ABI's remarks on the ESMA Consultation Paper regarding Guidelines on certain aspects of the MiFID II suitability requirements

April 2022

Foreword

The aim of this document is to provide ABI's contribution to the consultation launched by ESMA on the Guidelines regarding certain aspects of the MiFID II suitability.

Before responding to the specific questions raised by the consultation paper, we think it would be useful to comment on some relevant general aspects.

General remarks

We believe that the ESMA Guidelines should allow for a greater flexibility as far as it regards the approach admitted for applying the new MiFID II requirements on sustainability.

ESMA should support an approach that takes into due account the needs of all stakeholders, firstly with regard to the level of knowledge and information of retail investors on the technical aspects concerning sustainability characteristics of financial instruments. With this in mind, the provisions of Article 2, point 7, and Article 54 (10) of the Delegated Regulation (EU) 2017/565 should be read and consequently outlined into the draft Guidelines proposed.

The main points which should be addressed with a greater flexibility regard:

- the **information to be provided** to clients **and the arrangements to collect the information from clients.** We believe that the definition of sustainable preferences provided for by Article 2, point (7), of the Delegated Regulation (EU) 2017/565 allows, inter alia, for a collection of the client’s preferences which:

  - ✓ is not differentiated among the three types of financial instruments listed under letters a) to c);
  - ✓ considers these three types of financial instruments together, focusing on the formulation of the questions to be made to the client to describe the main differences existing among the three types of sustainable financial instruments;
  - ✓ is aimed at verifying the level of the client’s sustainability-related ambitions with regard to three types of financial instruments considered together.

  An important reference supporting this interpretation is the wording of the abovementioned point (7) expressly stating that “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 substantial element of outmost importance supporting this interpretation is represented by the awareness that at this stage clients cannot really understand the differences of the three types of sustainable financial instruments, their availability on the market, the proper weight to assign to them within their investments. Any detailed indications would therefore be given by clients without the awareness of the effects connected to them. It is therefore important that the Guidelines allow firms to "translate" the requirements defined in Article 2, point 7 a) – c) into a language that retail clients can understand. See for details the answers to Q1 e Q2;

- the **financial instruments able to satisfy to meet and satisfy the clients sustainability preferences**. Due to the fact that the scope of the MiFID II products is wider than the SFDR product scope, we believe it is fundamental to admit in addition to the approach based on the three financial products categories of SFDR/Taxonomy (i.e. letters a, b e c), an additional alternative approach which is based on the adoption of "ESG scoring/rating" of the financial instruments and, consequently, of the entire client's portfolio (which is composed not only of SFRD financial products, but also of financial instruments such as equities, bonds, certificates etc…). Therefore, it is fundamental that the Guidelines clarify this aspect with regard to the collection of the information and the suitability test. See for details the answer to Q6;

- the **way it can be interpreted the "to what extent" requirement** provided by Article 2, point 7, of the Delegated Regulation (EU) 2017/565 2. We believe it can be referred to the degree of clients' sustainability preferences. This is particularly important in case of investment advice with a portfolio approach, as it would allow for establishing the sustainability degree of the entire client's portfolio or, alternatively, the portion of the client's portfolio to be invested in financial instruments meeting his/her/their sustainability preferences (sustainable portion of the portfolio). See for details the answer to Q3;

- the **way it can be performed the suitability assessment in case of adoption of the portfolio approach.** It is crucial to have a confirmation that it is possible to perform the suitability assessment with regard to the entire client's portfolio/sustainable portion of the client's portfolio, assessing the single financial instrument's ESG score[1] and then matching the instrument's score with the overall ESG portfolio's score/ESG score of the sustainable portion of the portfolio or calculating the proportion of financial instruments with ESG features

[1] Which also include indicators based on "Sustainable Development Goals (SDGs)" Impact Metrics, and, in general, any other kind of impact metrics.

in the client's portfolio identified through data provided by info providers. This is in line with the suitability portfolio approach currently adopted for the assessment of market risk or credit risk since it represents the best practice under the methodology point of view. This confirmation is important due to the fact that in the same draft guidelines the concept of "portfolio approach" is (correctly) different from the concept of "to what extent", as stated in the point 26 ("when providing portfolio management or investment advice (with or without portfolio approach) the firm could also ask the client to what extent financial instruments….."). On the base of these assumptions, different operational model could be adopted: i) investment firms collect in the questionnaire the extent (i.e. the part of portfolio) that the client wants to be invested in instruments with ESG features and then they perform and match the suitability test at portfolio level and on the basis of single ESG instruments features; ii) investment firms collect in the questionnaire the extent (i.e. the level of sustainability ambitions of the client) and then they perform and match the suitability test at portfolio level (overall and average ESG portfolio's score). See for details the answers to Q6, Q10 e Q11;

- the **client's preferences adaptation**. Article 54 (10) and Recitals 7 and 8 of the Delegated Regulation (EU) 2017/565 state that:

    - the investment firm can still recommend financial instruments that are not formally eligible for individual sustainability preferences (as defined in Article 2, point 7);
    - the client "should have the possibility" (and not "must") decide to adapt his sustainability preferences. In other words, the adaptation is a possibility, but not an obligation.

