

FRENCH BANK FEDERATION RESPONSE ON ESMA CONSULTATION PAPER « ON INTEGRATING SUSTAINABILITY RISKS AND FACTORS IN MIFID II

The French Banking Federation (FBF) is the industry association for the French banking sector representing all banks operating in France. It has 347 French and international member banks of all sizes, including 121 foreign bank subsidiaries or branches.

The FBF and its members share the European Community's position on the importance of integrating environmentally-friendly investment products into a policy of sustainable economic growth, which is so vital to safeguarding the planet for future generations.

The FBF welcomes the opportunity to clarify distributors' positions on the proposed amendments to the regulatory texts to include sustainability considerations.

GENERAL COMMENTS

The risk of green washing in the marketing of ESG products is a concern the FBF shares with European authorities and governments.

The FBF agrees with ESMA's view on including a reference to ESG considerations in the Markets in Financial Instruments regulatory framework, while giving priority to a high-level approach.

The FBF wishes to emphasise the many far-reaching cross-sector programmes introduced in the industry as a result of MiFID II regulatory reforms. These include amongst others: upgrading information systems, redesigning client life-cycle management, identifying target markets, determining client profiles, redesigning the questionnaire to gather information on clients' knowledge and experience, gathering information on products from manufacturers, establishing control procedures and providing training and support for advisors.

Distributors faced the task of managing all these projects simultaneously, often against a backdrop of changes to the texts. The resulting problems of interpretation or implementation have yet to be resolved at national and European level.

Any additional new obligations – which the industry could not have anticipated – may impair the implementation work already completed and call into question the options chosen by distributors.

Similarly, the effectiveness of the approaches and procedures to take the sustainability of economic activities into consideration depends on a commonly agreed definition of what falls within the scope of each component of the ESG dimension of economic activities. However, the initial European proposals to develop a taxonomy to define what can be considered an environmentally sustainable economic activity are expected at the end of 2022 at the earliest. In the short term, the taxonomy will only cover the environmental (E) dimension and not social (S) and governance (G) issues.

The industry wishes to point out that the inclusion of ESG criteria will be based on a shared definition of what constitutes a sustainable economic activity (a common framework that could be provided by the taxonomy), as well as on the ESG dimension of firms' practices, irrespective of the type of activity (for example, the steps taken by a firm to switch to low-carbon or optimise consumption of natural resources for activities not necessarily considered sustainable within the meaning of the taxonomy are an important criterion to include when considering the best practice or legal texts that could be developed nationally by regulators).

The industry is examining the possibility of launching work to incorporate the ESG characteristics of products into the marketing process, ahead of any definition of sustainable activities and in the absence of any shared view of what constitutes a sustainable economic activity.

The absence of a harmonised methodology in Europe and of broader, standardised and granular data on the ESG activities and practices of the underlying firms only serves to heighten this feeling, which in turn means that distributors are unable, in the short term, to deploy a granular method to assess the E, S or G nature of a product.

We note that manufacturers use a diverse range of methodologies to establish that they meet the ESG criteria and to qualify products as full ESG products or as products that fulfil one of the components. This heterogeneity means distributors will not have legal certainty on whether the products they offer fulfil the objectives and needs of their clients' ESG preference and will not be in a position or to provide adequate training for advisors.

The availability of information about the ESG activities and practices of underlying firms remains a major challenge. Practically speaking, there are very few companies that publicly disclose the standard of information that would be required to make a clear distinction between the E, S and G dimensions of the underlying components of ESG products.

Manufacturers will have to rely on a variety of data vendors, which themselves use data-collection methodologies that are not only specific to their organisation, but often sector-specific. At this stage, these methodologies cannot distinguish between the E, S and G objectives of an investment product separately to enable distributors to fulfil their obligations.

RESPONSES TO ESMA QUESTIONS

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.

