

Séance d'information relative à la mise en oeuvre de MiFID II

FSMA

AUTORITEIT
VOOR FINANCIËLE
DIENSTEN
EN MARKTEN

AUTORITÉ
DES SERVICES
ET MARCHÉS
FINANCIERS



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Agenda

1. MiFID Conduct of Business Rules
2. Authorisation and Notifications to the FSMA
3. Knowledge and competences

1. MiFID II in a nutshell

Aspects related to Conduct of Business Rules

FSMA



FINANCIAL
SERVICES
AND
MARKETS
AUTHORITY



Guillaume Bérard – Jelle Van Caekenberghe

Outline

1. The legal framework and ESMA's role
2. MiFID II impact on the distribution of financial instruments
3. Relevant Articles



1. The legal framework*

Level 1 texts	Level 2 texts	Level 3 texts
<p>Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II)</p>	<p>Commission Delegated Regulation (EU) 2017/565 of 25.04.16 of the European Parliament and of the Council <u>as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (MiFID L2R)</u></p> <p>Two Commission Delegated Regulations of 08.06.16 about best execution (2017/575 – data to be provided by execution venues - and 2017/576 – annual publication by investment firms of information on the identity of execution venues and quality of execution)</p>	<ul style="list-style-type: none"> ▪ Guidelines on complex debt instruments and structured deposits (04/02/16, ESMA/2015/1787) ▪ Guidelines for the assessment of knowledge and competence (03/01/17, ESMA71-1154262120-153 EN (rev)) ▪ Guidelines on MiFID II product governance requirements, Final Report (02/06/17, ESMA35-43-620) ▪ Guidelines on certain aspects of the MiFID II suitability requirements, Consultation Paper (13/07/17, ESMA35-43-748) (deadline for comments: 13/10/17) ▪ ESMA's Q&As on MiFID II and MiFIR investor protection topics
	<p>Commission Delegated Directive (EU) 2017/593 of 07.04.16 supplementing MiFID II with regard to <u>safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (MiFID L2D)</u></p>	
<p>Regulation (EU) N° 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) n° 648/2012 (MiFIR)</p>	<p>Commission Delegated Regulation (EU) 2017/567 of 18.05.16 supplementing MiFIR with regard to definitions, transparency, portfolio compression and <u>supervisory measures on product intervention</u> and positions (MiFIR L2R)</p>	

* Only relevant texts with regards to the impact of MiFID II on the distribution of investment products

1. Entry into application and ESMA's role

- **Reminder:** entry into application => 3 January 2018
- **ESMA plays a crucial role:**
 - Level 2 measures
 - Technical advice to the European Commission
→ Final Report - 19 December 2014
 - Technical standards
→ Final Report - 28 September 2015
 - Level 3 measures (for example, guidelines and Q&As)
 - Within ESMA, two standing committees (SC) more especially involved in these matters
 - Investor Protection and Intermediaries SC (IPISC)
 - Secondary markets SC (SMSC)

2. MiFID II impact on the distribution of investment products: in summary

portfolio management
investment advice

- scope of advice and
independent advice
- inducements
(including research)

*suitability
test*

execution
complex financial
instruments or firm's
initiative

*appropriate-
ness test*

execution
non-complex financial
instruments and client's
initiative

Less automatically non-
complex financial
instruments

*execution-
only*

*Product governance, best execution, information and reporting to clients
(including about costs and charges), conflicts of interest, product intervention*

