**26th April 2022**

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Hereinafter the responses from Spainsif to ESMA’s consultation paper on the Guidelines on certain aspects of the MiFID II Sustainability requirements can be found.

**Guideline 1 – Information to clients about the purpose of the suitability assessment and its**

**Scope**

Companies should inform their clients about the sustainability assessment and its purpose, including the company’s responsibility and explaining to the client why that information is needed (which could be collected in a standardized format). This information should help the client to understand the purpose of que requirements.

**Suggests** that the company helps the client to understand the concept of sustainability preferences and the different products included in those sustainability preferences avoiding a technical language. Companies should explain what ESG mean

* *Q1. Do you agree with the suggested approach on the information to clients about the purpose of the suitability assessment and its scope? Please also state the reasons for your answer.*

The approach of informing clients about the purpose sustainability assessment is seen as a positive initiative, only if approached as a general framework aimed at bringing together common definitions that facilitate the introduction of sustainability factors in the conversation. In this sense, it is necessary to insist that such a framework is broad enough to allow financial institutions to design their strategies for presenting sustainable financial products with sufficient flexibility.

The establishment of a framework is supported to the extent that clients are informed at all times about what their sustainability preferences and the products they accept imply, in the same way that they are informed about profitability and risk issues; and in order to avoid that sustainable financial products are not offered to the end client due to a lack of knowledge of ESG criteria.

* *Q2. Do you agree with the new supporting guideline in relation to the information to the clients on the concept of sustainability preference or do you believe that the information requirement should be explained further? Please also state the reasons for your answer.*

Yes. Although, in theory, the more information the client has, the better the decision-making process, the proposal should focus on conveying information only **relevant** to the client and collecting it in a **standardized** way to avoid misunderstandings, time and costs for both the entity and the end client.

**Guideline 2. Arrangements necessary to understand clients**

Companies should establish, implement, and maintain adequate policies and procedures to enable them to understand the essential details and characteristics of their clients. When developing questionnaires to collect client information for the sustainability assessment, the company should consider what are the main reasons why an investor might not answer these questions correctly.

**Suggests** a higher level of customer information that includes all aspects mentioned in their sustainability preferences and that allows to connect sustainability preferences with sustainability-related financial instruments and that allows the combination of the different aspects.

* *Q3. Do you agree with the suggested approach on the arrangements necessary to understand clients and specifically with how the guideline has been updated to take into account of the clients’ sustainability preferences? Please also state the reasons for your answer. Are there other alternative approaches, beyond the one suggested in guideline 2, that you consider compliant with the MiFID II requirements and that ESMA should consider? Please provide examples and details.*

Yes, since final customer sustainability preferences may change as well as risk and return preferences, for different reasons: in reaction to new ESG evidence, policies, individual experiences, etc.

* *Q4. Do you believe that further guidance is needed to clarify how firms should assess clients’ sustainability preferences?* It would be positive to develop response recommendations according to the client's preferences (ESG criteria, intensity of their preferences with respect to the offer that can be made of products linked to SFDR/taxonomy alignment), although they should leave enough room for the advisor to decide on a discretionary basis about what combination of return/risk/sustainability is most suitable for each client, on a case-by-case basis.
* *Q5. Where clients have expressed preference for more than one of the three categories of products referred to in letters a), b) or c) of the definition of Article 2(7) of the del MiFID II[[1]](#footnote-1), Delegated Regulation, do you think that the Guidelines should provide additional guidance about what is precisely expected from advisors when investigating and prioritizing these simultaneous / overlapping preferences?* It would be positive to clarify that the weight/proportion of a/b/c can be decided on a discretionary basis by the advisor in the case of having enough supply/product choices of all three types and in the case of having an offer of only one of the three. Adding more layers of complexity to the design of the offer would excessively restrict the possible final offer to the client.
* *Q6. Do you agree with the proposed approach with regard to the assessment of ESG preferences in the case of portfolio approach? Are there alternative approaches that ESMA should consider? Please provide possible examples.* It could be of interest to collect customer thematic preferences around the different environmental objectives of the green taxonomy for the future design of sustainable funds.Also, analternative that has been discussed in the sustainable investment ecosystem is the convenience of presenting ESG preferences to the client by exemplifying them with sustainable products available in the advisor's offering. However, although this approach has advantages in terms of the ease of conveying abstract concepts through practical cases and in channeling demand towards existing products on offer, it presents risks of biasing sustainability preferences, and we believe that these should not be treated differently from the issues of profitability and risk.