The industry does not agree with this proposal

As pointed out in the analysis in the consultation paper, the Commission clarified that its objective is to explicitly incorporate sustainability risks in the investment decision or advisory processes of firms under the MiFID II regime. According to ESMA, implementation of this point requires that firms incorporate ESG considerations within their processes, systems and controls to ensure they are correctly taken into account in the investment and advisory procedures. Yet, in the absence of any clarification on the taxonomy, it is ESMA’s opinion that a high-level principle-based approach would be more appropriate at this stage than one based on recommendations to avoid the risk that they could be misinterpreted by professionals.

While the industry shares ESMA’s position on promoting the inclusion of the ESG dimension in support of the general principles, it does not understand why it is suggested to include this principle of consideration in Article 21.

- **The scope of application is too broad and unclear as to the objective to be achieved**

Article 21 of Delegated Regulation (EU 2017/565) refers to the organisational requirements for firms to monitor and control their management, decision-making and organisational policies in line with their business.

Moreover, the analysis in the consultation stresses that only certain services offered by the firms concerned are likely to be impacted by the integration of sustainability. It cites the example of portfolio management, which by extension refers to all investment advisory activities. We understand that other investment services, such as RTO services, are not concerned.

The proposed addition targeting “the provision of investment services to clients” leads to uncertainty about the scope of the addition.

Is the aim:

- a) Compliance with ESG factors in relation to the provision of the investment service to clients (selection of manufacturers, products, etc.) or in relation to the product offered and the approach;
- b) Compliance with the application of ESG principles in relation to fulfilling the various obligations imposed by Article 21 (namely Article 21(1)(e) on internal reporting: are firms required to ensure that these reports and how they are communicated are in fact "ESG-compatible", in other words, preference is given to digital media over hard copy)?

In any case, the addition to Article 21 of the delegated Regulation seems ill-timed.

An alternative solution would be a recital to recap on the key principles that must be upheld by the firms subject to the regulation to address the sustainability risk of their business in their general policy, when deemed necessary.

Either this addition covers case a), which is not the subject of Article 21; or case b). But, for many of the obligations included in this article, we believe that “sustainability risk” cannot be considered in the absence of harmonised references and measures to draw up a comparative peer assessment of a credit institution based on ESG criteria.

A situation where firms would define criteria for assessing the ESG standards of an organisation according to their own interpretations could potentially produce the exact opposite of the intended effect: assessment errors that could expose firms to the risk of non-compliance with the regulations.

Q2: 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.

The industry is not in favour of this proposal.

In the consultation, ESMA agrees that it is not necessary to single out sustainability risk to achieve the Commission’s objectives on risk management. In addition, the Commission is currently working on developing a taxonomy to identify activities that qualify as sustainable to provide a common framework for all actors to specify at what level an activity can be considered sustainable. However, as the consultation paper points out, this taxonomy will only cover environmental issues and will not be finalised before 2022. Furthermore it will not be the sole definition of the sustainability of a firm’s activities.

In parallel, firms are asked to draft their own policies and procedures to manage sustainability risk. The compliance and internal control functions are expected to ensure that sustainability risk is effectively taken into account in the risk management policies and procedures.

We have the same issue as in point 1 above as regards the intended scope. As Article 23 refers to firms’ general policy, it is not appropriate to include provisions aimed solely at obligations to be met for the provision of an investment service, especially as sustainability and environmental protection aspects are covered in many regulations applicable to all the activities of a credit institution (in particular, fiduciary duties, corporate responsibility and delegation). There is no need to introduce a specific recital on this issue in MiFID II.

Nonetheless, since we share ESMA’s concern to see sustainability risk taken into consideration in both the advice provided to clients and in the products distributed, the industry believes that it would be more appropriate to include these recommendations in the articles on product governance and suitability (see below).

Q3: 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?

Yes

Like ESMA, the industry considers it important to ensure that the inclusion of sustainability risk considerations does not damage the interests of the client. We therefore agree with ESMA's choice of including these measures in a recital (59 bis), as well as with the proposed draft of this new recital.

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.

No. No additional specific regulation is required.

As stated by ESMA at the beginning of the consultation paper, the industry believes that sustainability risk should not be assessed separately from the other risks covered by MiFID II. Instead, it must be addressed as one of the elements in a set of ESG criteria that require firms to integrate sustainability factors in the various aspects of the business of distributing financial products, once they determine that sustainability may have a potential impact.