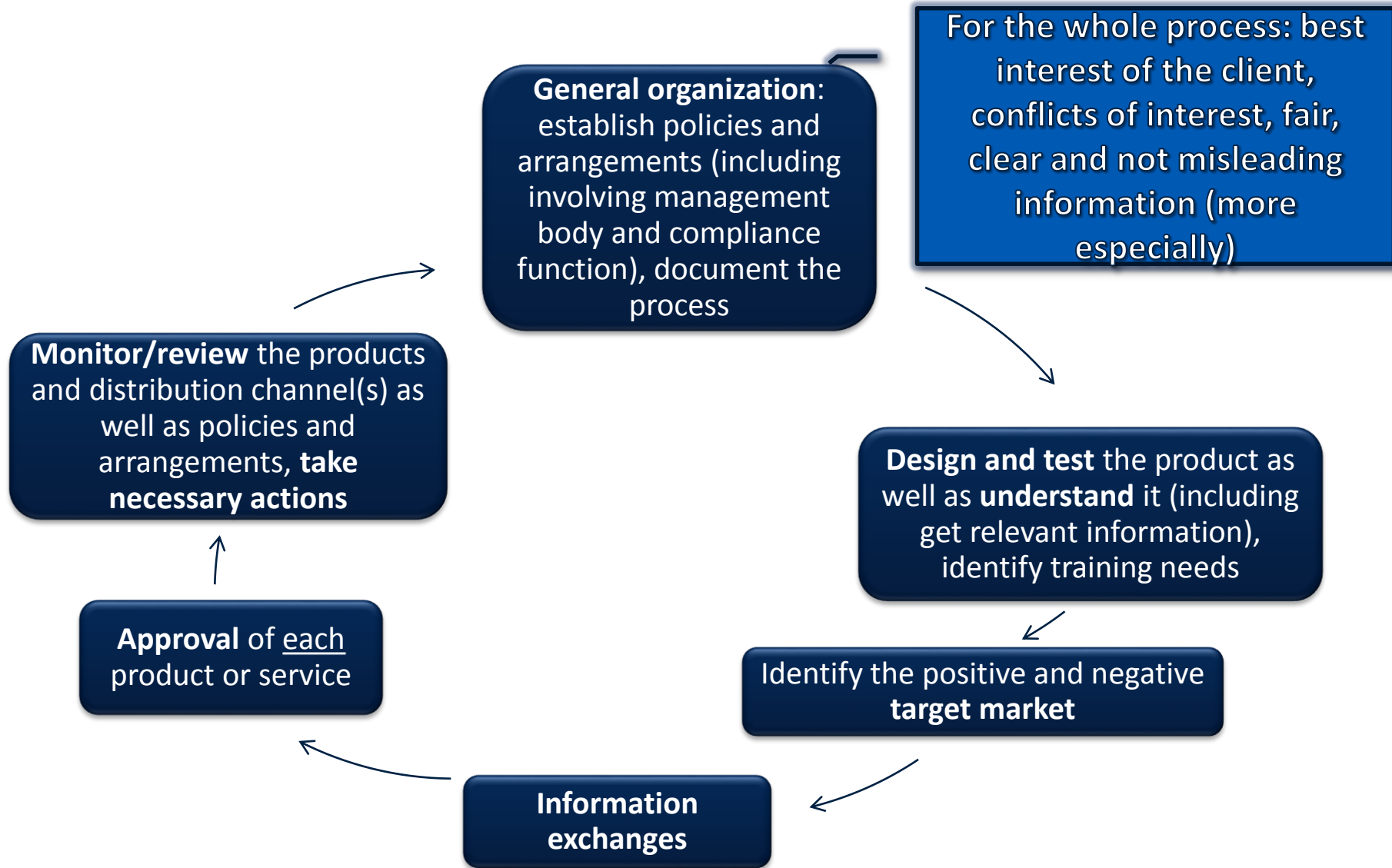
2.1. MiFID II - scope

- Investment products?
 - Financial instruments (Annex I, section C, of MiFID II) and
 - Structured deposits
 - Structured deposit? See Article 4(1)(43) of MiFID II
 - When selling or advising
 - Articles 9(3), 14, 16(2), (3) and (6), 23 to 26, 28, 29 (except second subparagraph of paragraph 2), 30 and 67 to 75 of MiFID II apply

2.2. Product governance (1)

- **Manufacturers?**
 - Investment firms that create, develop, issue and/or design financial products, including when advising corporate issuers on the launch of new financial instruments
- **Distributors?**
 - Investment firms that offer or sell financial products and services to clients
- Product governance rules **apply to all products sold on primary and secondary markets**
- Rules may be applied in a **proportionate manner**, depending on the complexity of the product and the degree to which publicly available information can be obtained, taking into account the nature of the product, the investment service and the target market

2.2. Product governance (2) - key steps



2.2. Product governance (3)

- Guidelines on MiFID II product governance requirements, Final Report (02/06/17, ESMA35-43-620)
 - => Focus on target market

2.2. Product governance (4)

Manufacturers	Distributors
<p>I. Identification of target market: categories to be considered (quantitative and qualitative criteria)</p> <p>II. Identification of target market: differentiation on the basis of the nature of the product manufactured</p> <p>III. Articulation between distribution strategy of the manufacturer and its definition of the target market</p> <p>IV. Regular review to assess whether products or services are reaching the target market</p>	<p>I. Timing and relationship of target market assessment with other product governance processes</p> <p>II. Relation between product governance requirements and the assessment of suitability or appropriateness</p> <p>III. Identification of target market: categories to be considered</p> <p>IV. Identification of target market: differentiation on the basis of the nature of the product distributed</p> <p>V. Identification and assessment of target market: interaction with investment services</p> <p>VI. Distribution strategy</p> <p>VII. Portfolio management, portfolio approach, hedging and diversification</p> <p>VII. Regular review to assess whether products or services are reaching the target market</p> <p>VIII. Distribution of products manufactured by entities not subject to MiFID II product governance requirements</p> <p>IX. Application of product governance requirements to the distribution of products manufactured <u>before 3 January 2018</u></p>

2.2. Product governance (5)

All

I. Identification of « negative » target market and sales outside of the positive target market

All

Identification of target market? Categories to be considered

Cumulative list of categories (assess the target market at least for each category) + align the depth of the identification in proportion to the type, nature and other features of the product + add additional categories if needed

Five categories:

- (1) Type of clients to whom the product is targeted
- (2) Knowledge and experience of target clients
- (3) Financial situation with a focus on ability to bear losses
- (4) Risk tolerance and compatibility of the risk/reward profile of the product with the target market
- (5) Clients' objectives and needs

2.2. Product governance (6)

- See also ESMA's opinion on Good practices for product governance arrangements about structured retail products (27 March 2014, ESMA/2014/332)
=> helps to illustrate the requirements
- These good practices cover the **following areas**:
 - General organisation of product governance arrangements
 - Product design
 - Product testing
 - Target market
 - Distribution strategy
 - Value at date of issuance and transparency of costs
 - Secondary market and redemption
 - Review process

2.3. Inducements (1)

- Inducements are banned for portfolio management or independent advice, except for minor non monetary benefits
 - capable of enhancing the quality of the service
 - of a scale and nature such that they could not impair compliance with the firm's duty to act in the client's best interest
- and
- disclosed to the client

2.3. Inducements (2)

- Other services

- strengthening of the conditions with regards to the enhancement test and the information provided to clients (ex-ante and ex-post)
- **enhancement test: non exhaustive list of examples**
- **organizational requirements:**
 - internal list of inducements paid or received
 - recording how the inducement paid or received enhances the quality of the service provided
 - steps taken in order not to impair the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client

2.3. Inducements (3)

- Specific requirements regarding investment research: unbundling
 - payments by the firm out of its own resources or payments from a separate research payment account funded by the client (see specific conditions)

2.4. Remunerations

- **Explicit requirements regarding remuneration policies**
 - remuneration policy aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interests with clients
 - firm's management body responsibility

2.5. Investment advice (1)

- **Clarify the basis of the advice provided:**
 - advice provided on an independent basis or not
 - advice based on a **broad** or on a more **restricted** analysis of different types of financial instruments and in particular, whether the range is limited to “related” instruments
 - the firm shall explain to the client the range of instruments that may be recommended, including the firm’s relationship with the issuers/providers
 - the firm shall provide a description of the types of instruments considered as well as of the range of instruments and providers analysed per type of instrument according to the scope of the service

2.5. Investment advice (2)

- Clarify the basis of the advice provided:
 - periodic assessment of the suitability of the instruments recommended or not
 - when providing a periodic suitability assessment, the firm shall disclose (a.o.) the frequency and extent of the periodic suitability assessment, the extent to which the information previously collected will be subject to reassessment and the way in which an updated recommendation will be communicated to the client
 - a firm providing a periodic suitability assessment shall review, in order to enhance the service, the suitability of the recommendations given at least annually. The frequency of this assessment shall be increased depending on the risk profile of the client and the type of financial instruments recommended

2.5. Investment advice (3)

- Independent advice?
 - assess a sufficient range of financial instruments available on the market which must be **sufficiently diverse** with regard to their type and issuers/product providers to ensure that the client's investment objectives can be suitably met
 - not limited to instruments issued by the firm itself or firms linked
 - no inducements

