EFPA’s Response on ESMA’s Consultation Paper on integrating sustainability risks and factors in MiFID II, 19 December 2018

On 24 July 2018, the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) received a formal request from the European Commission to provide technical advice to assist the Commission on potential amendments to, or introduction of, delegated acts under 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) and Directive 2016/97/EU (IDD), among others, with regard to the integration of sustainability risks and sustainability factors.

ESMA’s Consultation Paper on integrating sustainability risks and factors in MiFID II is timely and necessary, as it constitutes the means by which the European Authority can consult interested parties for the purpose of producing its technical advice.

EFPA España would like to express its gratitude in having the opportunity to contribute in this important task.1

Preliminary remarks

From EFPA Spain’s point of view, it seems appropriate to respond to the first question of ESMA’s Consultation Paper on integrating sustainability risks and factors in MiFID II, regarding the incorporation of ESG considerations within firms’ organisational requirements, particularly in relation to knowledge and competence required to staff providing advice or giving information.

ESMA’s Consultation Paper (Section 2) propose –among other measures– the amendment of Article 21 of the MiFID II Delegated Regulation, including the following statement: ‘Where ESG considerations are relevant for the provision of investment services to clients, firms should take them into account when complying with the above requirements.’

According to the Consultation Paper, through this amendment firms would be expected, for instance, firms will be expected to ensure that staff providing advice or giving information possess skills, knowledge and expertise for the assessment of sustainability risks (Section 2, §§ 6 and 7, p. 8).

1 EFPA España is the affiliate in Spain of the European Financial Planning Association (EFPA) is a standards’ setting and accrediting qualifications institution operational in the financial services sector in Europe and which was created in the interest of both professional financial advisers and users of their services. EFPA’s main objective is to make the general public aware of the activities of their members and to oversee their members’ compliance with the profession’s moral and ethical codes. EFPA España is the largest professional association in the financial sector with more than 30.000 registered and qualified advisors and planners, all of them compliant with the CNMV requirement.
2. Organisational requirements

General organisational requirements

Q1: Do you agree with the suggested approach and the changes to the Article 21 of the MiFID II Delegated Regulation on ‘general organisational requirements’? Please state the reasons for your answer.

Yes, EFPA España agrees with the suggested approach and the changes to the Article 21 of the MiFID II Delegated Regulation.

ESMA’s proposed amendment implies that firms should take into account ESG considerations when complying with the requirement that they shall employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them [Article 21.1 (d) of MiFID II Delegated Regulation], where ESG considerations are relevant for the provision of investment services to clients.

From EFPA España’s point of view, staff providing advice or giving information should be able to inform clients and assess their profile in relation to preferences on sustainable investments. Therefore, they need to count with appropriate knowledge and competence on sustainability risks and factors. For instance, staff should be able to distinguish between green products as for sustainable finance and green products as for non-risk products; and between sustainable investments and ethical investment.

Consequently, this amendment should also entail the amendment of ESMA Guidelines on the assessment of knowledge and competence, so that they require knowledge and skills on assessment of sustainability risks and factors for providing advice and giving information; and ESMA Guidelines on certain aspects of the MiFID II suitability requirements for including sustainability risks and factors as an object of suitability assessment.