However, the industry sees the revamp of the delegated regulation as an opportunity for ESMA and the Commission to review the provisions of Article 3 on the conditions applicable to the provision of information. This article specifies a preference for information to be provided to the client on a durable paper medium, which seems to be out of line with the ESG approach proposed by ESMA and the European Commission.

Given the increased digitisation of relations between banks and their clients, now would be the appropriate time to review Article 3 by making the following amendments:

"Where, pursuant to this Regulation, information must be provided on a durable medium within the meaning of Directive 2014/65/EU, Article 4(1)(62), investment **firms shall be** permitted to publish such information on a durable medium other than paper only if:

(a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and

(b) the person to whom the information is to be provided, when offered, on a secure website, ~~the choice between~~ this information on a durable medium other than paper, has not specifically chosen ~~opted~~ to receive the information on paper. ~~this other medium~~

Q5: 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.²⁰

NO to the second question

As ESMA points out in its analysis in the consultation paper, no information on the taxonomy of sustainable activities will be available before 2022, which will initially only encompass environmental aspects. Furthermore, no standard or harmonisation exists – either at Member State or manufacturer level – regarding the methodologies used to assess whether a product fulfils ESG criteria, at least from the standpoint of the underlying firms' activities.

Before amending the MiFID texts on ESG, it is critical to finalise the definition of a taxonomy and/or harmonise at European level the methodologies for evaluating the ESG activities and practices of firms and their products.

Then, the absence of a harmonised methodology in Europe and of broader, standardised and granular data on the ESG activities and practices of the underlying firms only serves to heighten this feeling, which in turn means that distributors are unable, in the short term, to deploy a granular method to assess the E, S or G nature of a product.

It is true that, in accordance with national regulatory developments, some Member States have developed best practices on the disclosure of information by firms and that allow manufacturers to develop methodologies to demonstrate the ESG characteristics of some of their products and/or to provide support for correspondence with national ESG labels.

In France, for example, pursuant to the requirements of Article 173 of the Act of 17 August 2015 on energy transition for green growth¹, manufacturers have implemented internal methodologies to report on the inclusion of ESG criteria by their firm and/or their products.

1. Labelling

If, despite the absence of a taxonomy, the EC and ESMA nonetheless wish to pursue the introduction of sustainability into MiFID II, the only option for a distributor to distribute products in compliance with the obligation to incorporate ESG risk would be:

Focus in principle on the distribution of financial products with a European or national ESG label.

The European authorities should endeavour to develop financial product labelling both at European and national level within the Member States, including when the taxonomy is definitively adopted. For example, there are two labels in France, TEEC and ISR, covering 178 funds². There are very few "S" funds, no "G" funds and very few ESG labels on other financial instruments. Strict implementation of the ESG provisions could lead to a certain concentration of investments which runs counter to the objectives of the regulation.

2. Other option

Failing this, distributors can only include sustainability in financial product distribution by applying a principle of:

“Inclusion by the distributor of the ESG characteristics stated by the manufacturer in terms of their company and products through the defined target market”.

Without harmonisation, distributors must use the classifications (E/S/G/ES/EG/ESG/etc.) provided by the manufacturer to determine their target market. The distributor must not be required to assess the categorisations it receives for each product. Based on their own ESG

¹ Article 173 of the act sets out the reporting obligations applicable to institutional investors on how they manage climate risks, and broadly speaking, how they incorporate environmental and social considerations in their investment policy

² Link to TEEC- or ISR-labelled funds: <https://www.lelabelisr.fr/fonds-isr/>

policy, distributors must have full discretion to choose manufacturers and the products in their range, based solely on data provided by the manufacturer and not restated.

While the industry understands why ESMA wants a fairly granular approach by both manufacturers and distributors on what categorises a product as E, S or G, it does not support the principle set out in point 9 of the Product Governance section of the consultation.

Absent harmonised manufacturer methodologies to classify products as fulfilling each of the major criteria (environment, social and governance), granularity is not possible.