2.5. Investment advice (4)

- Independent advice?
 - specific disclosures
 - the firm shall describe how the service provided satisfies the conditions regarding independent advice and the factors taken into consideration in the selection process used by the firm to recommend instruments
 - when the range of instruments assessed by the firm includes firm's own instruments/"related" instruments, the firm shall distinguish, for each type of instrument, the range of instruments issued/provided by third-parties

2.5. Investment advice (5)

- Independent advice?
 - specific conditions regarding the selection process
 - the selection process shall include the following elements
 - ✓ the number and variety of instruments considered is proportionate to the scope of advice services provided
 - ✓ the number and variety of instruments considered is adequately representative of instruments available on the market
 - ✓ the quantity of instruments issued by the firm itself/of “related” instruments is proportionate to the total amount of instruments considered
 - ✓ the criteria for selecting instruments shall include all relevant aspects, such as risks, costs and complexity as well as the characteristics of the firm’s clients, and shall ensure that the selection of instruments is not biased

2.5. Investment advice (6)

- Independent advice and non-independent advice?
 - specific disclosures: Article 52(1) MiFID II L2R
 - organisational requirements: Article 53(3) MiFID II L2R (! Clear separation ! A same natural person can not provide both independent and non-independent advice !)

2.5. Investment advice (7)

- **Suitability report**
 - includes an outline of the advice given

and

 - how the recommendation provided is suitable for the client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, client's knowledge and experience and client's attitude to risk and capacity for loss
 - includes information on whether the recommended services or instruments are likely to require the client to seek a periodic review of their arrangements

2.6. Suitability

- **New focus:**
 - client's ability to **bear losses**
 - and
 - client's **risk tolerance**
- **Costs and benefits analysis:**
 - when providing advice or portfolio management services that involve switching investments, the firm shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that it is reasonably **able to demonstrate that the benefits of switching are greater than the costs**
- Policies and procedures a.o. to assess, taking into account cost and complexity, whether **equivalent instruments** can meet client's profile

2.6. Appropriateness

- Philosophy remains the same, however, new record-keeping explicit requirements:
 - Investment firms shall maintain records of:
 - the result of the appropriateness assessment
 - when the investment service or product was assessed as potentially inappropriate or when the client did not provide sufficient information:
 - ✓ any warning given to the client
 - ✓ whether the client asked to proceed with the transaction despite the warning
 - ✓ whether the firm accepted the client's request to proceed

2.6. Execution-only - Complex/non-complex financial instruments (1)

- Strengthening of investor protection: less types of financial instruments are automatically non-complex
- Key criteria:
 - Liquidity
 - No embedded derivative
 - No “complex structure”

2.6. Execution-only - Complex/non-complex financial instruments (2)

Non complex financial instruments?

Article 19(6) MiFID	Article 25(4) MiFID II
<ul style="list-style-type: none">- shares admitted to trading on a regulated market (or on an equivalent third country market)- money market instruments, bonds or other forms of securitised debt (excluding bonds or securitised debt that embed a derivative)- UCITS	<ul style="list-style-type: none">- shares admitted to trading on a regulated market (or on an equivalent third country market) or on a MTF, where those are shares in companies, and excluding (i) shares in non-UCITS and (ii) those that embed a derivative- bonds or other forms of securitised debt admitted to trading on a regulated market (or on an equivalent third country market) or on a MTF, excluding those (i) that embed a derivative or (ii) incorporate a <u>structure which makes it difficult for the client to understand the risk involved</u>- money market instruments, excluding those that (i) embed a derivative or (ii) incorporate a <u>structure which makes it difficult for the client to understand the risk involved</u>- shares or units in UCITS, excluding structured UCITS (Art. 36(1) of Regulation (EU) n°583/2010)- structured deposits, excluding those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term

2.6. Execution-only - Complex/non-complex financial instruments (3)

- Points of attention
 - ! only non-structured UCITS are from now on automatically non-complex financial instruments (non-UCITS, structured UCITS, AIF are automatically complex financial instruments)
 - ! only **bonds** (a) listed (on a regulated market or on a MTF) and (b) which do not embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved are from now on automatically non-complex financial instruments
- A structure which makes it difficult for the client to understand the risk involved? ESMA's guidelines on **complex debt instruments and structured deposits** (04/02/16, ESMA/2015/1787)

2.7. Best execution

- **Enhanced disclosures** regarding the best execution policy (a.o. disclosure of venues and entities, third party payments, linking of costs with relevant services and use of single entities)
- Investment firms to disclose the **top five venues** (or top 5 execution brokers in case of RTO) for each category of financial instruments to which they routed the client order, as well as the information on the quality of execution obtained
- Executing venues to publish information in relation to the quality of their execution (**execution quality data**)

2.8. Information to clients, contract and reporting (1)

- Enhanced disclosures (for example)
 - Information on instruments and strategies must include **guidance on and warnings** of the related **risks** and whether the instrument is intended for **retail or professional clients**, taking into account the identified target market
 - General description of the nature and risks of financial instruments, taking into account the client's categorisation. The description shall explain (a.o.) the nature of the specific type of instrument, the functioning and performance of the instrument in different market conditions, including both positive and negative conditions

2.8. Information to clients, contract and reporting (2)

- **Enhanced disclosures (for example)**
 - Information on impediments or restrictions for disinvestments (for example for illiquid instruments or instruments with a fixed investment term), including an illustration of the possible exit methods and consequences of any exit, possible constraints and estimated time frame for a sale before recovering the initial costs
 - Information about the nature and the scope of a guarantee or capital protection incorporated in financial instruments. When the guarantee is provided by a third party, the information shall include sufficient detail about the guarantor and the guarantee

2.8. Information to clients, contract and reporting (3)

- Enhanced information about costs and charges
 - ex-ante and ex-post disclosure about product and about service's costs, including about the cumulative effect of costs on return of the investment
 - aggregated information but the client may request an itemised breakdown
 - the obligation to provide a full ex-ante disclosure about the aggregated costs and charges related to the instrument and to the service provided apply to firms where the firm recommends or markets instruments to clients OR where the firm is required to provide clients with a UCITS KIID or PRIIPs KID - firms not required to provide a full ex-ante disclosure shall inform their clients about the costs and charges relating to the service provided

2.8. Information to clients, contract and reporting (4)

- Firms are required to enter into a **written basic agreement** with the client before providing an investment or ancillary service
- When investment advice is to be provided, a written agreement is required only where a periodic assessment of the suitability is performed