    See for details the answers to Q11, Q13 e Q15.

Answers to Specific Questions

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

Q1: Do you agree with the suggested approach on providing information about the purpose of the of the suitability assessment and its scope? Please also state the reasons for your answer.
Q2. Do you agree with the new supporting guideline in relation to the information to clients on the concept of sustainability preference or do you believe that the information requirement should be expanded further? Please also state the reasons for your answer.

Answer: We generally agree with the need to illustrate to the client the purpose of collecting preferences regarding sustainability.

We also agree with the need for such information to be explained and given to the client in a simple, clear way and with a language that is not excessively technical, in order to ensure maximum transparency and at the same time full comprehensibility by the client.

However, with a view to promoting the greatest possible clarity in communications to clients, we do not agree with the approach proposed by the draft guideline No. 16, according to which investment firms are required to explain to the client the concept of "sustainability preferences" focusing necessarily on the three types of financial instruments (i.e. letters a, b and c) listed in Article 2, point 7, of the Delegated Regulation (EU) 2017/565.

This is because:

- the definition of the three categories of financial instruments is strictly technical and contains references to various regulatory sources and to qualitative and quantitative parameters that cannot be illustrated to the client in a simple and understandable way;
- it is currently impossible for investment firms to correctly identify many of the financial instruments falling into the three categories, since:
  - ✓ with regard to the financial instruments referred to in letter a), only the Taxonomy Delegated Regulations relating to the two environmental objectives referred to "climate change" have been issued. Moreover, the qualitative and quantitative parameters for identifying the remaining environmental objectives as well as social and governance objectives are completely missing;
  - ✓ with regard to the financial instruments referred to in letter b), the European Commission has just adopted the publication of the SFDR Delegated Regulation, which will fully identify the parameters for the classification of the so-called financial instruments “Article 8 plus” and which will entry into force as of 1 January 2023. It should also be noted that only those financial instruments falling within the scope of application of the SFDR (i.e. managed savings products), with the exclusion of financial instruments such as shares and bonds, would fall within the range of financial instruments provided for letter b): only SFDR financial products will be able to provide information regarding their sustainable investment objectives. As a matter of fact: i) green bonds are not currently aligned with environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 being required to apply different technical criteria set by Climate Bonds Initiative and ICMA; ii) social bonds could not satisfy the requirement regarding the sustainable investments as defined in Article 2, point (17), of the

SFDR as the relevant ICMA criteria do not address the "not significantly harm" requirement; iii) government bonds are excluded from the Taxonomy; iv) as far as regards equities currently only large companies are required to provide the NFR during 2023 and, in this context, to provide the portion of their activities which are Taxonomy-aligned;
- ✓ with regard to the financial instruments referred to in letter c), the scope of application also in this case remains limited to SFDR financial products. Furthermore, at present, not all asset managers make available the data relating to the principal adverse impacts (PAI).

MiFID II general principles require investment firms – when providing information - to make sure "*clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed*". However, the recent investor protection framework revisions on sustainability preferences (see Delegated Regulation (UE) 2021/1253, Delegated Directive (UE) 2021/1269 and Delegated Regulation 2021/1257 as well as these draft ESMA Guidelines) are deemed to **be overly complex and technical** and will not **allow an average client to fully understand all sustainability** concepts (see also what already said in the 'General remarks' above).

In such context, it is therefore important to highlight that investment firms would face an objective difficulty if they are required to:

- ✓ guarantee their clients / potential clients have a deep understanding of all technical sustainability elements and aspects;
- ✓ illustrate those aspects in a manner that it is so granular and detailed that the final result is ultimately too complex and may lead to an incorrect representation of sustainability preferences provided by the client.

We therefore ask ESMA to take into consideration also the possibility to provide clients with information on the concept of "sustainability preferences" not bound to the three letters a) to c), nor to possible sub-combinations of the three letters, and consequently more generic.