Q6: 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.

Partially

The industry agrees with ESMA's analysis that the Product Governance section is the most relevant choice to embed ESG considerations and with the choice of setting out the general principles to leave sufficient flexibility for distributors.

The industry is also in agreement with the simplified approach proposed by ESMA to consider two sub-sets, **ESG-positive** products and **non-ESG products**, and that **there is no need to identify a negative target market**.

Yet, in light of the information given in question 5, we are of the opinion that granularity in relation of each of the three components E, S and G would be difficult to obtain. In fact, without harmonised methodologies and a market standard, creativity abounds, making for a myriad of criteria to choose from. This multiplicity hinders distributors from setting up a standardised process to select the products for their range to offer to clients based on an analysis of the criteria specified by the manufacturers (paragraphs 8 and 9).

However, the information included in the documents may be used to help clients to fine-tune their choice. Manufacturers will also continue to clearly describe the ESG approach chosen, the type of ESG data and the ESG filters used for a given ESG product in the pre-contractual documentation for customers. On the other hand, a very granular description is not needed in the target market.

Accordingly, it would be desirable for ESMA to include in its amendment proposals the concept that "institutions should adopt a "best effort" approach to meet ESMA's expectations set out in Articles 10(2) and 10(5) without requiring granularity on the E, S and G dimensions."

“”

Article 10(2) of the MiFID II Delegated Directive to be amended as follows

Member States shall require investment firms, to have in place adequate product governance arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics, and objectives, **including ESG preferences (where relevant and making their best effort considering the lack of harmonised approach)**, of an identified target market and that the intended distribution strategy is consistent with the identified target market. Investment firms shall appropriately identify and

assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures. As part of this process, firms shall identify any groups of clients for whose needs, characteristics and objectives the product or service is not compatible.

Article 10(5) of the MiFID II Delegated Directive to be amended

Member States shall require investment firms to review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Firms shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives, including ESG preferences (where relevant and making their best effort considering the lack of harmonised approach), of the identified target market and whether the intended distribution strategy remains appropriate. Firms shall reconsider the target market and/or update the product governance arrangements if they become aware that they have wrongly identified the target market for a specific product or service or that the product or service no longer meets the circumstances of the identified target market, such as where the product becomes illiquid or very volatile due to market changes

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.

The industry shares ESMA's positions set out in points 12 and 13 of the consultation paper and the proposed wording of the revision of the ESMA guidelines on product governance, paragraph 18(e). It is important that the target markets for a product are not only determined with regard to the client's ESG preferences in the "needs and objectives" category, but also in relation to the other categories used to identify the target market(s). **They represent only objective and indicative criteria which must be neither additional nor preferential to the financial criteria.** Similarly, the industry agrees with ESMA that a negative target market does not need to be specified solely with regard to ESG considerations.

Addition of another case study (point 14)

Not at this stage!

The industry points out that it is not possible to provide additional granularity beyond the generic criteria above without a taxonomy of economic activities and a reference standard to define E, S and G criteria.

The example given by ESMA goes too far in terms of how granular the definition of the client's ESG preferences is relative to the operating limitations of incorporating these new factors in credit institutions' information systems. Similarly, the sample presentation of an investor's specific ESG preferences is too prescriptive and literal to be rolled out as part of an IS, both in terms of selecting the products in the range to be marketed and the products to promote to each investor following the provision of advice.

However as mentioned above, for manufacturers, this does not rule out a clear description of the ESG approach chosen, the type of ESG data and the ESG filters used (on activities and/or practices) for a given ESG product in the pre-contractual client documentation (in particular, the KID or KIID). On the other hand, a very granular description is not needed in the target market.

As ESMA points out in its analysis, integrating ESG considerations should not complicate the process of determining the target market for a product by either the manufacturer or the distributor. They must be able to continue to offer a sufficiently broad product range to meet the objectives and needs of investors, while integrating ESG considerations.