2.8. Information to clients, contract and reporting (5)

- Reporting in case of portfolio management:
 - Firms shall inform the client where the overall value of the portfolio (as evaluated at the beginning of each reporting period) depreciates by 10% and thereafter at multiples of 10%, no later than the end of the business day in which the threshold is exceeded

2.8. Other specific reportings (6)

- Investment firms that hold a retail client account that includes positions in leveraged financial instruments or contingent liability transactions shall inform the client where the initial value of each instrument depreciates by 10% and thereafter at multiples of 10%
- leveraged financial instruments? See Q&A 3 of section 8 of ESMA's Q&As on MiFID II and MiFIR investor protection topics as published on 6 June 2017: "(...) given Recital 96 and the objective of Article 62(2), firms should conclude that if a financial instrument has the potential of magnifying an investor's exposure to an underlying risk then this will result in the instrument being a leveraged financial instrument"
- contingent liability transactions? According to recital 96 of the delegated regulation, "a contingent liability transaction should involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument"

2.9. Recording of telephone conversations

- Investment firms shall take all reasonable steps so as to be able to record telephone conversations and electronic communications relating to, at least:
 - transactions concluded when dealing on own account and
 - the provision of client services that relate to RTO and execution of client orders
- Investment firms shall notify their clients that such telephone communications will be recorded. Such a notification may be made once, before the provision of the investment service
- These records are to be kept for a period of 5 years (or up to 7 years where requested by the competent authority)

2.10. Knowledge and competence of staff

- **Staff qualification**
 - personnel with the relevant skills, knowledge and expertise
 - guidelines for the assessment of **knowledge and competence** (03/01/17, ESMA71-1154262120-153 EN (rev))

3. Relevant Articles (1)

Topic	Level 1	Level 2	Level 3
Product governance	Articles 16(3) and 24(2) MiFID II	Articles 9 and 10 MiFID L2D	ESMA guidelines
Investment advice - suitability test	Article 25(2) MiFID II	Articles 54 and 55 MiFID L2R	Updated ESMA's guidelines expected (finished consultation)
Investment advice - scope of advice	Article 24(4)(a) MiFID II	Articles 52(1) to (3) and 54(13) (periodic suitability assessment) MiFID L2R	Q&A Investor Protection
Investment advice - suitability report	Article 25(6) MiFID II	Article 54(12) MiFID L2R	Q&A Investor Protection
Investment advice - independent advice	Article 24(7) MiFID II	Articles 52(1) to (4) and 53 MiFID L2R	Q&A Investor Protection
Appropriateness test	Article 25(3) MiFID II	Article 55 and 56 MiFID L2R	Q&A Investor Protection

3. Relevant Articles (2)

Topic	Level 1	Level 2	Level 3
Execution-only (complex/non-complex)	Article 25(4) MiFID II	Article 57 MiFID L2R	ESMA guidelines Q&A Investor Protection
Inducements - independent advice	Article 24(7)(b) MiFID II	Articles 12 and 13 (research) MiFID L2D	Q&A Investor Protection
Inducements - portfolio management	Article 24(8) MiFID II	Articles 12 and 13 (research) MiFID L2D	Q&A Investor Protection
Inducements - other services	Article 24(9) MiFID II	Articles 11 and 13 (research) MiFID L2D	
Recording of telephone conversations and electronic communication	Article 16(7) MiFID II	Article 76 MiFID L2R	Q&A Investor Protection

3. Relevant Articles (3)

Topic	Level 1	Level 2	Level 3
Best execution (and best selection)	Article 27 MiFID II	Articles 64 to 66 MiFID L2R	Q&A Investor Protection
Venues' disclosures	Article 27(3) MiFID II	RTS 27 (Commission Delegated Regulations of 08.06.16 - 2017/575)	Q&A Investor Protection
Firms' disclosures	Article 27(6) MiFID II	RTS 28 (Commission Delegated Regulations of 08.06.16 - 2017/576)	Q&A Investor Protection
Costs and charges	Article 24(4)(c) MiFID II	Articles 50 and 51 MiFID L2R	Q&A Investor Protection

3. Relevant Articles (4)

Topic	Level 1	Level 2	Level 3
Client agreement	Articles 24(1) and 25(5) MiFID II	Article 58 MiFID L2R	
Product intervention - Market monitoring	Article 39 MiFIR		
Product intervention - ESMA/EBA competencies	Articles 40 (ESMA), 41 (EBA) and 43 (coordination and opinion) MiFIR	Articles 19 (ESMA) and 20 (EBA) MiFIR L2R	
Product intervention - NCA competencies	Article 42 MiFIR	Article 21 MiFIR L2R	
Conflicts of interest	Articles 16(3) and 23 MiFID II	Articles 33 to 43 MiFID L2R	
Remunerations	See conflicts of interest + Articles 9(3)(c) and 24(10) MiFID II	Article 27 MiFID L2R	

2. MiFID II in a nutshell

Aspects related to Authorisation and Notifications to the FSMA)

FSMA

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Schéma

1. General legal framework
2. MiFID II impact regarding authorisation and notifications to the FSMA
3. Relevant Articles

1. The general legal framework*

Level 1 texts	Level 2 texts	Level 3 texts
<p>Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II)</p>	<p>Commission Delegated Regulation (EU) 2017/565 of 25.04.16 of the European Parliament and of the Council <u>as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (MiFID L2R)</u></p>	<ul style="list-style-type: none"> ▪ Guidelines for the assessment of knowledge and competence (03/01/17, ESMA71-1154262120-153 EN (rev)) ▪ Guidelines on MiFID II product governance requirements, Final Report (02/06/17, ESMA35-43-620) ▪ Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, Final Report (26/09/17, EBA/GL/2017/12/ESMA71-99-598) ▪ ESMA's Q&As on MiFID II and MiFIR investor protection topics
	<p>Commission Delegated Directive (EU) 2017/593 of 07.04.16 supplementing MiFID II with regard to <u>safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (MiFID L2D)</u></p>	
<p>Regulation (EU) N° 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) n° 648/2012 (MiFIR)</p>	<p>Commission Delegated Regulation (EU) 2017/567 of 18.05.16 supplementing MiFIR with regard to definitions, transparency, portfolio compression and <u>supervisory measures on product intervention</u> and positions (MiFIR L2R)</p>	

* Only relevant texts with regards to authorisation and notifications – see other relevant texts listed in section 3

