

Warsaw, 19th February 2019



European Securities and Market Authority
103 Rue de Grennelle
75007 Paris France

Dear Sir or Madam,

Please find below comments and remarks from Bank Gospodarstwa Krajowego as regards the consultation on integrity sustainability risks and factors in MIFID II.

Yours faithfully

Bank Gospodarstwa Krajowego is a state development bank whose mission is to support the social and economic development of Poland and the public sector in the fulfilment of its tasks.

The Bank is a financial partner actively supporting the entrepreneurship and making effective use of development programmes. It is the initiator of and the participant in cooperation between business, public sector, and financial institutions.

General remarks

Bank Gospodarstwa Krajowego - (hereinafter: Bank) would like to thank for the possibility to comment the proposed amendments to the MIFID II in terms of inclusion into aforesaid Directive Environmental, Social and Governance factors (hereinafter ESG).

Bank is generally supportive as regards the matter of including non financial elements i.e. Environmental, Social and Governance factors. In particular Bank is of the view that social and governance factors seem to be important as the factors that could reasonably enhance the level of investor protection and finally implement the overarching MIFID II goal i.e. acting in the best interest of the client.

As regards the matter of environmental factors Bank considers this factor as an important one however it is purely non financial factor that does not directly correspond with the general MIFID goal acting in the best interest of the client. The inclusion of environmental factors for bank represent something entirely new and could be particularly challenging in providing daily investment services and activities particularly without providing clear guidelines and definitions. However, with the growing focus on ESG (and climate change in particular), Bank shares the view it would only be a matter of time before firms would have to consider such matters anyhow. Done correctly, firms could use this as a competitive advantage.

Bank being generally supportive as regards ESG factors would like to emphasize the need to draft and establish a clear definition and taxonomy precising all aspects of the environmental, social and governance factors. Bank particularly sees the social and governance aspects understood in terms of ethics, transparent and in this context enhancing provision of secured investment services especially for retail clients. However if the proposed amendments are implemented prior to the finalisation and adoption of the taxonomy, firms will face a somewhat challenging task in having to implement these requirements prior to a uniform "ESG language" having being developed and agreed upon. For example, in respect of risk management, ESMA points out that while the Commission is developing the taxonomy on what can be considered an environmentally sustainable economic activity, investment firms shall take a broad approach to assessing potential sustainability risks. The clear definition and taxonomy would also contribute to avoiding interpretational issues.

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.

Answer:

Bank agrees with a general approach presented in this point particularly in the terms of inclusion social and governance factors. Environmental factors generally seems to be pivotal however from the investor protection perspective as well as the overarching goal of MIFID, this factor seems to be not such important as social and governance factors.

All factors should be clearly defined and explained. The taxonomy elaborated by the European Commission or another bodies should be publicly consulted.

Q.2 Do you agree with the suggested approach and the changes to the Article 23 of the MiFID II Delegated Regulation on 'risk management'? Please state the reasons for your answer.

Answer

Yes. Please refer also to answer 1 and general remarks.

Q.3 Do you agree with the suggested approach and the new recital on 'conflicts of interest'? Please state the reasons for your answer. What would be specific examples of conflicts of interests that might arise in relation to sustainability considerations?

Answer

No. Generally it is too early to provide detail comments on the inclusion of ESG to conflict of interests requirements. EC should provide more details to what extent practically ESG factors should be included into day to day provision of investment services in particular within the conflict of interest area.

Q4: Do you think that on the topic of 'organisational requirements' other amendments should be made to the MiFID II Delegated Regulation in order to incorporate sustainability risks and factors? If yes, which ones? Please state the reasons for your answer.

Answer

European law maker should be aware that current regulatory requirements seems to be very burdensome in particular for small investment firms and banks. The cost benefit analyse as well as proportionality principle should be taken into account in drafting the new requirements within capital market area.

Bank is of the view that the including new factors should be preceded by detail analysis of potential benefits for clients and the costs of implementation by the firms. It also requires drafting, elaborating and implementing particular regulatory measures that facilitate the internal implementation of ESG factors into internal organisation.

Q 5. Which existing market standards or "labels" are you intending to take into account or already taking into account for the consideration of ESG factors? Do you see any issues when relying on current market standards or "labels"? Please describe.

Answer: Bank is of the view that particular attention should be drawn to the factors of ethics and governance. Ethical standards as well as governance factors should be particularly developed because they play pivotal role in area of investor protection.

As a label for ethical standard could be used some codes that are part of the internal organisation within banks and investment firms e.g. ethic codes.

Similarly it should be taken into account standard as regards corporate governance elaborated by the national banking federation, or corporate bodies acting in the capital market.

Q. 6 Do you agree with the suggested approach and the proposed amendments to the MiFID II Delegated Directive Articles on 'product governance'? If not, please explain.

Answer: Generally Bank agrees with a inclusion of governance factors. Whereas the inclusion of environmental and social factors in the field of product governance does not seem to relate in any way to the overriding objective of investor protection related to the product creation and target market assessment. Moreover necessary precondition to score governance factors is elaborating the draft of the taxonomy.

Q7: Do you agree with the proposed changes to the ESMA Guidelines on MiFID II product governance requirements and the addition of an additional case study? If not, please explain what changes should be made and why.

Answer: It depends on to what extent the taxonomy of ESG factors and definition will be elaborated. Generally target market assessment for investment instruments for compliance with green and ethical investment seems to be unsuccessful. As indicated in Consultation Paper, "whether the product will be compatible with clients who do not have these ESG objectives, will have to be determined by considering the other target market categories for this investment product". Taking the above into consideration, EC should provide more details how ESG factors should be included into product governance area.

Q8: Do you think extra guidance is needed on the elements listed in paragraph 15 above? If yes, please provide details.

Answer: Please refer to point 7.

Q9: Please specify any approach you see to identify environmental, social and governance criteria separately from each other or as a single indicator. Please explain how the criteria would interact with each other and how the target market assessment and matching would be performed in such cases.

Answer: Bank is of the view that the ESG factors should be treated and assessed separately and not cumulatively. Generally proposed factors are not linked each other and it would be too burdensome for firms to include them cumulatively in terms of fulfilling regulatory requirements.

Anna Trytek

Compliance Officer BGK