**Guideline 3 y 4. Extent of information to be collected from clients (proportionally) and reliability of the client information**

3. Before offering financial advice or portfolio management services, all the necessary information should be collected from the client.

4. Firms should take the necessary steps and tools to ensure that the information collected from their clients is reliable and consistent, without relying solely on what the client reports.

**Does not suggest any amendments**

**Guideline 5. Actualizar la información del cliente**

When a firm has a relationship with a client, in order to carry out the sustainability assessment correctly, the firm will need to define what client information should be updated and how often; and how this information should be updated by the firm or how it should proceed when the client does not favor this information.

**Suggests** that client preferences should be updated either during the first meeting with the client or after its application to MiFID II regulation.

* *Q7. Do you agree with the suggested approach on the topic of ‘updating client information’? Please also state the reasons for your answer.* It is proposed to recommend a periodic update of the client's preferences, so that he/she can update his/her portfolio according to his/her preferences, in accordance with the deadlines or periodicity already pre-established in each entity. The update could be transferred as "mandatory" for financial institutions as for profitability and risk criteria, and voluntary response by the client in case he/she has already declared his/her sustainability preferences at least once. In case they decline to update their sustainability preferences, it is proposed to maintain those of the initial response to the suitability test.Regarding the introduction of the preferences in the existing tests, we consider it unfeasible to ask the question massively to all existing clients in the entities at the time of entry into force, so it is proposed to indicate that the question on sustainability preferences be transferred in the update of the test when appropriate according to the protocols established in each entity.

**Guideline 6. Client information for legal entities or groups**

Firms should have an ex ante policy on how to conduct the sustainability assessment in situations where the client is a legal person or a group of two or more persons, or where there are one or more persons represented by a third party.

**Does not suggest any amendments**

**Guideline 7. Arrangements necessary to understand investment products**

Firms should ensure that the policies and procedures employed to understand the characteristics and nature of their investment products enable them to recommend suitable investments or invest in suitable products on behalf of their clients.

**Suggests** ensuring that the policies and procedures carried out by the company to understand the nature and characteristics of the products take into consideration sustainability factors of their investment products.

* *Q8. Do you agree with the suggested approach with regards to the arrangements necessary to understand investment products? Please also state the reasons for your answer.* Yes, there is room for development on the details of the products that can be included in the "informed consent" information for the client in relation to: (a) products art. 8 and art. 9 of the SFDR Regulation (possible mismatch of the offer detailing MIFID II with the pre-contractual and periodic information templates) and (b) the minimum proportions referred to in the offer.
* *Q9. Do you believe that further guidance is needed to clarify how firms should take into consideration the investment products’ sustainability factors as part of their policies and procedures? Please also state the reason for your answer.* The primary role of these companies is not to understand 100% what the sustainability factors of their financial products look like. However, if they are provided with this information, it is easier for them to offer products that are more appropriate to the sustainability preferences of their clients; although this is not a role that corresponds to the application guide for the sustainability preferences question in the suitability test.

**Guideline 8**. **Arrangements necessary to ensure the suitability of an investment**

In order to be able to offer their clients suitable financial products, companies should establish policies and procedures that take into account all possible client information (including their current portfolio) and all material characteristics of the investments considered in the suitability test, including all relevant risks and all direct and indirect costs to the client.