2.1. Scope of MiFID II (1)

- The list of services, activities and financial instruments has been amended; further details have been provided regarding the exemptions
=> Impact on the scope of MiFID II
- See amongst others
 - Annex I, section A, (9) of MiFID II: **operation of an OTF**
 - Annex I, section C, (11) of MiFID II: **emission allowances**
 - Dealing on own account includes **back to back trading**
 - Execution of orders includes orders regarding **financial instruments issued by the investment firm** executing the order
 - **Fine-tuning of the definition of investment advice**: « a recommendation is not a personal recommendation if it is issued exclusively through ~~distribution channels or to the public~~ »
 - Several MiFID II requirements apply regarding **structured deposits**
 - **Data reporting services providers** need to be authorised

2.1. Scope of MiFID II (2)

- See also amendments to Article 2 of MiFID II regarding **exemptions**: concerns mainly specific situations such as transmission system operators
=> More details in point 2.1. of FSMA_2017_14 dated 22/08/2017

2.2. New organisational requirements applicable to certain types of services

- General organisational requirements applicable to all investment firms are enhanced
- Some specific organisational requirements complement the general framework with regards to some specific services:
 - Algorithmic trading
 - Direct electronic access
 - General clearing member
 - Systematic internaliser
 - Operation of a MTF (multilateral trading facility) or of an OTF (organised trading facility)
 - In case of passporting, notify intention to use **tied agents** and identity of those

2.3. Enhanced corporate governance requirements

- Strengthening of the role of management bodies
 - Define, approve and oversee
 - Firm's organisation for the provision of services, including the skills, knowledge, expertise of staff, resources, procedures and arrangements for the provision of services and activities, taking into account the nature, scale and complexity of the firm's business and all applicable requirements
 - A policy as to services, activities, products and operations offered or provided by the firm, in accordance with the firm's risk tolerance and the characteristics and needs of the firm's clients, including carrying out appropriate stress testing where appropriate
 - A remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest
 - Members of the management body should have an **appropriate level of availability** as well as **adequate access** to information and documents needed to oversee and monitor management decision-making

2.4. Standardization of information exchanges

- Standardization of information to be provided to national competent authorities (standard forms, templates and procedures) regarding:
 - Granting of autorisation (including modifications to management bodies)
 - Assessment of the suitability of members of the management body and key function holders
 - Acquisition of a qualifying holding
 - Free provision of services and establishment of a branch

2.5. Data reporting services providers

- Data reporting services providers?
 - **Approved publication arrangement (APA)** – a person authorised under MiFID II to provide the service of publishing trade reports on behalf of investment firms
 - **Consolidated tape provider (CTP)** – a person authorised under MiFID II to provide the service of collecting trade reports for certain types of financial instruments and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument
 - **Approved reporting mechanism (ARM)** – a person authorised under MiFID II to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms
- The provision of data reporting services as a regular occupation or business is subject to **prior authorisation**
 - **however**, investment firms or market operators operating a trading venue don't need to be authorised to be allowed to operate data reporting services subject to prior verification of their compliance with MiFID II (such service shall be included in their authorisation)

2.6. Provision of services by third country firms

- Third country firms may provide investment services to eligible counterparties and to *per se* professional clients without the establishment of a branch where they are registered in the register of third country firms kept by ESMA
- Conditions to be met in order to be registered:
 - Adoption of an equivalence decision by the European Commission
 - The firm is authorised in its home State to provide investment services and is subject to effective supervision and enforcement
 - Cooperation arrangements have been established
- Before providing services, registered third country firms must inform clients that they are not allowed to provide services to clients other than eligible counterparties and *per se* professional clients and that they are not subject to supervision in the EU
- In the absence of an equivalence decision or with regard to **retail clients**, national regimes can exist
 - Establishment of a branch will always be required if the third country firm intends to provide services to retail clients

3. Relevant Articles (1)

Topic	Level 1	Level 2	Level 3
Scope	Articles 1, 2, 4, 59 to 66 MiFID II Sections A to D of Annex I MiFID II	Articles 4 to 11 and 84 to 89 MiFID II L2R RTS 13 and 20 ITS 3	
New organisational requirements	Articles 4, 16 to 20 as well as 34 and 35 MiFID II Articles 14 to 23 MiFIR	Articles 12 to 32 and Annex I MiFID II L2R RTS 6 and 8	
Corporate governance	Article 9 to 13 MiFID II		Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, Final report, EBA/GL/2017/12/ESMA71-99-598, 26 September 2017

3. Relevant Articles (2)

Topic	Level 1	Level 2	Level 3
Standardization of information exchanges	Articles 7, 9, 12, 34 and 35 MiFID II		
<i>Authorisation</i>		Delegated Regulation 2017/1943 (RTS 1) ITS 2	
<i>Qualifying holding</i>		Delegated Regulation 2017/1946 Implementing Regulation 2017/1944	
<i>Free provision of services or establishment of a branch</i>		Delegated Regulation 2017/1018 ITS 4	

3. Relevant Articles (3)

Topic	Level 1	Level 2	Level 3
Data reporting services providers	Articles 1, 4 and 59 to 66 MiFID II	Articles 84 to 89 MiFID II L2R Delegated Regulation 2017/571 (RTS 13) (amended on 26.09.17) Implementing Regulation 2017/1110 (ITS 3)	
Provision of services by third country firms	Articles 39 to 43 MiFID II Articles 46 to 49 MiFIR	Delegated Regulation 2016/2022	

3. MiFID II Richtlijn

Uitgelicht: Nieuwe Reglementering Kennis en Vakbekwaamheid

FSMA

AUTORITEIT
VOOR FINANCIËLE
DIENSTEN
EN MARKTEN

AUTORITÉ
DES SERVICES
ET MARCHÉS
FINANCIERS



Herlinde Boogaerts – Christophe Viaene

Ongeveer 26.000 bemiddelingstatuten onder controle FSMA

(Her)Verzekeringstussenpersonen **11.554**

Tussenpersonen in bank- en
beleggingsdiensten **3083**

Kredietbemiddelaars **11.366**



Uitgelicht: Impact op vereisten van kennis en vakbekwaamheid

Omzetting
MiFID II
(T= 03/01/'18)



- Kennis/bijsholing inzake beleggen
- **Wet van 22 maart 2006 betreffende de bemiddeling in bank- en beleggingsdiensten en de distributie van financiële instrumenten**

Omzetting
IDD
(T= 23/02/'18)



- Kennis/bijsholing inzake verzekeringen
- **Wet van 4 april 2014 betreffende de verzekeringen**