On this basis, the industry considers that ESMA's guidance in point 8 of the Product Governance section goes beyond the European Commission's guidance. The taxonomy aims to define the activities that can be considered environmentally (E) sustainable and is not intended to drill down to product level.

The taxonomy filter will be based on the specifications presented in the preparatory work completed by the Commission's expert WG. Recommending application of the filter to specify which ESG preferences a product fulfils and to select within the product range, before applying a methodology to determine its E, S, G, ES, EG and/or ESG characteristics, creates the risk of reducing the range of products suitable for marketing.

This may hinder the objective of contributing to financing the real economy through savings.

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

The industry believes that no new guidelines are needed.

New guidelines could be overly prescriptive and may require financial institutions to embark on developments that could then be challenged by the conclusions of the European Commission's work to create a unified classification system of sustainable activities.

- **How should the target market be assessed and matched (consistency/concordance/suitability) with a client when the product has no ESG characteristics and the client has ESG preferences?**

The industry agrees with the analysis in point 13 of the ESMA Guideline in the consultation paper. The FBF believes this is an appropriate response to the case study presented by ESMA in this question.

Assessing the target market and the suitability of a financial product that may or may not have ESG characteristics must be made in relation to all five categories in MiFID II for determining the target market³ and then based on consideration of ESG factors as a sub-criterion in the "Objectives and needs" category.

³ Investor type, knowledge and/or experience; ability to bear losses; risk tolerance, objectives and needs

These principles could be applied to define the target market for products and to analyse suitability for an investor.

Thus, a non-ESG product could be offered to a client who has expressed ESG preferences if it fulfils their expectations under the other categories. To justify the information provided to the client and their agreement to subscribe to this product, the financial institution could specify the client objectives fulfilled by the product and that it does not meet their ESG preferences in the suitability report

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.

The industry believes that no new guidelines are needed.

Guidelines could be overly prescriptive and may require financial institutions to embark on developments that could then be challenged by the conclusions of the European Commission's work to create a taxonomy.

• How ESG considerations can be either specified separately from each other or as a single indicator.

Separate assessment or single indicator of ESG criteria

The absence of a European taxonomy, of broader, standardised and granular data on the ESG activities and practices of the underlying firms, and of a unified standard to assess each of the ESG criteria in products makes it impossible to conduct a separate assessment of the ESG components at this stage. Admittedly, the European Commission has identified a number of objectives to be included in the environmental (E) assessment.⁴ The same is true nationally, in France for example, for the scope of the components to be included to assess the E, S or G components at manufacturer level.

However, without a unified national or European calculation methodology to define products as ESG, distributors cannot assess the E, S or G characteristics of manufacturers' products.

In addition, the industry considers that it cannot state a position on the concept of a single indicator until ESMA clarifies how to interpret this terminology. Developing European or even national labelling of products would be a valid alternative for distributors to provide legal certainty on the integration of ESG considerations.

⁴ See the consultation paper, Product Governance section, point 8: climate change mitigation; climate change adaptation; sustainable use and protection of water and marine resources; transition to a circular economy; waste prevention and recycling; pollution prevention and control; and protection of healthy ecosystems

- **How the assessment of the target market and the matching of a client with the target market should be performed if the ESG considerations of a product are specified separately and if a client has different preferences for some or all of these criteria (for example, a product has sound environmental criteria but few governance criteria, while the client has few environmental preferences and strong governance preferences**

As for the previous question, the absence of a harmonised methodology makes true comparability between products identified as fulfilling E, S or G characteristics impossible.

Distributors cannot therefore adopt a granular approach in their product selection system.

See Q10 below.

SUITABILITY

Q10: What current 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.

On the basis of the arguments presented (see Q9), and inasmuch as the European authorities maintain their intention to embed sustainability into MiFID II prior to establishing a taxonomy, a staged approach should be taken to integration to provide more legal certainty for distributors.

Phase 1

An initial phase focusing on integrating sustainability by introducing two types of target market: **“ESG-positive products” and “non-ESG products”**.⁵ Distributors will only ask clients about their “ESG” or non-ESG” preference in the MiFID II investor questionnaire.