**Suggests** indicating what the strategy is to take into account the client's sustainability preferences in their suitability test. Offer the possibility to recommend a financial product that is not suitable for the customer's sustainability preferences when there are no suitable sustainability products for a particular transaction. Firms should collect all information on their customer's sustainability preferences even if they do not have products that match their preferences.

* *Q10. Do you agree with the additional guidance provided regarding the arrangements necessary to ensure the suitability of an investment concerning the client’s sustainability preferences? Please also state the reasons for your answer.* There is no need for additional guidance if it is established that sustainable financial products may be offered that are not 100% aligned with the investor's sustainability preferences. In order to address the needs of the advisor to manage such situations, the recommended response is training.
* *Q11. Do you agree with the approach outlined with regards to the situation where the firm can recommend a product that does not meet the client’s preferences once the client has adapted such preferences? Do you believe that the guideline should be more detailed? Please also state the reasons for your answer.* It is acceptable that the company can make an offer of non-sustainable products if they are not available once the customer communicates its sustainability preferences. However, the customer's sustainability preferences should be recorded and retained regardless of whether or not they can be satisfied by the offer, and the customer should not, under any circumstances, sign preferences that differ from those initially expressed and are conditioned by the offer. Similarly, the recording of unmet sustainability preferences can be a powerful tool for the design of sustainable financial products and the revision of the offer.
* *Q12. Do you agree with the approach outlined with regards to the situation where the client makes use of the possibility to adapt the sustainability preferences? Please also state the reasons for your answer.*

Understanding that it refers to giving the client the option to re-do their preferences if there is no financial product that suits their preferences: No, the client should not give up their sustainability preferences when there is no product that suits, because:

* + The client's profitability, risk and sustainability preferences are unalterable to the availability of financial product offerings. Suggesting that a particular entity's offering should lead to changes in the expression of demand is considered bad practice.
  + Keeping a record of customers' sustainability preferences, satisfied or unsatisfied, allows that information to be incorporated into the design of ESG product offerings.
  + The proposal to adapt preferences in case there is no available offer generates adverse incentives to include this type of products in portfolios (it could be tempting to invite the client to systematically renounce this type of products without exploring the possibility of including them in the offer in the medium term).
* *Q13. Could you share views on operational approaches a firm could use when it does not have any financial instruments included in its product range that would meet the client’s sustainability preferences (i.e. for the adaptation of client’s preferences with respect to the suitability assessment in question/to the particular transaction and to inform the client of such situation in the suitability report)?* It is proposed that the guide recommends the entity to have a document explaining the reasons that lead the entity not to consider offering products with ESG characteristics, which can be provided to the client in the event of not being able to respond to its sustainability characteristics. The sustainability risk integration policy may serve as a basis for this purpose.
* *Q14. Do you agree with the proposed approach for firms to be adopted in the case where a client does not express sustainability preferences, or do you believe that the supporting guideline should be more prescriptive? Please also state the reasons for your answer.* Yes.

*Where a client does not answer the question whether it has sustainability preferences or answers “no”, the firm may consider this client as “sustainability-neutral” and recommend products both with and without sustainability-related features. The firm’s product offer should be documented and explained to the client with a mention of the products/portfolio’s sustainability features. If the client states that he/she has sustainability preferences, and the firm does not have any products with sustainability related factors available, this should also be documented in the suitability report.*

* *Q16. What measures do you believe that firms should implement to monitor situations where there is a significant occurrence of clients adapting their sustainability preferences? What type of initiatives do you envisage could be undertaken to address any issues detected as a result of this monitoring activity?* Insisting on the seriousness of clients adapting and thus foregoing their sustainability preferences in the event that products are not available, in the event that the sustainable product offer cannot be systematically met, the institutions themselves will incorporate into their models the need to redesign or not the offer, on a discretionary basis. In the medium term, once the implementation of the European standards for sustainable finance is more established and sufficient time has been given to assemble the product offering in the new regulatory framework, a recommendation to publish a declaration could be considered for those companies that, above a certain percentage of tests, do not respond to the sustainability preferences of their clients.