On the other hand, the Consultation Paper, within the new Supporting Guideline No. 26, allows for the possibility that clients may express "generic" sustainability preferences (i.e. "*clients answer that they do have sustainability preferences but do not state a preference with regard to any of the specific aspects mentioned under a) to c) or with regard to a minimum proportion*"). This means that ESMA itself is aware that it may be extremely difficult for an average client to provide (and before that, to understand) technical / sophisticated information about his/her/their sustainability ambitions. Whenever investment firms make use of this possibility – according to the afore-mentioned Supporting Guideline – the client shall be duly provided with a specific disclosure in which firms "*inform the client about their choice and the level of the sustainability-related expectation of the product and document in the suitability report the client's choice not to further specify the sustainability preferences*" (see Supporting Guideline 26). Hence, the key role of disclosure: clients / potential clients will be assured to be fully informed about all sustainability aspects of the financial instrument / the service provided without having to define sustainability preferences with an excessive detail.

We also ask to clarify that new MiFID II requirements should not be applicable when client is pursuing hedging purposes via "ordinary" OTC Derivatives and that investment firms are allowed to adjust information provided to the clients and questions asked for the suitability assessment, when investment advice is limited to hedging needs through ESG-linked OTC Derivatives, because these types of instruments may not be fully aligned with products' categories (i.e a, b and c) as described by new MiFID II requirements.

Guideline 2 - Arrangements necessary to understand clients

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.

Answer: We disagree with the suggested approach and, therefore, propose an additional alternative one as described below, in order to:

1) collect the client sustainability preferences;
2) evaluate the concept of the "to what extent" related to the client portfolio.

As above anticipated, we believe that it is not necessary to collect information from clients in a granular way, aiming at getting a specific indication of the extent to which every single type of sustainable financial instruments should be present in the client's portfolio: this is a very technical indication that we believe most retail clients are unable to formulate.

In addition to the reasons already illustrated in the above general remarks and in answers to Q1/Q2, we have to highlight some important drawbacks connected to the approach suggested by ESMA:

- ✓ it would certainly create confusion to clients, because it requires to apply rules for the collection of sustainability preferences completely opposite to those to be applied to the collection of information on the financial aspects which have a predominant role in the profiling questionnaire;
- ✓ it would make the profiling questionnaire unbalanced, as it would require very technical questions to be made to clients on sustainability preferences differently from questions on financial aspects which use a clear and understandable wording (and which play a more important role in the suitability assessment);
- ✓ it would create a risk of potential litigation between clients and investment firms due to the fact that the clients' comprehension of the concept and questions related to sustainability would not be linked to the intelligibility of the wording of the questionnaire;
- ✓ **an overly complicated / technical questionnaire may lead clients to express the lack of sustainability preferences due to lack of familiarity, lack of availability of mainstream information, anchoring to already well-known concepts, as well as psychological traits;**
- ✓ the above-mentioned complexity is reflected also in the "*to what extent"* concept. This concept could be implemented not necessarily only in terms of portfolio percentage to be invested in sustainable financial instruments, but also in terms of a qualitative scale (such as high-medium-low or neutral-balanced-sustainable approach to the sustainability issue[2]) so that the client may be able to correctly express his/her/their level of sustainability ambitions;
- ✓ the same reasoning - as above, as well as all rationales behind it and taking into consideration that the average client cannot be expected to fully understand the concept of single product exposure – should be applied to the notion of "*minimum proportion*" for financial instruments listed under letters a) and b); in such instances, investment firms should be allowed to:
    - o set by itself the minimum proportion as an internal parameter and not submit to their clients a double set of questions (at product and portfolio level). We therefore ask ESMA to revaluate the model for the portfolio approach in order to simplify the requirement keeping into consideration what mentioned above;
    - o provide the client with clear and non-technical information - instead of asking the client for a quantitative representation - so that a prompt comprehension of the average client is always ensured;

[2] This refers to the hypothesis in which the investor manifests a greater or lesser degree of interest in sustainability than the 'classic' financial elements such as performance, risk, etc.

