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Your ref., Your message of Our ref., person in charge Extension Date

BSBV 39/Horvath 3141 7th Feb 2019

**ESMA Consultation Paper on integrating sustainability risks and factors in MiFID II**

**(ESMA35-43-1210)**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as legal representative of the entire Austrian banking industry, appreciates the possibility to comment on the above cited consultation paper and would like to submit the following position:

As long as the ESG-Taxonomies are not agreed upon by the EU-legislators we would like to highlight again that it is difficult to understand and implement processes regarding the integration of sustainability risks and factors in the advisory process. We assume that the lack of a harmonized taxonomy may lead to non-uniform measures throughout the applying entities and therefore may miss the aim of having consistent implementation of sustainability measures in Europe and a level-playing field throughout the affected market participants.

Regarding the proposed wording of Art. 21 and 23 MiFID II Delegated Regulation, the proposed additions to the product governance process and the amendments to the ESMA Guidelines on certain aspects of the MiFID II suitability requirements, we would like to point out, that the additions are of a very general nature. Without further guidance on the expected, practical implementation requirements, we fear the already mentioned non-uniform application throughout the relevant market participants.

As for any implementation measures which the banks need to set, we think **it would be feasible to start implementation not until the EU´s classification system of ESG investment products is final and in force** (and not to make entity-individual specifications). Otherwise, this could lead to the fact that the affected entities would need to make the implementation effort twice (including material and labour costs), which do not seem justified in relation to clients’ benefits. Without uniform definitions, we do not see an actual benefit for the customer, but the risk of confusion amongst customers and of losing the comparability between products and services of different entities.

Therefore, when setting the transition period for the affected entities, we highly recommend to consider the **necessity for having valid definitions on the one hand and required technical and processual adaptions on the other hand.**

We agree to ESMA’s clarification, that environmentally sustainable investments, social investments and good governance investments should not automatically be deemed unsuitable for clients that do not have ESG preferences. Whether this product will be suitable for clients who do not have these ESG-objectives, will have to be assessed according to the other criteria taken into account in the suitability assessment.

In addition, we agree that the inclusion of ESG considerations in the advisory process and portfolio management must not lead to misselling practices, and that therefore this may – as a consequence – lead to giving ESG considerations [subsidiary](https://www.linguee.com/english-german/translation/subsidiary.html) significance (if other interests of the client prevail).

Yours sincerely,

Dr. Franz Rudorfer

Managing Director

Division Bank and Insurance