ES, FR, IE, LI, LU, NL, NO, SK, PL, UK) follow the same approach as for any other domestic firm, whereas 2 (BE, NL) also mentioned that they have not observed a significant client base in other jurisdictions. Moreover, 9 CAs (CZ, EL, FI, HR, HU, IT, LT, SK, SE) responded that they have not observed significant client base from other jurisdictions.
183. Four CAs (EE, MT, PT, RO) have responded that they have not observed any related activity regarding cross-border clients, while four CAs (BG, IS, IT, LV) responded that they have no such investment firms. Three CAs (CZ, EL, SE) also noted that in such cases they also co-operated with other CAs.

Use of mystery shopping and tied agents' supervisory handling

184. 22 CAs (AT, BG, HR, CZ, DE, DK, EE, EL, ES, FI, HU, IS, IT, LI, LU, MT, NO, PL, PT, SE, SI, SK) responded that they have not to date, used mystery shopping. Five of these CAs (BG, ES, HU, MT, SK) responded that they intend to use mystery shopping in the future (not for suitability specifically, but in general). Moreover, three (AT, DE, LU) of these CAs added that they do not use mystery shopping because there is no legal basis for it, while one (EE) cited data confidentiality issues arising from the use of this supervisory tool, and one CA (SE) responded that they did not use mystery shopping during the review period. One CA (RO) responded that it used mystery shopping recently (and therefore outside of the review period). One CAs (NO) responded "N/A". Eight CAs (BE, CY, FR, HU, IE, LT, LV, UK) stated that they make use of mystery shopping however of these, four CAs (BE, CY, FR, LV) specifically used mystery shopping for ensuring compliance with MiFID suitability requirements during the review period. LT responded that they use mystery shopping generally, but they did not use it during the review period. BE used mystery shopping in 2014 in order to assess the nature and level of firm compliance with the MiFID suitability requirements. CY and HU also used it in 2014 along with FR which as well as carrying out face-to-face mystery shopping also used mystery shopping via the internet. Finally, LV conducted four mystery shopping exercises during the review period, where it reported the following findings: in one case it found signs that investment advice was provided by an authorised firm, without registering information about advice being provided. One CA (IE) used mystery shopping but not in relation to monitoring compliance by firm with the MiFID suitability requirements. One CA (UK) responded that they usually use mystery shopping for two main reasons: either to carry out research into a specific area, or where concerns already exist around compliance and they will use the tool to confirm and identify key issues in order to conduct more focused supervisory work (although

this CA stated that no mystery shopping related to the subject of the peer review was carried out during the review period). The UK noted that it has never used this tool as a “fishing” exercise. In IT, although the CA did not make use of mystery shopping, it interviews clients directly during onsite inspections or through the firms’ compliance officers acting on behalf of the NCA.

185. 20 CAs (AT, BE, CZ, DE, EL, ES, FI, HU, IE, IT, LV, MT, NL, NO, PL, PT, RO, SI, SK, UK) do not differentiate the supervision of tied agents from the supervision of investment firms and their staff, whereas, seven CAs (BG, DK, IS, LI, LT, LU, LV) do not make use of tied agents, with LU responding that there should not be any differentiation regarding the relevant supervisory approach.

Use of external supervisory tools (clients’ complaints, media articles, dialogue with other CAs, dialogue with retail investors, occasional external analysis, whistle-blower information and other tools), and number of firms under table 3 (from questionnaire) which have been identified as having supervisory issues and brief explanation of the identified supervisory issue

186. 30 CAs (AT, BE, BG, CR, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PT, PL, RO, SE, SI, SK, UK) make use of client complaints in order to identify supervisory issues. Whereas one (EE) CA stated it did not receive any complaints regarding suitability during the review period. NO also clarified that the handling of complaints is not part of their mandate however, they added that complaints received are one of several indicators used in the risk-based approach when identifying which investment firms will be subject to an on-site inspection. Three CAs (AT, BE, CY) have not provided the number of firms under table 3 having supervisory issues identified by using clients’ complaints. Where a number has been provided by CAs, this ranges from 0 (DE, HU, LI, LV, PL, SI, SK), 1 (EL, IE), 2 (CZ, ES, FR, LT, LU, MT, RO), 3 (DK, IT), 13 (PT), 14 (LT), 10-15 (SE), but only in the case of EL, ES and MT was it clarified that the relevant numbers relate to firms which have been identified as having supervisory issues under table 3. HU clarified that it did not provide a number because in the review period there were no consumer complaint made in relation to the provision of investment advice. DK responded that it identified the following supervisory issues: unreliable client information used for suitability tests, failure to complete suitability test before providing personal recommendations and investment advice, failure to update client information used for suitability tests, poor arrangement to understand clients and financial instruments, failure to complete appropriateness test before completing non-advised sales, inadequate collection of client information used for suitability tests in relation to giving investment advice on complex products. NL responded that client complaints cannot be measured. They further stated that complaints are judged or qualified according to their risk and forwarded to the supervisors of the relevant firm(s). The supervisors will then consider whether to take action but in 2013/2014 this meant that the complaints were ‘transferred’ to the thematic review teams and supervisory issues therefore form part of

the overall findings of the thematic reviews. PL also responded that it did not receive any complaints from clients with regard to the suitability requirements.

187. 31 CAs (AT, BE, BG, HR, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PT, PL, RO, SE, SI, SK, UK) make use of media articles in order to identify supervisory issues. Some CAs (BE, HR, CY, EL, HU, IT, IS) did not provide the number of firms under table 3 having supervisory issues identified by using media articles. HU also clarified that they have not provided any number because in the review period there was no specific media article in relation to investment advice on the basis of which the relevant CA initiated a supervisory procedure. Where a number has been provided by CAs, this ranges from 0 (BG, DE, ES, IE, LI, LT, LU, LV, MT, PL, PT, SI, SK), 1 (CZ, DK, EE, RO), 3 (SE) but only in the case of MT is it clear that the numbers provided relate to firms which have been identified as having supervisory issues under table 3.
188. 28 CAs (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FR, HU, HR, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PT, RO, SE, SI, SK, UK) make use of dialogue with other CAs or European bodies in order to identify supervisory issues, whereas two CAs (EE, PL) do not. EE clarified that due to the limited size of the market they do not see the practical need to currently use additional tools in performing supervisory activities. This approach is also supported by continuously low number of complaints in the ambit of provision of investment services and investment advice. Some CAs (BE, CY, IS, IT, NL, NO) have not identified any firms under table 3 as having supervisory issues that arose by engaging with another CA or European body. Where cases have been identified by CAs, the number ranges from 0 (CZ, DE, DK, ES, FR, LI, LT, LU, LV, MT, PT, SE, SI, SK, UK) 1 (AT, EL), to 2 (IE, RO), but only in cases of EL and MT, is it clear that the numbers provided relate to firms which have been identified as having supervisory issues under table 3.
189. 23 CAs (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FR, HR, IE, IS, IT, LT, NL, NO, PL, PT, SE, SI, SK, UK) make use of dialogue with retail investors/consumer bodies in order to identify supervisory issues, whereas eight CAs do not (EE, FI, HU, LI, LU, LV, MT, RO). EE, LI and LV have clarified that such bodies do not exist in their jurisdictions, whereas MT responded that such dialogue takes place only through the consumer complaints unit. RO clarified that they did not use this specific supervisory tool, because the weight if the investment advice is significant low compared to other services provided by intermediaries. Some CAs (BE, CY, FR, HR, IS, IT, NL, UK) have not identified the number of firms under table 3 as having supervisory issues that arose by using dialogue with retail investors/consumer bodies. HR responded that consumers/investors bodies are indifferent and the UK responded that they use this tool for ranking/prioritisation. Where a number has been provided by CAs, this ranges from 0 (BG, DE, DK, EL, ES, LT, PL, SK) 1 (AT, PT), few cases (CZ) to 1-3 (SE), but only in the case of DE is it clear that the relevant number relates to firms which have been identified as having supervisory issues under table 3.