IDD/MiFID II : vakbekwaamheid

- **IDD**

- ledere persoon in contact met het publiek moet **vakbekwaam** zijn;
- ledere persoon in contact met het publiek moet minimum 15u/**bij**scholing volgen per jaar

- **MIFID II**

- ledere persoon in contact met het publiek moet **vakbekwaam** zijn
- ledere persoon in contact met het publiek moet bij aanvang **minimaal zes maanden voltijdse ervaring** verwerven onder toezicht

Filosofie: alle relevante personen in de distributieketting moeten beroepskennis /permanente vakbekwaamheid hebben

IDD/MiFID II : harmonisatie vakbekwaamheid

Omzetting IDD/MiFID II



streven naar maximale
harmonisatie in alle statuten
bemiddeling

Denkpiste

IDD/MiFID II : harmonisatie vakbekwaamheid

- IDD / Verzekeringen ↔ MIFID II / Beleggen

Denkpistes:

- ✓ Modulair examensysteem
- ✓ Effectief leider “die de facto actief is”
- ✓ Bijscholing 15u per jaar
- ✓ PCP in opleiding
- ✓ Ervaringsvereiste voor PCP
- ✓ Erkenning opleidingsverstrekkers

IDD/MiFID II : harmonisatie vakbekwaamheid

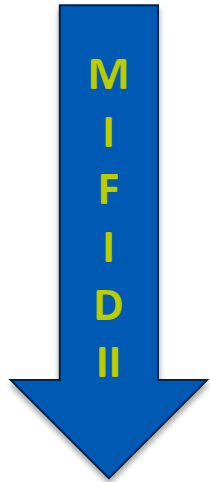
Denkpiste

Harmonisatie van de kennisvereisten :

1. **Theoretische kennis**
2. **Praktische ervaring**
3. **Bijscholing**

Filosofie: alle relevante personen in de distributieketting moeten beroepskennis /permanente vakbekwaamheid hebben

MiFID II : vakbekwaamheid – op wie van toepassing ?



Artikel 25 Mifid II richtlijn :

*“Beleggingsondernemingen moeten waarborgen en aan toezichthouder kunnen aantonen dat de **personen in contact met het publiek** over de nodige kennis en bekwaamheid beschikken.”*



European Securities and
Markets Authority

RICHTSNOEREN

MiFID II : vakbekwaamheid – op wie van toepassing ?

Personen in Contact met het Publiek (PCP)

van :

- **beleggingsondernemingen**

Effectieve leiders en PCP van :

- **bankagenten &**
- **bankmakelaars**



= alle natuurlijke personen die namens de beleggingsonderneming aan cliënten:

- beleggingsadvies verlenen ; of
- informatie verstrekken over financiële instrumenten, beleggingsdiensten of nevendiensten; of
- advies verstrekken over gestructureerde deposito's en deze verkopen

1. Theoretische kennis

Richtsnoeren ESMA voor kennis en bekwaamheid personeel	dat informatie geeft	dat advies geeft
de belangrijkste kenmerken, risico's en aspecten begrijpen van de beleggingsproducten die via de onderneming verkrijgbaar zijn, met inbegrip van de eventuele algemene fiscale gevolgen en de kosten die door de cliënt in verband met transacties moeten worden gemaakt. Bijzondere zorgvuldigheid moet worden betracht wanneer informatie / advies wordt gegeven over producten met een hoger complexiteitsniveau;	✓	✓
het totaalbedrag van de kosten en lasten begrijpen die door de cliënt moeten worden gemaakt in verband met transacties in een beleggingsproduct, of beleggingsdiensten of nevendiensten;	✓	✗
Het totaalbedrag van de kosten en lasten begrijpen die door de cliënt moeten worden gemaakt in verband met het type beleggingsproduct dat wordt aangeboden of aanbevolen, alsmede de kosten in verband met de verstrekking van het advies en eventuele overige daarmee verband houdende diensten die worden verleend	✗	✓
de kenmerken en omvang van beleggingsdiensten of nevendiensten begrijpen;	✓	✗
Begrijpen hoe financiële markten werken en hoe deze de waarde en de prijsstelling van beleggingsproducten waarover zij cliënten informatie geven / die worden aanbevolen, beïnvloeden;	✓	✓
De gevolgen begrijpen van economische cijfers en van nationale/ regionale/mondiale gebeurtenissen voor markten en voor de waarde van beleggingsproducten waarover zij informatie verstrekken / die worden aanbevolen;	✓	✓
Het verschil tussen eerder behaalde resultaten en scenario's voor toekomstige resultaten, evenals de beperkingen van prognoses begrijpen;	✓	✓
Kwesties op het gebied van marktmisbruik en de bestrijding van witwassen begrijpen;	✓	✓
Gegevens beoordelen die relevant zijn voor beleggingsproducten waarover zij cliënten informatie verstrekken / die zij cliënten aanbevelen, zoals documenten met essentiële beleggersinformatie, prospectussen, financiële overzichten of financiële gegevens;	✓	✓

1. Theoretische kennis

Richtsnoeren ESMA voor kennis en bekwaamheid personeel	die informatie geeft	die advies geeft
Begrip hebben van specifieke marktstructuren voor de beleggingsproducten waarover zij cliënten informatie verstrekken / dat aan cliënten wordt aanbevolen, en indien van toepassing hun handelsplatformen of het bestaan van eventuele secundaire markten;	✓	✓
Beschikken over basiskennis van de waarderingsmethoden voor het type beleggingsproducten waarover informatie wordt verstrekt / dat wordt aanbevolen.	✓	✓
te voldoen aan de verplichtingen die aan ondernemingen worden opgelegd met betrekking tot de geschiktheidseisen, met inbegrip van de verplichtingen die zijn vastgelegd in de Richtsnoeren met betrekking tot bepaalde aspecten van de MiFID-geschiktheidseisen;	✗	✓
Te begrijpen waarom het type beleggingsproduct dat door de onderneming wordt verstrekt, mogelijk niet geschikt is voor de cliënt, op basis van een beoordeling van de door de cliënt verstrekte relevante informatie en in het licht van wijzigingen die zich mogelijk hebben voorgedaan sinds de relevante informatie werd verzameld;	✗	✓
De grondbeginselen van vermogensbeheer begrijpen, met inbegrip van de gevolgen van spreiding ten aanzien van afzonderlijke beleggingsalternatieven.	✗	✓

1. Theoretische kennis

Kennis van personen die informatie > < advies geven

Denkpiste

- ✓ Kennisvereisten voor toegang tot het beroep zijn algemene kennisvereisten (basiskennis).
- ✓ De basiskennis moet permanent worden bijgeschoold



geen onderscheid maken tussen personen die informatie / advies geven

1. Theoretische kennis

Bewijs van de kennis

AS IS

- Masters
- Bachelors met voldoende studiepunten
- Bezitters HSO + geslaagd in erkende examens
 - 4 modules
 - Basisbeginselen van het bank- en financiewezen
 - Compliance
 - Betalingsverkeer en spaarproducten
 - beleggingsproducten

ESMA richtsnoeren

geen minimum-diploma of basiskennis aan de hand van attesten /examens.

vrij in te vullen door de lidstaten.