In the documentation, manufacturers will be expected to identify the general ESG nature of a product when it is identified as meeting at least one of the criteria, even if they are in a position to precisely define the E, S, G, ES, EG and/or ESG characteristics for each of their products, according to their own internal assessment.

Based on their internal ESG policy, distributors will select from their product range and offer all products identified as ESG by the manufacturer to a client with ESG preferences, even if the product covers only one of the criteria.

Additional information provided by manufacturers in data form and that must be included in the information documents given to clients may be used in the provision of advice on choosing one product over another.

Phase 2

In support of the progress made on the taxonomy or on a harmonised method for determining the E, S or G characteristics of a product, the investor questionnaire under MiFID II could provide more granular information on the client’s ESG preferences by adding questions aimed at more accurately ascertaining client’s preferences between E, S, G, ES, EG and ESG. The

⁵ See consultation paper, Product Governance section, point 10.

procedures for selecting and offering products could also be perfected in line with these advances.

Q11: Do you agree with the suggested approach and the amendments to paragraph 28 of the suitability guidelines? If not, do you have any suggestions for developing a more detailed approach with regard to (a) the collection of information from clients and (b) the assessment of ESG preferences with the assessment of suitability?

Yes, on condition

The industry requests the deletion of the “s” in the word “questions” in the proposed wording: “When collecting information about their clients’ ESG preferences, firms should ask questions in relation to environmental ...”

Since distributors can only ask investors about their "ESG positive products" or "non ESG products" preference – at least in the first phase, it is important that the ESMA guidelines do not leave any scope for interpretation as to an obligation to ask several questions.

The industry could support ESMA’s proposed revision of Article 28 of the suitability guidelines, **provided it removes the last sentence:** *“while this classification system is under development, investment firms should clearly specify what they consider to be ESG preference or considerations, while taking into account current market standards”*.

This revised wording does not reflect the analysis in points 11 and 13 of the consultation paper, which advocates an approach based on enumerating general principles to give distributors ample flexibility regarding the methods used to comply with ESMA's recommendation.

There is currently no current market standard for manufacturers. This sentence may be open to the interpretation that there is an implicit obligation on distributors to produce an internal definition of a methodology for assessing each ESG factor and each ESG preference with sufficient granularity.

The inability to articulate and compare the methodologies chosen by manufacturers and possible defined by distributors greatly increases:

- The risk of mismatch between manufacturers’ and distributors’ target markets
- Potentially leading to:
- The risk of unsuitable products offered to investors by the distributor

The industry also agrees with ESMA’s approach in point 14 (p. 23) as a necessary corollary to determining an “only positive” target market to meet ESG objectives.

⇒ **If not, do you have any suggestions for developing a more detailed approach with regard to (a) the collection of information from clients and (b) the assessment of ESG preferences with the assessment of suitability?**

Q12: Please specify any approach you see to assess environmental, social and governance criteria separately from each other or as single preferences. Please explain

how the criteria would interact with each other and how the suitability assessment would be performed in such cases.

The absence of a standard European taxonomy to assess each of the ESG criteria with reference to manufacturers makes it impossible to conduct a separate assessment of the ESG components at this stage. Admittedly, the European Commission has identified a number of objectives to be included in the environmental (E) assessment.⁶ The same is true nationally, in France for example, for the scope of the components to be included to assess the E, S or G components at manufacturer level.

However, without a unified national or European calculation methodology to define products as ESG, distributors cannot assess the E, S or G characteristics of manufacturers' products.

In addition, the industry considers that it cannot state a position on the concept of a single indicator until ESMA clarifies how to interpret this terminology.

In any case, the industry is of the view that a taxonomy should be a prerequisite for the integration of sustainability into MiFID II. In the absence of a taxonomy, developing European or even national labelling of products would be a valid alternative for distributors to provide legal certainty on the integration of ESG considerations.

Furthermore, the industry points out the slow progress in developing labels in Europe and the Member States (only 178 funds in France are labelled).

In the long term certainly, developing labelling systems and the option for distributors to select the funds for their range on the basis of European or national labels would be a legally secure solution.