190. 17 CAs (AT, BE, BG, CY, DE, DK, ES, FR, IS, IT, LI, LT, NL, PT, PL, SK, UK) make use of occasional external analysis by a consumer or trade association in order to identify supervisory issues, whereas 13 CAs do not (HR, CZ, EL, FI, HU, IE, MT, LU, LV, NO, RO, SE, SI) and one CA (EE) did not provide any response. IE clarified that no consumer/trade associations are active in this space. The same applies for LV. 6 CAs (BE, CY, FR, IS, IT, NL) have not identified the number of firms under table 3 as having supervisory issues that arose by using occasional external analysis by a consumer or trade association. Where a number has been provided by CAs, this ranges from 0 (AT, BG, DK, ES, PT, LI, LT, SK) to 9 (PL), to on a voluntary basis with no specific cases being provided (DE), but in none of these cases the relevant CAs have responded clearly that the numbers provided relate to firms which have been identified as having supervisory issues under table 3.
191. 26 CAs (AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IS, IT, LT, LU, MT, NL, NO, PT, PL, SE, SK, UK) make use or would make use of whistle-blower information in order to identify supervisory issues, whereas five CAs do not (BE, LI, LV, RO, SI). LI also clarified that the whistle-blowing system is currently under evaluation. Some of the CAs (CY, FR, IS, IT, NL) have not identified the number of firms under table 3 as having supervisory issues that arose by using whistle-blower information. Where a number has been provided by CAs, this ranges from 0 (BG, CZ, EL, ES, IE, LT, MT, PT, SK), 1 (AT, DE, DK, LU), 3 (SE), rare (PL) to 5-6 (NO), but only in the case of MT, is it clear that the numbers provided relate to firms which have been identified as having supervisory issues under table 3.
192. Nine CAs (AT, DE, ES, FR, LI, NL, NO, SK, UK) make use of other tools in order to identify supervisory issues, whereas ten CAs said they do not (BE, EE, EL, IT, LT, LU, LV, MT, SI, UK) and nine CAs have not provided any response (HR, CY, CZ, DK, HU, IE, RO, PL, SE), and three CAs (BG, FI, IS) have responded N/A.

Use of clients' complaints

193. 28 CAs (AT, BE, BG, HR, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IT, LI, LT, LU, MT, NL, NO, PT, PL, RO, SE, SI, SK, UK) receive and use client complaints for on-site visits. Complaints may lead to short investigations into intermediaries (BE, DE, DK), on-site visits (BE, DE, FI, MT), issuance of relevant warnings to investors (depending on the outcome of the investigation initiated after the use of specific clients' complaints) (CY, DE, FR, NO), thematic reviews (DE, ES, FI, UK). BG, EE, HU, IS, LV, SI have not received any complaints related to suitability during the review period. LU describes special procedures for dealing with clients' complaints. Ten CAs (BE, BG, CY, EL, FI, IT, LT, MT, PT, RO) cited specific consumers' complaints received in relation to suitability issues, including: bad advice allegation, charges (FI, MT), mis-selling allegations, suitability of product (BE, LT, MT), marketing of medium/long-term investment to elderly persons (PT), illegal provision of investment advice (without having any license allowing to provide investment services) (BG, LT), inappropriate assessment of clients' suitability (EL, IT, RO). DE have installed an employee and

complaints register where firms have to report every single complaint a retail investor makes against an advisor.

4. Enforcement

194. A summary of enforcement actions is set out in Table 7 of Section 2 The number of reported potential breaches varies widely among the Member States.
195. Seven CAs reported that neither pecuniary nor non-pecuniary actions had taken place in relation to the suitability requirements during the review period (BG, EE, FI, HR, IS, LV, SK). Three CAs (CY, EL, LT,) report conducting one enforcement action during the review period.
196. Two CAs report more than 90 breaches (BE, ES). The largest group of CAs report between 1 to 23 enforcement actions (AT, CY, CZ, DK, EL, FR, HU, IT, LI, LT, LU, MT, NL, NO, PL, PT, RO, SE, SI). The vast majority of these breaches related to non-pecuniary actions.
197. However, the way a CA defines a non-pecuniary action is the main factor in understanding these figures. In the case of DE, the CA has been unable to provide the full number of non-pecuniary actions. This is because non pecuniary actions include actions such as meeting with executives or the compliance officer on-site as well as a request for information and as such it would have to include “nearly all firms” it supervises in this list.
198. In NO the following activities has not been reported under enforcement: “The NCA may issue orders to remove irregularities. However, this is seldom necessary, as the investment firm mainly confirm irregularities after this has been pointed out by the NCA.”
199. BE considers non-pecuniary measures as “an order, a recommendation and a point for attention”. IE reports “risk mitigation programmes” as non-pecuniary measures. Other CAs also mention warning letters and follow up letters which set out issues to be addressed by the firm as non-pecuniary measures (ES, FR, IE, IT, LI, NL, PT, RO).
200. The strongest non-pecuniary action that has been imposed has been the (partial) withdrawal of the licence or authorisation of the firm. This has been reported by ES, LU, NL, SE, and NO. Although it was not clear whether these sanctions were imposed entirely as a result of breaches of the suitability requirements.
201. 19 CAs (AT, BE, CY, CZ, EL, ES, FR, IT, LU, HU, MT, NL, DE, PL, PT, RO, SI, SE, UK) report having imposed a pecuniary action. Although it was not clear whether these sanctions were imposed entirely as a result of breaches of the suitability requirements. These pecuniary enforcement actions all refer to fines: none of these CAs (except for UK) indicated that compensation to clients was ordered in relation to an identified breach. The amount of the fines varies widely. The smallest amount amounts to EUR

400 (SI) which reflects compensation for a supervisory procedure for issuing an order and the largest amount reaches more than EUR 40 million (UK – although this fine was not entirely related to breaches of the suitability requirements).

202. Some CAs explained that enforcement actions was often not taken for the following reasons:

- i. insufficient evidence (FR, NL, UK);
- ii. the enforcement was not deemed merited (MT, UK);
- iii. the investment firms were in liquidation (UK);
- iv. another enforcement action was taken against individuals in the firm (UK).

203. Table 7 also sets out the number of investment firms that were subject to supervisory activity regarding the suitability requirements and the number of firms that were subsequently found to be non-compliant with the suitability requirements. While it is not always clear whether the enforcement actions taken arose specifically from these supervisory actions, nonetheless there is a lack of correlation between the findings of non-compliance and enforcement activity.

Published and unpublished enforcement actions (Question 43)

204. In general most CAs publish all pecuniary actions they have applied against firms. However, they differ in relevant elements of publication. The content of the publication differs on the following elements:

- i. publication is anonymised or not;
- ii. time of publication:
 - a. publication is immediate,
 - b. publication when the administrative procedure is finished, or
 - c. publication when the enforcement action has become irrevocable in the juridical procedure (which may take years as indicated);
- iii. place of publication:
 - a. press announcement,
 - b. CA website,
 - c. anonymised mention in CAs' Annual Report.

205. Three CAs do not normally publish any fines applied (AT, DE, LU). LU clarified that “the publication itself can be seen as a supplementary sanction”.

Time elapsed between breach identification and the enforcement action taken (Question 44)

206. The time elapsed from the identification of a potential breach to the enforcement action being taken varies to a great extent among CAs. About half of CAs reports a time frame of less than 1 year (e.g. 3-6 months), the other half report a time frame of between 1-3 years. DE stated that they measure the time elapsed from the moment the breach has been noticed. Other CAs may start counting from a different point in time.