- ✓ in line with the reasons expressed above, we're just worried that requiring to manage the circumstance of clients expressing preference for more than one of the three categories of products (i.e. letters a, b or c) may lead to additional complexity and to an objective difficulty in the management of such information by investment firms. We therefore suggest allowing for the possibility to fulfill the obligation within the proposed solutions on Q1/Q2, without the additional need for intermediaries to manage separately and granularly any preferences on more than one of the three categories of products mentioned above;
- ✓ **all the above-mentioned metrics and approaches should be always communicated to the clients within an ad hoc disclosure about the financial instrument offered / service provided.**

In our opinion, to ensure a clear comprehension of the questions to be made to clients on sustainability preferences, it should therefore be possible for investment firms to **adopt an alternative approach**. The section of the questionnaire focused on sustainability preferences could be set adopting a multilevel approach, according to which:

- firstly, clients have the possibility to indicate whether they have or not preference in including in their investments also aspects related to sustainability, appropriately formulated to explain its meaning and the main potential aspects;
- secondly, where clients have expressed positive sustainability preferences, investment firms could ask them to indicate the level / extent / intensity of these preferences (e.g. low-medium-high or, in alternative, the minimum weight) in relation to their investments. This could be referred to the whole group of sustainable financial instruments and therefore without splitting the indications for the three types listed under letters a) to c). In this sense, we believe that the requirement "to what extent" provided for by Article 2, point 7, can be referred to the degree of client's sustainability-related ambitions (multilevel approach of the entire portfolio, for example high-medium-low) or to the portion / minimum percentage of the portfolio the clients wants to be invested in financial instruments meeting his sustainability preferences. Neither the new point 7 of Article 2 of the Delegated Regulation 2017/565 nor the Explanatory Memorandum give a precise definition of the high-level concept of "to what extent". Consequently, ESMA is allowed to provide in its Guidelines different options and declinations of the high-level concept.

Moreover, in order to test the client's preferences regarding sustainability, we believe that the indication of the minimum measure of eligibility to consider a financial instrument as sustainable is a too technical information, which the client may find it hard to provide.

The same Article 2 states that "the financial instrument for which the client determines that a minimum proportion shall be invested" and not "financial instrument for which the client determines the minimum proportion that shall be invested". Therefore, it is important that financial instruments for being eligible for the ESG preferences have a minimum proportion of sustainable investments, regardless of their specific amount or proportion. Therefore, it is not necessary that the clients indicate this amount.

According to our proposal, investment firms would not assign to clients the responsibility to take detailed decisions on technical aspects they are unable to understand and would act as "decoders" of the technicalities related to sustainability. In view of this, investment firms should provide clients with a statement which explains the investment firms' policies to identify and classify financial instruments able to meet the clients' sustainability preferences. This statement could be provided within the precontractual information document on financial instruments or the policies published on their websites according to the SFDR disclosure requirements. It could also be mentioned in the investment advice proposal.

We therefore believe that the survey on the client's sustainability preferences could be conducted in a simple and easily understandable way, using a qualitative approach, leaving to the pre-contractual information the task to provide the client with information on the sustainable characteristics of the recommended financial instrument.

Q4. Do you believe that further guidance is needed to clarify how firms should assess clients' sustainability preferences?

Answer: No, we believe that it is not necessary to provide further guidance. At this stage it is important to allow for more flexibility instead of further detailing/clarifying the suggested guidelines, which are even too detailed.

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 MiFID II 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?

Answer: No, we believe that it is not necessary to provide further guidance**.** At this stage it is important to allow for more flexibility instead of further detailing/clarifying the suggested guidelines, which are even too detailed.

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.

Answer: We agree with the proposed approach, but we believe that it is necessary to admit, in addition, an alternative portfolio approach as described below.

In line with our answer to Q3, we agree with the proposed approach related to the assessment of sustainability preferences in the case of portfolio approach (described by paragraph 27 of the draft Guidelines) under the condition that it is adjusted in order to allow for:

- greater flexibility regarding the way to consider and refer to the client's portfolio the words "to what extent" provided for by Article 2, point (7), of the Delegated EU Regulation 2017/565. In fact, according to the business model adopted by investment firms to provide investment advice or portfolio management, it should be possible to set the "measure" or "degree" of the sustainability of investments in relation to the client's preferences as: (i) the "sustainable" portion of the portfolio invested in one or more instruments with certain characteristics, or alternatively (ii) the level of sustainability of the entire portfolio;
- a suitability assessment performed at the portfolio level, carried out taking into account the impact that the "ESG scoring / rating" of the financial instrument (ESG financial instrument score) produces on the overall value of the ESG portfolio scoring (ESG portfolio scoring) or of its sustainable portion, set as the weighted average of all ESG scoring / rating values of the financial instruments making up the portfolio / or its sustainable portion. This approach is in line with the one used by investment firms to verify the suitability of the portfolio for market risk or credit risk;
- considering paragraph 27 (properly adjusted according to our request) as an alternative to the previous paragraphs 25 and 26.

The portfolio approach is particularly relevant in the Italian market, which is historically based on advisory services provided through the aforementioned portfolio approach based on the evaluation of financial instrument characteristics with regard to the whole average client portfolio features and not to the single financial instrument (e.g. VAR or expected loss of the entire portfolio).