That said, if this option were adopted now, it would limit the scope of funds that can be offered to investors, which would run counter to the dual European objective of financing the real economy through financial savings and not harming clients' interests by integrating ESG considerations.

Pending progress in how ESG criteria should be assessed, the only model possible is "ESG positive products" and "non ESG products", according to the methodologies presented in question Q10.

Distributors will take into account the information provided by manufacturers, who remain solely responsible for the quality of the information provided.

Q13: Do you agree with the suggested approach and the amendments to paragraph 70 of the suitability guidelines?

Yes, subject to

- applying ESMA's view that the Product Governance section is the most relevant choice to embed ESG considerations and with the choice of setting out the general principles to leave sufficient flexibility for distributors.

⁶ See consultation paper, Product Governance section, point 8;⁷ See table provided on page 33.

- applying the simplified approach proposed by ESMA to consider two sub-sets, **ESG-positive** products and **non-ESG products, and with no obligation to identify a negative target market.**

In light of the information given in question 5, we are of the opinion that granularity in relation of each of the three components E, S and G would be difficult to obtain. In fact, without harmonised methodologies and a market standard, creativity abounds, making for a myriad of criteria to choose from. This multiplicity hinders distributors from setting up a standardised process to select the products for their range to offer to clients based on an analysis of the criteria specified by the manufacturers (paragraphs 8 and 9).

However, the information included in the documents may be used to help clients to fine-tune their choice.

The industry considers that it is important for the Guidelines to at least include point 14 (page 23).

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The amendments introduced in MiFID II on the topic of the suitability assessment will require firms to take into account ESG considerations in the investment and advisory process as part of their duties towards clients. ESMA wishes to clarify that this does not imply:

□ that environmentally sustainable investments, social investments and good governance investment should automatically be deemed unsuitable for clients that do not have ESG preferences. Whether this product will be suitable for clients who do not

16 https://ec.europa.eu/info/sites/info/files/180131-sustainable-finance-final-report_en.pdf 24

have these ESG-objectives, will have to be assessed according to the other criteria to be taken into account in the suitability assessment; or

□ that investments that are not categorised as environmentally sustainable investments, social investments or good governance investments should automatically be deemed unsuitable for clients who have expressed ESG preferences. As set out in paragraph 13, above, different methodological approaches are possible on how to incorporate ESG considerations in the assessment of suitability.

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This would serve as a corollary in terms of suitability to the provisions in the Product Governance section relating to the non-existence of a negative or grey target market.

Q14: What level of resources (financial and other) would be required to implement and comply with the proposed changes (risk-management arrangements, market researches and analyses, organisational costs, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant⁷.

The industry does not share ESMA's position on the costs of integrating sustainability in MiFID II.

Contrary to what ESMA indicates in point 15, the implementation costs will be considerable rather than limited.

To date clients are asked very few questions about sustainability, as ESMA points out in the consultation paper. Integrating sustainability will entail revisiting a large number of projects that have yet to be finalised (definition of specifications for data to be included in MiFID II client questionnaires, tools for selecting products and defining product allocations, IS upgrades, updating questionnaires and documentation, reporting); organising how to collect data from manufacturers for input to IS systems, which requires a revamp of the current data-gathering specifications to allow for cross-referencing information from different tools and sources.

ESMA completely underestimates the costs involved in supporting the sales force to manage the change, which would involve creating training courses and training tools and providing training for advisors.

Nor does ESMA take into account the support and educational resources required for investors.

Implementing the taxonomy within existing labels will entail additional costs.

⁷ See table provided on page 33.

Information requested	Firm response
Firm size (annual turnover in euro)	
Number of employees	
Firm complexity (low/medium/high)	
Expected costs from market research related to ESG factors (in euro)	
Expected IT costs related to ESG factors, initial and on-going (in euro)	Initial:
	On-going:
Expected training costs related to ESG factors (in euro)	Initial
	On-going
Other expected organisational costs related to ESG factors (in euro) – <i>please describe</i>	Initial
	On-going