5. Communication with stakeholders to ensure consistent adherence to suitability requirements by firms

Published information (Question 45)

207. A table setting out a summary of CAs communication with stakeholders is set out in Table 8. Most CAs publish suitability guidance. CAs supervising less significant markets more often refer to ESMA publications regarding the suitability requirements.
208. It is not always clear how CAs report on their supervisory activities. Some CAs have mentioned publication of thematic reviews (AT, BE, DE, DK, ES, HU, IE, IT, HU, NL, NO, PT, SE). There was less mention of the publication of good and poor practices. Only DK, IE, AT, HU SI have explicitly mentioned that they publish good and poor practices.
209. Most countries have issued public guidance in relation to suitability (AT, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, LT, LV, NL, NO, PL, SI, SK, UK). In FR the Guidance was issued in 2012 on suitability, in PT the guidelines on the provision of investment advice in 2012 and in the UK guidance is issued through the CA’s website.
210. In some countries (CZ, DK, HR, LI, MT, NO, RO, SE and SI) the public guidance was issued through a link to the ESMA website.
211. Some CAs (AT, BG, CZ, DE, ES, FR, HU, NL, NO, PL, PT, RO, SE, UK) have also published communication directed to retail investors. FR offers dedicated information tools and services for retail investors on its website, including setting out basic rules for managing investments wisely.
212. A few CAs explicitly mention that they also publish investor warnings. AT, DE, ES, FR, LT and NO stated that they regularly publish ESMA’s investor warnings on their website. In UK, warnings are published on a section of the CA’s website called “financial adviser”. Some CAs (FI, SE) mention they regularly comment in media on current incidents related to investor protection issues.

213. Some CAs mentioned ad-hoc publications that had taken place. IT has issued a report on pecuniary enforcement actions, AT focused on suitability, SE organised a seminar focused on the development and distribution of complex financial instrument. DE communicates the findings to the industry regularly.
214. The publication of complaints in relation to suitability play a role in eight CAs (CZ, DE, DK, FR, HU, MT, SI, UK). In FR, complaints findings in relation to suitability are published in the annual Ombudsman's report. In UK, information about complaints is published periodically and complaints are published also by the UK financial ombudsman service.
215. 12 CAs (CZ, DK, EL, ES, IE, FR, HU, IT, LT, NL, SE, UK) indicate they publish information in relation to enforcement cases fines on an individual basis. FR communicates relevant enforcement cases concerning breaches of suitability requirements and almost all enforcement decisions are published.
216. In SE, three public reports have been issued which all included a section focusing specifically on investor protection issues. It has also published on its website the details of sanctions imposed on investment firms.
217. Other communication activities include the handbook on "on-line services" in NL, the Annual report in ES, the weekly CA's journal in RO, the yearly meeting with the industry participants in SI, the financial education project and the different seminars in IT, the Annual workshop in LV, the training sessions on a bilateral annual basis in FR and the workshop for trade association in in HR. SK hold semi-annual meetings with market participants and also arrange seminars.

Non-public information (Question 46)

218. Almost half of the CAs (CY, DK, EE, EL, IE, IS, LI, LU, LV, MT, NO, PT, SE) have explicitly indicated that they have not issued non-public guidance.
219. The other CAs have indicated they do give non-public guidance. From their replies it mainly occurs in the context of their regular/permanent contact with investment firms and trade organisations.

Section 2: Background information

Table 1 Number of firms providing investment services

| Country code | Number of investment firms (incl. credit inst.) authorised to provide investment services or activities | How many of these are authorised to provide investment advice |
|--------------|---------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| AT | 822 | 822 |
| BE | 182 | 163 |
| BG | 65 | 65 |
| CY | 229 | 65 |
| CZ | 58 | 47 |
| DE | 6090 | 6090 |
| DK | 205 | 205 |
| EE | 37 | 20 |
| EL | 73 | 63 |
| ES | 363 | 345 |
| FI | 320 | 213 |
| FR | 319 | 259 |
| HR | 29 | 23 |
| HU | 49 | 31 |
| IE | 107 | 84 |
| IS | 23 | 19 |
| IT | 652 | 619 |
| LI | 143 | 142 |
| LT | 37 | 37 |
| LV | 34 | 20 |
| LU | 241 | 237 |
| MT | 66 | 44 |
| NL | 288 | 227 |
| NO | 128 | 111 |
| PL | 90 | 35 |
| PT | 81 | 68 |
| RO | 51 | 42 |
| SE | 187 | 157 |
| SI | 18 | 18 |
| SK | 24 | 22 |
| UK | 3568 | 3300 |

Table 2 Incoming firms established on a branch basis

| Country code | Number of investment firms operating in the MS on a branch basis under Article 32 of MiFID | How many of these provide investment advice |
|--------------|--------------------------------------------------------------------------------------------|---------------------------------------------|
| AT | 48 | 48 |
| BE | 88 | 79 |
| BG | 7 | 0 |
| CY | 5 | 3 |
| CZ | 10 | 4 |
| DE | 108 | Data not available |
| DK | 43 | 4 |
| EE | 4 | 0 |
| EL | 8 | 5 |
| ES | 95 | 67 |
| FI | 3 | 2 |
| FR | 97 | 73 |
| HR | 0 | 0 |
| HU | 6 | 2 |
| IE | 38 | 24 |
| IS | 0 | 0 |
| IT | 98 | 38 |
| LI | 0 | 0 |
| LT | 3 | 2 |
| LU | 39 | 35 |
| LV | 3 | 1 |
| MT | 2 | 1 |
| NL | 56 | 41 |
| NO | 22 | 15 |
| PL | 14 | 7 |
| PT | 11 | 9 |
| RO | 10 | 6 |
| SE | 59 | 46 |
| SI | 0 | 0 |
| SK | 5 | 3 |
| UK | 75 | Data not available |

Table 3 Outgoing firms under freedom to provide services

| Country code | Number of investment firms from the MS providing investment services in other jurisdictions under Article 31 of MiFID | How many of these provide investment advice |
|--------------|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| AT | 234 | 234 |
| BE | 33 | 9 |
| BG | 14 | 0 |
| CZ | 14 | 13 |
| CY | 150 | 44 |
| DE | Data not available | Data not available |
| DK | 0 | 0 |
| EE | 3 | 3 |
| EL | 18 | 9 |
| ES | 51 | 20 |
| FI | 19 | 16 |
| FR | 210 | 159 |
| HR | 1 | 1 |
| HU | 11 | 6 |
| IE | 76 | 65 |
| IS | 1 | 1 |
| IT | 5 | 0 |
| LI | 75 | 44 |
| LT | 2 | 2 |
| LV | 0 | 0 |
| LU | 155 | 122 |
| MT | 8 | 7 |
| NL | 118 | 118 |
| NO | 30 | 19 |
| PL | 13 | 1 |
| RO | 11 | 7 |
| SE | 240 | 22 |
| SI | 0 | 0 |
| SK | 12 | 5 |
| PT | 15 | 7 |
| UK | 1850 | Data not available |

Table 4 Firms under the Article 3 exemption in MiFID

| Country code | Number of firms providing investment service under the Article 3 exemption in MIFID. |
|--------------|--------------------------------------------------------------------------------------|
| AT | 65 |
| BE | 17 |
| BG | 0 |
| CZ | 7554 |
| CY | 0 |
| DE | 40662 |
| DK | 14 |
| EE | 3 |
| EL | 7 |
| ES | 0 |
| FI | 0 |
| FR | 4915 |
| HR | 3 |
| HU | 0 |
| IE | 1102 |
| IS | 0 |
| IT | 0 |
| LI | 0 |
| LT | 6 |
| LU | 0 |
| LV | 0 |
| MT | 0 |
| NL | 12 |
| NO | 0 |
| PL | 90 |
| PT | 0 |
| RO | 0 |
| SE | 1023 |
| SI | 0 |
| SK | 129 |
| UK | 3500 |