**Guideline 9. Costs and complexity of equivalent products**

**Does not suggest any amendments**

Policies and procedures should ensure that, before the firm makes a decision on the investment products it recommends, or invests a portfolio on behalf of its client, an analysis of possible investment alternatives is carried out, taking into account the cost and complexity of the products.

**Guideline 10. Costs and benefits of switching investments**

Companies should have adequate policies and procedures to ensure a cost-benefit analysis of a change made in such a way that the company can demonstrate that the expected benefits of the change outweigh the costs.

**Suggests** changes to the wording of Article 25(2). The wording would read: *When providing investment advice or performing portfolio management involving the switching of financial instruments, investment firms shall obtain the necessary information about the client's investment and analyze the costs and benefits of switching financial instruments. When providing investment advice, investment firms shall inform the client whether or not the benefits of switching financial instruments outweigh the costs involved in switching financial instruments.*

* *Q17* *Do you agree with the proposed amendment to supporting guideline 10? Please also state the reasons for your answer?* Yes

**Guideline 11. Qualifications of firm staff**

Companies must ensure that the personnel involved in the material aspects of the suitability process have the appropriate level of skills, knowledge, and experience.

**Suggests** that such staff receive training

* *Q18. Do you agree with the additional guidance regarding to the qualification of firms’ staff or do you believe that further guidance on this aspect should be needed? Please also state the reasons for your answer?* One could go into more detail: what kind of training do you need? how long does this training last? what content is included? how do you demonstrate these skills? The indications are very ambiguous, eg. “*appropiate understanding of the technology and algorithms used to provide digital advice*”

**Guideline 12. Record-keeping**

Firms should ensure that they obtain and keep a record of advice given to the client, as well as investment recommendations and investments/disinvestments made after following the suitability test.

**It has not suggested anything new** but has clarified that firms should keep a record of the client's sustainability preferences and whether there are any updates to them.

* *Q19. Do you agree on the guidance provided on record keeping? Please also state the reasons for your answer?* Yes, this way you can observe market trends and customer interest in order to be able to offer new products if there are similar demands among several customers.
* *Q20. Do you agree on the alignment of the two sets of guidelines (where common provisions exist for the assessment of suitability and appropriateness)? Please also state the reasons for your answer.* Yes, if it is designed as a voluntary tool to assist in analyzing and storing information about the client and about financial instruments/asset classes.
* *Q21. Do you have any further comment or input on the draft guidelines?*  Education and training of financial advisors is essential for the correct implementation of the consideration of clients' sustainability preferences. The guide should support the incorporation of basic sustainability issues in the training of advisors, informants, planners, etc. and the desirability of specific training or certification for advisors in the case of working with sustainable products (only for advisors, it would not be necessary for informants).

**Good and bad practices**

* *Q23. What level of resources (financial and other) would be required to implement and comply with the guidelines (organizational, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)?*

The largest initial costs, in proportion, would have to do with personnel training in large companies and with technological adaptation in small and medium-sized financial companies.

1. In Article 2, the following points (7), (8) and (9) are added: “(7) ‘sustainability preferences’ means a client’s or potential client’s choice as to whether and, if so, to what extent, one or more of the following financial instruments shall be integrated into his or her investment:

   (a) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council\*; (​​Pursue a minimum proportion of sustainable investments in economic activities that qualify as environmentally sustainable under the EU [Taxonomy Regulation](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-taxonomy-sustainable-activities_en))

   (b) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council\*\*; (Financial instruments that pursue a minimum proportion of sustainable investments as defined in [SFDR](https://ec.europa.eu/finance/docs/level-2-measures/mifid-2-delegated-act-2021-2616_en.pdf))

   (c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client; (Financial instruments that consider principal adverse impacts on sustainability factors, where elements demonstrating that consideration are determined by the client.) [↑](#footnote-ref-1)