TO BE

Diplomavrijstelling

behouden

= harmonisatie in bank- en beleggingsdiensten, verzekeringsbemiddeling en kredietbemiddeling.

1. Theoretische kennis

Inhoud van de examens

AS IS

Examens opgebouwd in vier modules.

*Module 1 : Basisbeginselen bank- en
financiewezen*

Module 2 : Compliance

Module 3 : Betalingsverkeer en spaarproducten

Module 4 : Beleggingsproducten

Module 1 en 2 verplicht voor iedereen

Module 3 en 4 in functie van activiteiten van

PCP's

Gaps t.a.v. ESMA richtsnoeren:

- Partial : gegevens beoordelen die relevant zijn voor het type beleggingsproducten, zoals ... , financiële overzichten of financiële gegevens,
- Het verschil tussen eerder behaalde resultaten en scenario's voor toekomstige resultaten, alsook de beperkingen van de prognoses begrijpen

TO BE

**minimale
aanpassing
aan
richtsnoeren**

2. Praktische ervaring

AS IS

Natuurlijke persoon en E.L. (effectieve leiders) van bankagent / -makelaar:

- 6 maanden tot 2 jaar ervaring naargelang categorie en diploma's / attesten

PCP's :

- Geen ervaring vereist



- Alle medewerkers in contact met het publiek (effectieve leiders + PCP's):
- min. 6 maand, max. 4 jaar ervaring
- voltijds en "onder toezicht"

= **Nieuw voor PCP !**

Denkpiste

Alle PCP in alle bemiddelingsactiviteiten :

min. 6 maand voltijdse ERVARING onder toezicht als "**PCP in opleiding**".

Periode onder toezicht vóór behalen theoretische kennis telt mee als "ervaring".

3. Bijscholing

Bijscholing van de verantwoordelijke personen

AS IS

Makelaars en agenten (natuurlijke Personen en Effectieve Leiders) :

- systeem van bijscholingspunten verleend door erkende opleidingsverstrekkers
- **30 punten (=uren) per 3 jaar**

MiFID II

... hecht naast technische kennis over de wetgeving en de gedragsregels inzonderheid belang aan de **kennis van de kenmerken van de producten van de onderneming.**

legt geen minimum aantal uren bijscholing op : vrij in te vullen door de lidstaten

Denkpiste

Makelaars en agenten (natuurlijke Personen en Effectieve Leiders)

- behoud van systeem van bijscholingspunten verleend door erkende opleidingsverstrekkers
- harmonisatie van aantal bijscholingspunten met verzekeringsstatuut: **15 punten (=uren) per jaar** (cfr IDD)

3. Bijscholing

Bijscholing van de verantwoordelijke personen

- **Doel** : kennis van de verantwoordelijke personen actueel te houden. Zij moeten dus **permanent voldoende** zijn **opgeleid** voor de werkzaamheden die zij verrichten.
- **Organisatie** :
 - De bijscholing moet gevolgd worden bij door de FSMA erkende opleidingsverstrekkers.
 - Alle vormen van opleidingen komen in aanmerking, zowel o.a. klassikaal als e-learning, voor zover de deelnemer kan worden geïdentificeerd en de tijd besteed aan de verwerving van de kennis kan gemeten worden.

3. Bijscholing

Bijscholing van de verantwoordelijke personen

- Opleidingen die in aanmerking komen :

➤ alle opleidingen die bijdragen tot :

- verhoging van het professionalisme van de verantwoordelijke persoon op het vlak van de kennis van de verschillende producten en de kennis van de wetgeving;
- de zorg voor correcte en ernstige informatieverstrekking en raadgeving aan de cliënt;
- kennis van de interne werkprocedures en de normen van de bedrijfsethiek;
- het vlot kunnen toepassen van technologische ontwikkelingen binnen hun werkomgeving.

• Aantal uren : 15u/per jaar

3. Bijscholing

Bijscholing van de personen in contact met het publiek (PCP's)

AS IS

PCP's :

Geen minimum aantal uren opgelegd.

Werkgever is verplicht kennis van PCP's te actualiseren.

MiFID II

... hecht naast technische kennis over de wetgeving en de gedragsregels inzonderheid belang aan de [kennis van de kenmerken van de producten van de onderneming](#).

legt geen minimum aantal uren bijscholing op : vrij in te vullen door de lidstaten

Denkpiste

[PCP : Harmonisatie met andere statuten](#)

Systeem van vorming blijft verantwoordelijkheid werkgever

3. Bijscholing

Bijscholing van de personen in contact met het publiek (PCP's)

- **Doel** : Alle personen in contact met het publiek moeten permanent voldoende zijn opgeleid voor de werkzaamheden die zij verrichten.
- **Organisatie** : De geregementeerde ondernemingen en tussenpersonen bepalen zelf hoe zij de verplichting tot bijscholing van hun personen in contact met het publiek invullen.

3. Bijscholing

Bijscholing van de personen in contact met het publiek (PCP's)

- **Organisatie (vervolg):**

opstellen vormings- of bijscholingsplan :

- de geregementeerde ondernemingen of tussenpersonen leggen in een plan vast hoe zij deze verplichting zullen invullen.
- Plan is aangepast aan de grootte en de organisatie van het bedrijf, aan de aanwezige kennis en ervaring, en aan de aangeboden diensten en producten.