Table 5 Market structure by financial institutions

| Country Code | A general description of the distribution of market shares amongst firms who provide investment advice in country's jurisdiction | The share of market accounted for by the most dominant firms | Firms operating under the FPS under Article 31 of MiFID | Firms operating through the establishment of a branch under Article 32 of MIFID |
|--------------|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| AT | | <p>On the banking side, the ten largest service providers have a combined market share of 39.9 % (market share calculations are based on fees and commissions).</p> <p>Investment firms provide investment advice on client assets, with a percentage equivalent to 15 % of total assets under management.</p> | <p>Half of the 74 investment firms provide investment services and activities under Article 31.</p> | <p>None of the investment firms operates under Article 32 of MIFID.</p> |
| BE | <p>Three dominant credit institutions.</p> | <p>70 % of the market in terms of transaction.</p> | | |
| BG | | <p>Three investment firms. 77 %, 16 % and 7 % respectively.</p> | | |
| CY | | <p>15 firms account for around 97 % in terms of the trading income. Two firms accounted for around 76 %.</p> <p>Based on the number of clients, twenty firms account for 90 %</p> | <p>7 firms provide investment services and activities under Article 31.</p> | |
| CZ | <p>Investment advice is provided in the Czech Republic mainly by banks.</p> | <p>No data</p> | <p>No firm operating in the Czech Republic under the freedom to provide investment services and activities under Article 31 can be indicated as dominant.</p> | <p>No firm operating in the Czech Republic through the establishment of a branch under Article 32 of MiFID can be indicated as dominant.</p> |
| DE | <p>No statistical data is available on this question.</p> | <p>An indication is given by the shares of banks in general. Saving banks had a market share of 31.2 % and cooperative banks a share of 14.1% while private banks accounted for 33.7% Regarding investment advice to retail clients, the savings banks had a share of 39.3 %,</p> | | |

| | | | | |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| | | cooperative banks 26.8%, private banks 30.7%. | | |
| DK | Credit institutions with a licence to provide investment services. | 4-5 large corporations represent for close to 90 percent of the market share among credit institutions. | None of the dominating credit institutions is operating under freedom to provide investment services and activities under Article 31 or 32 MIFID. | |
| EE | One bank leads with 39% of the market of total assets under management (10 % of funds AUM is allocated to equity funds, remaining is mostly divided between fixed income and real state funds). Another bank has 19% of the market | Two credit institutions which have Scandinavian origin. | No evidence that significant volumes are allocated by firms operating under freedom to provide investment services and activities under Article 31. | |
| EL | Mixed | | | |
| ES | Credit institutions. | Credit institutions represent 90% of retail clients to whom investment advice is provided. The most dominant firm accounts a share of 52 % (in terms of clients), the second one a share of 11 % and the third of 5 %. | | |
| FI | The three largest banking groups are the most dominant in Finland. | They hold three quarters of the market. | The three largest banking groups operate under single passport. | One of them has branches through credit institution notification process. |
| FR | Credit institutions. | A growing part of advisory services is provided by new on line companies which are specialised in investment services and products. 11 banks control more than 50 % of the investment advice market towards individual investors. | 210 firms | 97 firms |
| HR | | Market for investment advice is distributed as follows: four of the credit institutions hold the largest portion, ca. 70% of market share. The largest investment firm holds 6.7% of market share. | | |
| HU | Credit institutions. | The most important | There are | There are investment |

| | | | | |
|----|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | market players are credit institutions providing investment services (also investment advice). | investment firms providing both cross-border services and operating in the form of a branch (also providing investment advice), but none of them can be considered as 'dominant' on the Hungarian market. | firms providing both cross-border services and operating in the form of a branch (also providing investment advice), but none of them can be considered as 'dominant' on the Hungarian market. |
| IE | Stockbroking firms | No data | | |
| IS | 23 Investment firms out of which 19 are authorised to provide investment advice to retail clients. | Three banks represent over 90 % of the total market. | None are providing cross border services. | |
| IT | 97% approximately of the market is covered by Italian banks and the remaining 3% by Italian non-banking firms. | 10 Italian largest banking groups 70-75 % of the market, in terms of number of clients and stock of clients' assets. | Not significant. | Not significant. |
| LI | Three major banks account for 80 % of the market, while the remaining 12 banks manage around 20 % of assets. | Credit institutions market share: 87 %; Asset management companies 13 %; management companies with additional licence for individual portfolio management: 0%. | Article 31 doesn't play a substantial role in the market concentration figures. | Branches don't play a substantial role in the market concentration figures. |
| LT | There is no data about the share of market. | | 2 firms provide investment services and activities under Article 31 | LT has three branches of credit institutions authorised by Member States and three branches of investment firms authorised by Member States. |
| LV | | One dominant bank 80 % of the market share. Only two investment firms (banks) provided investment advice in the review period. | | One branch of foreign branch under Article 32 could form 20 % in the area of investment advice. |
| LU | Market fragmented. | | | |
| MT | Market share is dominated by one of the major banks in Malta. | | None of the dominant firms operated during review period under Article 31. | None of the dominant firms operated during review period under Article 32. |
| NL | | Small group of large retail banks. 90 % on the number of clients/ accounts. The remaining 10 % of the market is | Not significant | Not significant |

| | | | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | provided by a small group of private banks and a larger group of smaller investment firms (predominantly wealth management). The ratio investment advice / portfolio management is 50%/50% for the smaller investment firms' portfolios. | | |
| NO | One bank is the most dominant firm | One bank represents 24 % of the market. Investment firms have 61 % of the market, credit institutions have 38 % of the market. | | Branches have 1 % of the total market. NO does not have numbers referring to investment advice only. |
| PL | A market share is approximated by number of clients. Brokerage houses in 2013 – 7020 clients; in 2014 4753 clients. Banks providing investment services 4804 in 2013 and 5544 in 2014. | | | There are no dominant firms in our jurisdiction providing investment services under Article 31 or through the establishment of a branch under Article 32. |
| PT | Most of the financial advice activity is given in the framework of “private banking” services. | | | |
| RO | n/a | n/a | n/a | n/a |
| SI | The market is dominated by investment firms. | Investment firm A 27.31%; Investment firm B 11.81%; Credit Institution B 8.75%; Investment Firm C 6.80%. | There are no investment firms under Article 31 | There are no investment firms under Article 32 |
| SK | | One bank provides the vast majority of investment advices, | | |
| SE | Major banks dominate market | | | None of the dominant firms are ‘foreign’ firms providing investment services under Article 31 or through the establishment of a branch under Article 32. |
| UK | Do not currently have this information available in term of firms providing investment advice, owing to the large number of firms in question. It can be seen that the range of firms providing advice covers a number of large firms and a much larger | n/a | n/a | n/a |

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|--|-----------------------------------|--|--|--|
| | number of smaller intermediaries. | | | |
|--|-----------------------------------|--|--|--|

Table 6 Market structure by products

| Country Code | Bonds | Equity | UCITS | Non-UCITS ETFs | Structured products and certificates | Others |
|--------------|----------------------------------------------------------------------|-------------------------|-----------------------------------------------------------------|-------------------------|--------------------------------------|--------------------------------------------------|
| AT | Fixed income 39,1% | 15% | Balanced funds 40,6% | | | |
| BE | | | Dominant | | | Insurance contracts |
| BG | 13% | 85% | | | | |
| CZ | 43% | 10% | 47% | | 0.03% | Pension funds and life insurance |
| CY | x | X | | | Warrants | Government bonds (the most important investment) |
| DE | 5% | 16% | 26% | | | 59% Life insurance 7% other |
| DK | Execution only services | Execution only services | X (Dominant) | | X (Lesser extent) | |
| EE | 2% publicly traded stocks | | 1% Investment Funds | 15 Unit Linked products | | Pension funds and demand /overnight deposits |
| EL | | | | | | |
| ES | X (7%) | X (3%) | X (79%) | | X (11%) | |
| FI | X | X | X (units of funds dominate) | | X | X (unit linked products) |
| FR | 30% | 50% | 11% | | | 9% |
| HR | | dominant | dominant | | | |
| HU | Corporate bonds 7,4% Government bonds 64%; Mortgage bonds 3,3% | 10,3% | Mutual funds 15% | | | |
| IE | | | X Dominate market | X Dominate market | | Insurance based investment |
| IS | | X | x | One ETF | | |
| IT | X Bonds 33%. Treasury Bonds 21%. | X 11% | Open-end funds 33% | | | |
| LI | X | X | X (20% equity, 22% money market; 33% alternatives; 8% strategy) | | | |
| LT | | X (80%) | X(2%) | X (3%) | | Insurance |

| | | | | | | |
|----|-------------------|-------------------|-------------------------------|-----|---------------------------|----------------------------------------------------------------------|
| | | | | | | based products (5%) |
| LU | | | | | | |
| LV | | | | | | |
| MT | X | X | X | | | X insurance based investments |
| NL | 10% | 30% | 60% | | | Insurance based investment products |
| NO | n/a | n/a | n/a | n/a | n/a | n/a |
| PT | X (43%) | X (56%) | | | X (1%) | Warrants |
| RO | | | | | | |
| PL | x | | Open-end investment funds | | | Insurance investment products |
| SE | 2% | 9% | 11% | | | Savings account 20%; Traditional life assurance and Premium pension. |
| SI | 10.06% | 88.6% | | | | |
| SK | x | | x | | Interest rate derivatives | Currency |
| UK | 22% of households | 12% of households | Mutual Funds 5% of households | | | Deposits 96 % of households, life insurance 7% of households. |

Table 7 Overview of enforcement cases during review period

| Country code | Firms captured by supervisory actions (excluding desk based reviews) | Minumum number of firms found to be non-compliant wih Suitability Requirments | Non pecuniary actions | Pecuniary actions |
|--------------|----------------------------------------------------------------------|-------------------------------------------------------------------------------|-----------------------|-------------------|
| AT | 169 | 9 | 0 | 5 |
| BE | 19 | 14 | 128 | 2 |
| BG | 0 | 0 | 0 | 0 |
| CY | 4 | 1 | 0 | 1 |
| CZ | 12 | 8 | 0 | 6 |
| DE | 670 | 37 | Data not available | 7 |
| DK | 29 | 8 | 12 | 0 |
| EE | 0 | 0 | 0 | 0 |
| EL | 65 | 2 | 0 | 1 |
| ES | 56 | 40 | 114 | 3 |
| FI | 0 | 0 | 0 | 0 |
| FR | 28 | 19 | 23 | 2 |
| HR | 0 | 0 | 0 | 0 |
| HU | 14 | 10 | 8 | 1 |
| IE | 10 | 10 | 9 | 0 |
| IS | 0 | 0 | 0 | 0 |
| IT | 167 | 10 | 9 | 5 |
| LI | 144 | 2 | 5 | 0 |
| LT | 15 | 10 | 0 | 1 |
| LU | 10 | 9 | 9 | 1 |
| LV | 0 | 0 | 0 | 0 |
| MT | 10 | 4 | 2 | 0 |
| NL | 165 | 13 | 11 | 2 |
| NO | 22 | 11 | 2 | 0 |
| PL | 41 | 12 | 0 | 2 |
| PT | 68 | 4 | 1 | 1 |
| RO | 28 | 9 | 6 | 8 |
| SE | 25 | 14 | 1 | 3 |
| SI | 3 | 3 | 3 | 1 |
| SK | 11 | 2 | 0 | 0 |
| UK | 46 ² | 32 | 4 | 12 |

² Includes desk based

Table 8 Overview of public communication with stakeholders

| CA | Public Guidance (national) | Public guidance by link to ESMA | Good & poor practices | Communication to retail investors (consumer leaflets, warning to consumers, consumer days) | Report on Thematic Reviews | Communication on enforcement cases (individual basis/annual report) | Complaints in relation to Suitability | Others-workshops, seminars | Reports of onsite visits |
|----|--------------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| AT | ESMA Guidelines on certain aspects of the MIFID suitability requirements on published on CA's website. | | Yes | Manual of duties for firms offering investment services under Austrian Law published. Also ESMA's investor warnings regularly published on CA's website. | Yes, Findings of any thematic reviews focused on suitability. | | | | |
| BE | Yes | | Yes | Yes | Yes | | | Yes | |
| BG | English and Bulgarian versions of "Guidelines on certain aspects of the MIFID suitability requirements" published. | | | Warnings to investors about firms regularly published on CA's website. | | | | | |
| CY | Guidelines on certain aspects of the suitability requirements issued. | | | | | | | | |
| CZ | Yes | Yes ESMA/2012/387 | No | Yes. The CNB outlined some findings of its supervisory activities focused on provision investment services in relation to CFDs. The CNB stressed out that CFDs are unsuitable for most retail customers. | No | Yes | The Czech National Bank Yearly Complaints Report, which was passed on to the Parliament (in anonymised version). The full version of the report was submitted to the CNB's Board. | Yes. Educational website "ČNB pro všechny" (i.e. The CNB for everyone") contains for instance document simply describing risk of churning. Official regulatory standpoint to churning you can find on the CNB's website. | |
| DE | X | | | X | X | | X | X | |
| DK | X | X | X | | X | X | X | | |
| EE | | | | | | | | | |
| EL | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| ES | Guidelines on appropriateness & | | | Specific area in Website: i) Investor orientation, | Q&A document | | | Conference 2012 Annual report. | |

| | | | | | | | | | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|--|
| | suitability | | | ii) Investor guidelines Joint website with Bank of Spain: http://www.finanzasparatodos.es/ | | | | Annual Plan Articles related to suitability in Quarterly bulletin. | |
| FI | ESMA Guidelines on certain aspects of the MIFID suitability requirements is published on CA's website. A supervision release re elderly and vulnerable clients when providing investment products and services (a product and service neutral approach covering credit institutions, investment firms and insurance companies). | | | | | | | | |
| FR | The Guidance on suitability was issued in 2012. | | | Yes, Dedicated information tools and services for retail investors on CA's website. Publication of investor warnings. | | Yes Communication of relevant enforcement cases concerning breaches of suitability requirements. Almost all enforcement decisions are published. In the ombudsman report. The CA's strategic plan considers product distribution as a key area of focus. | Yes, complaints finding in relation to suitability are published such as the complaint findings published in the annual Ombudsman report. | Bi-annual training sessions for compliance personnel. | |
| HR | | CA published information on ESMA guidance | | | | | | CA held a workshop for trade association in March 2014. | |

| | | | | | | | | | |
|----------|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------|----------------------|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|--|
| | | on aspects of suitability consulted with trade association on impact and possible difficulties of application of guidelines in HR. | | | | | | | |
| HU | Public guidance on aspects of suitability. | | Good and poor practices guides for firms and investors in relation to key suitability supervisory findings by CA. | X | X | X | Complaints finding in relation to suitability. | | |
| IE | X | | X | | Yes, but not during the review period. | X | | | |
| IS IT | | | | | Pecuniary enforcement actions. | | Distribution of complex financial products to retail investors. | January 2014, A new financial education project. Different seminars. Seminar tackling the assessment of investor's risk tolerance. | |
| LI | | X | | | | | | | |
| LT | X | X | | (Warning for investors on investments in financial derivative instruments and trade in online trading platform) | | X | | (Communication on mystery shop review) | |
| LV | X | | | | | | | Annual workshops with industry | |
| LU | | | | | | | | | |
| NL | X (several) | | | X | X | On individual basis. | | Handbook, Online services; | |

| | | | | | | | | | |
|----|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| | | | | | | | | workshops | |
| MT | | X | | | | | X | | |
| NO | | X | | | | | | | X |
| PL | The guidelines on "Standpoint concerning the provision of investment advice dated on 27 March 2012". | | | Letter complementing the Standpoint. | | | | A number of meetings and seminars organised for participants (mainly investment firms). | |
| PT | | | | X | | | | | |
| RO | | x | | Sanctions and alerts regarding the activity of the intermediaries | | | | Weekly CA's journal | |
| SE | | A seminar in June 2014 described some examples of bad practices. | | CA regularly comments in media on current incidents related to investor protection issues. The Q/A related to savings includes comprehensive information on financial instrument, share trading, complaints, frauds, cross border operation, investments firms and their services pension savings. | Seminar focus on the development and distribution of complex financial instrument that CA has carried out in three phases during 2011 and 2013. | CA has issued three public reports which all included a section focusing specifically on investor protection issues. CA has sanctioned investment firms and two insurance mediators. The sanctions are published in the CA's website. | | CA in April 2014 arranged a seminar focused solely on suitability assessment. CA is carrying out several educational projects to increase the financial education available to private individuals. | |
| SI | X | X | X | | | | X | Yearly meeting with the industry participants. Seminar organised by the Banking Association. | |
| SK | | | | | | | | | |
| UK | The financial adviser" part of the CA's website. | | | Warnings in the website "Financial adviser". Also, finalised guidance on assessing suitability and Handbook guidance. | | Yes, on the CA's website. | | Periodic information about complains published. Complaints also published by the UK Financial Ombudsman Service | |