3. Bijscholing

Bijscholing van de personen in contact met het publiek (PCP's)

opstellen vormings- of bijscholingsplan (vervolg) :

- Het bijscholingsplan mag meerdere concrete invullingen combineren, voor zover uit het bijscholingsplan blijkt dat de gereguleerde onderneming of de tussenpersoon de bijscholing van zijn personen in contact met het publiek zo organiseert dat zij voldoende uren bijscholing per jaar krijgen.
- De effectieve leiding van de gereguleerde ondernemingen of tussenpersonen keuren het vormings- of opleidingsplan goed.
- Bijscholingsplan : per kalenderjaar, minstens ieder jaar geactualiseerd.

Er moet geen bijscholingsplan per PCP opgesteld worden, enkel globaal in functie van de verkochte producten.

Er moeten geen punten / uren per PCP worden bijgehouden.

3. Bijscholing

Bijscholing van de personen in contact met het publiek (PCP's)

- Opleidingen die in aanmerking komen :

➤ alle opleidingen die bijdragen tot :

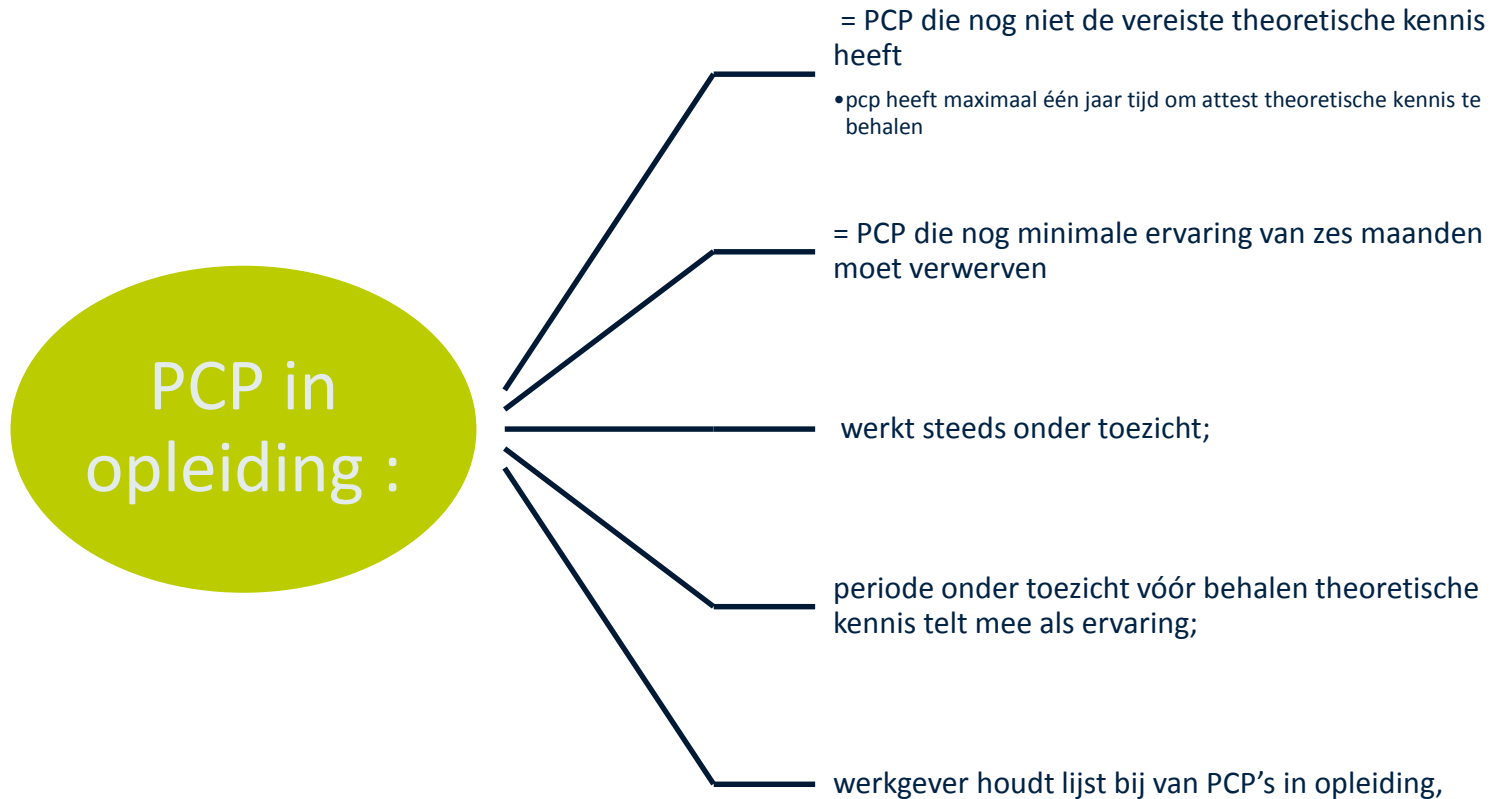
- verhoging van het professionalisme van de verantwoordelijke persoon op het vlak van de kennis van de verschillende producten en de kennis van de wetgeving;
- de zorg voor correcte en ernstige informatieverstrekking en raadgeving aan de cliënt;
- kennis van de interne werkprocedures en de normen van de bedrijfsethiek;
- het vlot kunnen toepassen van technologische ontwikkelingen binnen hun werkomgeving.

3. Bijscholing

Bijscholing van de personen in contact met het publiek (PCP's)

- Voorbeelden :
 1. Interne en externe vormingen
 2. Een externe spreker komt spreken
 3. Regelmatige werksessies over nieuwe regelgeving en producten (in digitale agenda opgenomen)
 4. E-learnings
 5. Puntuele vorming on the job door coach of specialist over specifieke topics met opgave van onderwerpen
 6. ...

4. PCP in opleiding : begrip



4. PCP in opleiding : voorbeelden



1^{ste} tewerkstelling als PCP op 1/1/2018 : geen werkervaring en geen attest theoretische kennis



1/1/2018 : aanvang
opleiding

30/5/2018 pcp in
opleiding behaalt attest
theoretische kennis

30/6/2018 einde
opleiding



2^{de} tewerkstelling als PCP op 1/1/2018 : 3 maanden ervaring bij vorige werkgever maar nog geen attest theoretische kennis



1/1/2018 Aanvang
opleiding

31/03/2018 Ervaring
ok maar nog geen
attest theoretische
kennis

9/9/2018 PCP behaalt
attest Einde opleiding

IDD/MiFID II : kennis en vakbekwaamheid

- Uitwerking door FSMA in Mededelingen en FAQ's:
 - Toegang tot het beroep
 - Bijscholing
 - Erkenning door de FSMA van opleidingsverstrekkers