Table 9 Overview of non-public communication with stakeholders

| Country code | Non-public guidance- Suitability requirements | Non-public guidance- Investment advice | Sought views – suitability requirements | Sought views - investment advice | Samples of such correspondence | Permanent Contact |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|-----------------------------------------|----------------------------------|--------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| AT | The Austrian Chamber of Commerce's financial services industries section has issued its own guidelines on the suitability assessment in the provision of financial services. | | | | | Yes, regularly organise meetings |
| BE | | | | Yes | Yes | |
| BG | The Department of investment firms and securities markets has prepared an internal instruction that has not been published on CA's website. | | | | | |
| CY | No | No | No | No | No | |
| CZ | Yes, answers to qualified inquiries from supervised entities could be regarded as non-public guidance. | Yes, answers to qualified inquiries from supervised entities could be regarded as non-public guidance. | | | | |
| DE | Individually to firms. | Individually to firms. | | | | On an individual basis and during (industry) meetings. |
| DK | No | No | No | No | No | No |
| EE | No | No | No | No | No | No |
| EL | Not applicable | Not Applicable | Not applicable | Not applicable | Not applicable | Not applicable |
| ES | No | No | No | No | | Yes, permanent contact with firms |
| FI | General supervisory visits in small investment firms and UCITS management companies providing investment services where one of the topics was to find out if the firms had implemented FIN-FSA/ ESMA guidance (the ESMA Suitability Guidelines). | | | | | A discussion session held with the local trade association after the entry into force of the ESMA Suitability Guidelines. |

| | | | | | | |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------|----|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| | them. | | | | | |
| FR | | | | | | Yes, on a regular basis with firms, their trade associations, investors and other national authorities on an informal basis. |
| HR | | | | | | CA took a stand in line with ESMA's opinion "Structured Retail Products- Good practices for product governance arrangement". |
| HU | | | | | Yes, CA may issue guidance and 'Dear CEO' letters. | |
| IE | No | No | No | No | No | |
| IS | No | No | No | No | No | |
| IT | Guidelines on suitability issues (5 March 2014) Guidelines drawn by the ABI – Italian Banking Association – (7 May 2014). Guidelines provided by Assosim - Italian Association of financial intermediaries, on suitability and appropriateness test, Guidelines drawn up by the Italian Cooperative Banks Trade Association (Federkasse)(June 2014). | | | | | |
| LI | No | No | No | No | | |
| LT | | | Informs investment firms and their associations about key review findings and summary with good and poor practices. | | Informs investment firms personally about mystery shopping. | Carries out thematic review on compliance with suitability requirements. |
| LU | No | No | No | No | | |
| LV | No | No | No | No | No | No |
| MT | No | No | No | No | No | No |
| NL | | | | | | Yes, regular contacts |
| NO | No | No | No | No | | |
| PT | No | No | No | No | | |
| PL | | | | | | Yes, letter complementing the standpoint of 27 March 2012 to the market participants (investment firms) dated on 3 September 2013. |

| | | | | | | |
|----|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|----|-------------------------------------|----|
| RO | The Instruction no.8/2012 on the application of those ESMA recommendations. | The Instruction no.8/2012 on the application of those ESMA recommendations This piece of secondary legislation is binding and applicable in the case of all entities providing investment advice. | | | | |
| SE | | No | | | | |
| SI | No | Yes, Such non – public guidance was issued in the review period on compliance with the suitability requirements. | No | No | No | No |
| SK | | | | | Yes | |
| UK | Finalised guidance on assessing suitability. Handbook guidance. | | Warnings and alerts for consumers. | | Factsheet 023: Suitability reports. | |

Section 3: Suitability questionnaire

A. Background information

Key Questions

- 1) Please update, if needed, the figure (which the Review Panel received during the peer review on Best Execution) in Annex 1 with the number of investment firms³ authorised to provide investment services or activities in your jurisdiction.
- 2) How many of these investment firms are authorised to provide investment advice in your jurisdiction?
- 3) How many investment firms for which your CA is a host supervisor operate on a branch basis in your jurisdiction under Article 32 of MiFID? How many of these provide investment advice?
- 4) How many investment firms for which your CA is a home supervisor provide investment services under freedom to provide investment services and activities in jurisdictions other than yours under Article 31 of MiFID? How many of those provide investment advice?
- 5) How many firms are eligible to provide investment advice under the Article 3 exemption in MiFID?
- 6) Please provide a general description of the distribution of market shares amongst firms who provide investment advice in your jurisdiction. Where possible, please indicate the share of market accounted for by the most dominant firms. Where possible, please also specify how many of the dominant firms (if any) are operating under freedom to provide investment services and activities under Article 31 and through the establishment of a branch under Article 32 of MiFID, respectively. Your answer should be no more than 300 words.
- 7) Please provide a general overview of the structure of the market in terms of products (which financial instruments dominate the market, such as bonds, equities, UCITS, non-UCITS ETFs, structured products, investment certificates etc. and, where possible, provide their approximate market share). Please clarify if the market is also dominated by investment products other than financial instruments such as insurance based investments. Your answer should be no more than 300 words.

³ Including credit institutions. Reference to investment firms and their staff also includes tied agents that investment firms may use for the provision of investment services to their clients.

B. Understanding and identification of ‘Advice’

- 8) Please describe the most common distribution methods in your jurisdiction, including, where available, the market share of each distribution method and whether/how the suitability requirements apply to each of them? Your answer should be no more than 300 words.
- 9) Does your CA make a distinction in how it supervises different distribution methods in your jurisdiction? Your answer should be no more than 150 words.
- 10) Where available, please provide some indication on the current or expected growth in the different distribution methods in your jurisdiction. Where possible please identify what trends are emerging and how you would expect such trends to affect the methods of distribution by investment firms in your jurisdiction? Your answer should be no more than 150 words.
- 11) Which criteria are used by your CA to determine whether personal recommendations are being provided to clients through different distribution methods? Your answer should be no more than 150 words.
- 12) Where firms provide investment advice through telephone and face to face methods, please provide details on whether/how the CA monitors whether pre-drafted selling instructions such as sales scripts and/or other sales techniques instructions resulting in advice being given are used by the firm. Your answer should be no more than 150 words.
- 13) For each scenario listed in Table 1 please state whether your CA would consider these firms to be providing personal recommendations?

Table 1 - Scenarios

| | Scenario | Advice (Y/N) |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1 | <p><i>A firm offers an IT based filtering functionality to its internet-based sales model.</i></p> <p><i>This functionality allows clients to filter financial instruments according to product risk and client investment objectives.</i></p> <p><i>Only financial instruments that meet the information input by the client are displayed:</i></p> <p><i>So if the client chooses ‘high risk financial instruments’ then the filter displays a pre-existing list of financial instruments to that client. The same results will be displayed for any other client that chooses that category of risk and has the same investment objective.</i></p> | |

| | | |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 2 | <p><i>A client who is an execution only client of a firm, telephones the firm to request information on investment property opportunities.</i></p> <p><i>The investment firm tells the client that emerging market equities are “hot” right now and sends the client the Key Investor Information of the latest UCITS emerging markets fund it is currently selling to clients. The firm has a number of other financial instruments with an underlying investment in emerging market equities available for sale to clients but only the latest KII is sent to the client.</i></p> | |
| 3 | <p><i>An investment firm sends a letter to its clients that hold a UCITS fund informing them that in light of the client’s investment in the fund the firm wishes to inform them that they also have an investment certificate with similar features as the fund but offering a higher return.</i></p> | |

- 14) Does the CA use tools or measures to monitor and assess whether personal recommendations are being provided by firms when providing non-advised services? What tools and measures are used and do they take into account different distribution methods (such as internet)? How often is this assessed? Your answer should be no more than 300 words.
- 15) When was the last time your CA conducted an overview of the distribution methods used by firms to provide investment advice? How many firms did your CA review and how many different distribution methods did your CA identify? Your answer should be no more than 150 words.
- 16) Did your CA find over the review period that firms were providing personal recommendations to investors without assessing the suitability of the financial instrument? Where possible, please specify the distribution methods involved (on-line sales, telephone sales, face-to-face sales, etc.) and an estimation of the number of clients potentially involved. Please specify how many of these cases involved a failure of the firm’s systems, including IT systems and/or controls between its advised and non-advised services (where a firm provided both services). Your answer should be no more than 300 words.
- 17) Did your CA identify any entities providing advice without authorisation? Please specify whether these entities were authorised to provide investment services other than advice (investment firms, credit institutions or Article 3 entities) or whether they were entities without any authorisation to provide any investment service. Your answer should be no more than 150 words.
- 18) What supervisory work has your CA carried out over the review period to clarify the boundary between the provision of information and provision of investment advice as

well as between the provision of non-advised and advised sales? Your answer should be no more than 300 words.

- 19) How does your CA ensure that its staff monitor that firms have safeguards, procedures and staff training in place in order to distinguish advised and non-advised services, to guide, track and record the interaction between firms' staff and clients and avoid any personal recommendation being made in situations where a suitability assessment will not be provided? Your answer should be no more than 200 words.
- 20) Please provide a sample of internal briefings or training documents/compendiums or any other relevant material used specifically by (and intended for) supervisory staff to analyse each of the distribution methods and to help them understand what constitutes a personal recommendation under the various distribution methods operating in your jurisdiction. Where possible please provide such documents in English.
- 21) How does your CA ensure that its supervision staff assess the situations mentioned under questions 18 to 20, in cases where an investment firm authorised by your CA operates under freedom to provide investment services and activities in accordance with Article 31 of MiFID and has a significant client base in jurisdictions other than yours? Your answer should be no more than 150 words.

C. Monitoring of compliance with suitability requirements

- 22) Please describe briefly your CA's supervisory approach to monitoring firm compliance with the suitability requirements. Please also clarify whether and how your CA adapts its approach to monitoring suitability according to the distribution methods being used in your jurisdiction. Your answer should be no more than 200 words.
- 23) How does your CA adapt its approach to monitoring suitability according to the complexity of the instrument which is being advised upon? In particular, please specify how your CA assesses the extent of information that firms gather from clients when recommending more complex financial instruments compared to client information collected in relation to less complex instruments. Your answer should be no more than 300 words.
- 24) Please describe how your CA's approach to monitoring suitability ensures that firms have adequate arrangements and procedures in place, and appropriate information-gathering to understand the 'essential facts' about the client so that the firm adequately understands the client's financial situation (including, where relevant, source and extent of regular income, investments, other assets and financial commitments), investment objectives (including, where relevant, holding period, risk-taking preferences, risk profile and the purpose for which the investment is sought) and knowledge and experience (including information to enable the firm to assess the client's ability to understand the risk involved in any transaction recommended). Your answer should be no more than 300 words.
- 25) Please provide samples of supervisory work carried out over the review period to ensure firms are gathering adequate information on their clients and are making appropriate use of risk profiling/assessment tools. Where possible please provide such documents in English.
- 26) Please describe specifically how your CA determines whether firms are making appropriate use of tools and arrangements to match a client profile with suitable investment recommendations? Please specify, in this context, how the cost of the financial instrument is factored in the firm's suitability assessment. Your answer should be no more than 300 words. Please provide samples of supervisory work carried out over the review period to ensure firms have appropriate policies, procedures and record-keeping in place to demonstrate the suitability of their investment recommendations. Where possible please provide such documents in English. Where such samples have been provided in your response to question 25, please make this clear. Please note, there is no need to copy or extract that information in your response to this question.
- 27) How does your CA determine that firms are taking appropriate account of the liquidity of a financial instrument and a client's preferred holding period? Your answer should be no more than 150 words. Please provide samples of supervisory work carried out over the review period to establish that a firm or group of firms has adequately

considered liquidity against client holding period assessed. Where possible please provide such documents in English. Where such samples have been provided in your response to question 25 or 26, please make this clear. Please note, there is no need to copy or extract that information in your response to this question.

- 28) Please describe how your CA's approach to monitoring suitability ensures that firms fully understand all material characteristics of the financial instruments they are offering to their client, including their cost, and have adequate procedures and processes in place to ensure the firm only recommends investments where the firm understands the characteristics of the financial instruments recommended, including the impact of cost on the performance of the product. Your answer should be no more than 150 words.
- 29) What are the main challenges that your CA faces in monitoring firms' compliance with the suitability requirements? Your answer should be no more than 150 words.
- 30) What does your CA do particularly well in supervising compliance with the suitability requirements; which areas, if any could be improved? Your answer should be no more than 150 words.
- 31) Please list, using the table below, all the analysis your CA has carried out over the review period to monitor the occurrence of non-compliance with the suitability requirements by firms?
- 32) Please identify any other supervisory tools that your CA has used to monitor compliance with the suitability requirements not listed in Table 2?

Table 2 - Supervisory tool used in monitoring of the suitability requirements.

| | General desk-based review | General routine on-site visit(s) | Non-routine or ad-hoc on-site visit(s) | Thematic Review Exercises | Other supervisory tools |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------------|-----------------------------------------------|----------------------------------|--------------------------------|
| Number of times supervisory tool used over review period | | | | | |
| Number of firms covered/visited over the review period | | | | | |
| Please estimate in absolute and percentage terms which part of the total number of investment firms authorised to give investment advice in your jurisdiction have been covered/visited during the review period | | | | | |

Table 3 - Findings of non-compliance

| Reason found for non-compliance with Suitability requirements as a result of using supervisory tools (cited in Table 2 above) | Total number of firms found to be non-compliant from cumulative number of firms covered/visited over the review period |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| <p>INADEQUATE INFORMATION PROVIDED TO CLIENTS ON THE SUITABILITY ASSESSMENT (GUIDELINE 1)</p> <p>Some of the factors your CA may wish to consider in making this determination may include:</p> <ul style="list-style-type: none"> -Inadequate explanation provided to clients on their suitability assessments -Inadequate explanation provided to clients of investment risks. -Failure to explain 'loss' to client corresponding with the level of risk taken. | |
| <p>POOR ARRANGEMENTS TO UNDERSTAND CLIENTS & FINANCIAL INSTRUMENTS (GUIDELINE 2)</p> <p>Some of the factors your CA may wish to consider in making this determination may include:</p> <ul style="list-style-type: none"> - absence of, or inadequate policies and procedures to enable firm to understand '<i>essential facts</i>' about clients and the characteristics of the financial instruments available to those clients. -Failure to recommend instruments other than those understood by the firm (i.e. firm demonstrated an inadequate knowledge of characteristics | |

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>of financial instruments)</p> | |
| <p>INADEQUATE COLLECTION OF CLIENT INFORMATION BY FIRM (GUIDELINE 4)</p> <p>Some of the factors your CA may wish to consider in making this determination may include:</p> <p>-Failure to determine extent of information to be collected from client in light of (a) the type of the financial instrument or transaction that the firm may recommend or enter into (including the complexity and level of risk);</p> <p>(b) the nature, needs and circumstances of the client.</p> | |
| <p>UNRELIABLE CLIENT INFORMATION (GUIDELINE 5)</p> <p>Some of the factors your CA may wish to consider in making this determination may include:</p> <p>-Over-reliance on information supplied by client on their knowledge, experience and financial situation;</p> <p>-Firm has no 'objective' criteria to counterbalance self-assessment information provided by client (e.g. fails to ascertain what types of instruments the client is familiar with; firm does not determine what level of loss over a given time period the client would be willing to accept.)</p> <p>-Failure by firm to use appropriately designed suitability assessment tools (e.g. firms uses insufficient questions in risk assessment</p> | |

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>questionnaires or relies too heavily on risk-profiling tools which they have a poor understanding of);</p> <p>-Deliberate manipulation of client information to allow client to appear more experienced/knowledgeable/financially robust than he/she is in reality.</p> | |
| <p>FAILURE TO UPDATE CLIENT INFORMATION (GUIDELINE 6)</p> <p>Some of the factors your CA may wish to consider in making this determination may include:</p> <p>-When providing advice on an on-going basis firm does not maintain adequate and updated information about the client:(i.e. firm failed to identify what information should be subject to updating and at what frequency);-</p> <p>-Absence of procedures setting out ‘how’ the updating of client information should be carried out by the firm</p> | |
| <p>INADEQUATE ARRANGEMENTS TO ENSURE SUITABILITY OF AN INVESTMENT(GUIDELINE 8)</p> <p>Some of the factors your CA may wish to consider in making this determination may include:</p> <p>- Failure to gather all relevant information required by the firm to assess whether an investment is suitable;</p> <p>-firm fails to gather information on a client’s current portfolio of investments;</p> | |

| | |
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| <ul style="list-style-type: none">-failure by firm to consider direct or indirect costs;- Inappropriate focus on the risk the client is willing to take. | |
| INADEQUATE RECORD KEEPING (GUIDELINE 9) -Failure of firm to maintain adequate arrangements and records. | |

Where exact figures cannot be provided your CA should provide estimated figures including range and explain why exact figures cannot be provided.

- 33) Please provide examples of the information aids (toolkits/on-site visit templates/supervisory briefings) your CA’s supervision staff have used over the review period to facilitate their effective monitoring of the MiFID suitability requirements. Where possible please provide such documents in English.
- 34) Please provide details on what your CA considers to be main problems (in order of importance) in relation to compliance with the suitability requirements. Please also set out the actions your CA has taken to improve these. Your answer should be no more than 150 words.
- 35) Following on from the issues identified in Table 3, please complete Table 4 by firstly clarifying whether the internal tools listed below in the table are used by your CA (and if not explaining why); secondly identifying the number of firms that had supervisory issues identified in Table; and thirdly providing a brief explanation of the supervisory issues:

Table 4 Internal sources/supervisory tools

| Source/origin | Is this tool used by your CA? (Yes/No?) If no, please state why | Number of firms identified as having supervisory issues identified in Table 3 | Brief explanation of supervisory issues (possibly with supporting/illustrative examples and reference to number of clients potentially involved) |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Supervisory intelligence (including from A. day-to-day supervisory contact with firms/trade associations B. on-site inspections (planned and unplanned) C. thematic reviews (either carried out | | | |

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|--------------------------------------------------------------------------------------------------------------|--|--|--|
| on a number of firms or sector or market) D. case-by-case review by a third party or 'skilled person' | | | |
| Internal risk analysis/assessment | | | |
| Internal systems and arrangements to regularly record, analyse and classify client complaints | | | |
| Auditors acting on behalf of CA | | | |
| Mystery shopping | | | |
| Other internal tools please list: | | | |

- 36) Please describe how your CA prioritises and carries out thematic reviews. Please provide details (along with supporting/illustrative samples) of any thematic reviews which have been carried out specifically to assess the nature and level of firm compliance with the MiFID suitability requirements or any thematic review where assessment of compliance with the MiFID suitability requirements formed a key part.
- 37) Please describe and provide details (along with supporting/illustrative samples) of the risk prioritisation and assessment tools used by your CA to identify areas of regulatory compliance requiring additional or intensive supervision. Please provide the criteria your CA used over the review period to identify these areas and please specify how suitability issues were assessed in this context.
- 38) Please explain how your CA assessed regulatory compliance of investment firms for which your CA is the home supervisor and which operate on a cross border basis in other jurisdictions in accordance with Article 31 of MiFID, especially in cases in which the firm has a significant client base in those jurisdiction. Please explain how your CA assessed compliance with suitability requirements in this context.

- 39) If your CA makes use of mystery shopping, please describe how you prioritise and carry out this type of exercise. Please provide details (along with supporting/illustrative samples) of any mystery shopping which have been carried out specifically to assess the nature and level of firm compliance with the MiFID suitability requirements or any mystery shopping where assessment of compliance with the MiFID suitability requirements formed a key part.
- 40) As indicated in footnote 2, reference to investment firms and their staff also includes tied agents. In case your CA differentiates supervision of tied agents from supervision of investment firms and their staff, please explain the reasons for different supervisory approaches and any specific issues that emerged from the use of tied agents in relation to the assessment of suitability.
- 41) Following on from the issues identified in Table 3, please complete Table 5 by firstly clarifying whether the external tools listed below in the table are used by your CA (and if not explaining why); secondly identifying the number of firms that had supervisory issues identified in Table; and thirdly providing a brief explanation of the supervisory issues:

Table 5 External tools/sources

| Source/origin | Is this tool used by your CA? (Yes/No?) If no, please state why | Number of firms identified as having supervisory issues identified in table 3 | Brief explanation of supervisory issues (possibly with supporting/illustrative examples and reference to number of clients potentially involved) |
|---------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|-------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Ad hoc assessment of client complaints (directly addressed to your CA or another relevant authority e.g. ombudsman) | | | |
| Media articles | | | |
| Dialogue with another CA or European body | | | |
| Dialogue with retail investors/consumer bodies | | | |

| | | | |
|-----------------------------------------------------------------|--|--|--|
| Occasional external analysis by a consumer or trade association | | | |
| Whistle-blower information | | | |
| Other external tools Please list: | | | |

42) Please outline how client complaints are used in your CA. Please provide an illustrative example of how you have assessed complaints received over the review period in relation to suitability and any specific action taken in relation to them.

D. Enforcement

Table 6 - Enforcement

| Brief description of potential breaches cases concerning suitability | Non-pecuniary actions taken (please specify the type of action taken and the number of firms addressed) | Pecuniary actions (please specify the amount of fines or of repayment to clients required to firms) | Reason why no specific action taken (if applicable) |
|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| | | | |
| | | | |

43) Please identify the split between enforcement actions relating to the suitability requirements that were publicised and those that were not made public.

44) Please estimate for each enforcement action the time elapsed from the identification of the breach to when the enforcement action has been taken?

E. CAs' communication with stakeholders to ensure consistent adherence to suitability requirements by firms

45) Over the review period, has your CA published any of the following (if so please provide details):

- Public guidance on aspects of suitability.
- Good and poor practices guides for firms and investors in relation to key suitability supervisory findings by CAs.
- Communication to investors (via consumer leaflets, warning notices, consumer days, etc.) specifically or largely around suitability.
- Findings of any thematic reviews that were focused solely or in large part on suitability.
- Communication of relevant enforcement cases concerning breaches of suitability requirements.
- Complaints findings in relation to suitability
- Other public material or other public initiatives taken by your CA, such as workshops or seminars on suitability (please specify)

46) Has the CA issued any non-public guidance or sought views from firms and/or their trade associations, or third party auditors/inspectors hired by the CA or firms, on compliance with the suitability requirements or what constitutes investment advice? If so, please provide details and samples of such correspondence. Your answer should be no more than 150 words.