This approach is both heavily employed and recognised as the best-practice in the Italian investment service market as a result of the supervisory approach adopted by the Italian competent Authority since the implementation of MiFID I in order to:

- raise awareness among distributors; and
- empower the relationship between the distributor and its clients.

Moreover, this model is also backed by the new ESMA Supporting Guideline 26 which states that "*Firms should have policies and instructions for their client-facing staff in place for situations where clients answer that they do have sustainability preferences but do not state a preference with regard to any of the specific aspects mentioned under a) to c) or with regard to a minimum proportion. For example, the firm could consider any of the aspects under a) to c) or a combination thereof and could consider that it is not bound by any minimum proportion of sustainability-related expectation for the purpose of conducting the suitability assessment. Where firms make use of this possibility, they should inform the client about their choice and the level of the sustainability-related expectation of the product and document in the suitability report the client's choice not to further specify the sustainability preferences".* According to the regulatory text, it is mandatory (i.e. "*should*") for the firm to define and implement rules and procedures to manage situation in which the client will not provide detail about his/her/their sustainability preferences; in these situations the firm itself is already organised and equipped to provide a punctual advice to its clients and clients will be promptly disclosed all sustainability feature of the financial instrument/s recommended.

Taking into account all the considerations stated above, we ask to revise the regulatory text of the Supporting Guideline 27, where it should be clear that firms do not need to ask the client for too many detailed information on his/her/their sustainability preferences because such preferences do not fit the portfolio approach.

We propose to revise the current text of the Supporting Guideline 27 as follows:

"~~Firms should ensure the same level of granularity of information is collected on the client's sustainability preferences.~~
When providing portfolio management or investment advice with a portfolio approach, ***firms should collect information on the client's sustainability preferences in terms of interest for environmental, social and good governance issues****. The client's sustainability preferences should be collected with regard to the portfolio (whereas the possibility of specific individual instructions remains, e.g. if a client asks for specific ESG-related products in the portfolio). Firms should therefore ask the client which part of the portfolio (if any) the client wants to be invested in products meeting the client's sustainability preferences* ***or, alternatively, which level of sustainability the client wants with regard to the entire portfolio****.*
Where firms work with model portfolios that combine some or all of the criteria listed under paragraph 25 mentioned above, these model portfolios should allow for a granular assessment of the client's preferences and should not be translated into a questionnaire that pushes the client into a certain combination of the criteria that would not meet the client's sustainability

preferences (i.e. all preferences need to be asked for and matched with the sustainability-related features of the model portfolio)."

The reason for this proposal is that the current regulatory provision has too many complex as well as incoherent elements, which are emphasised when a portfolio approach is adopted in the provision of investment services. Therefore, in such cases investment firms cannot be forced to ask the clients for specific details about single financial instruments sustainability features and characteristics. Such features will - in any case and always - be disclosed to the clients through the explanation of investment policies.

We also believe that, in order to identify the financial instruments capable of satisfying the sustainability preferences expressed by the clients, a possible approach investment firms can adopt to assess the level of sustainability of all financial instruments is the "ESG rating / scoring"[3] provided by the main info-providers / rating agencies or based on proprietary metrics.

In this regard, it is in fact important to bear in mind that:

- the "ESG scorings/ratings" represent from the methodology point of view the best practice in use by financial industry (primarily asset manager, issuers, banks distributors, etc.) on the ESG topics;
- the "ESG scorings / ratings" provided by the main info-providers are currently the only tool available for investment firms to map, not only the degree of sustainability-related ambitions / expectation of the financial products falling within the SFDR / Taxonomy scope, but also the other financial instruments falling within the scope of MiFID II (e.g. shares, bonds, certificates etc ...) which must be classified according to the sustainability factors, as explicitly required by the amendments to the Delegated Regulation (EU) 2017/565 and recalled by point 15 of the Background section of the ESMA consultation paper.
  Without "ESG scorings / ratings" investment firms would be unable to objectively guarantee coverage of their investment advice/portfolio management with regard to all types of financial instruments and, consequently, unable to carry out the suitability assessment on the sustainability aspect, as well as the overall assessment of the client's portfolio;
- investment firms are already using "ESG ratings / scorings" provided by the main info-providers or developing proprietary metrics. Such metrics are based on the use of one or more "ESG rating / scoring" possibly integrated with methodologies internally developed or provided by specialized third parties in order to take into additional information. The final outcome reflects and takes into account the

[3] Which also include indicators based on "Sustainable Development Goals (SDGs)" Impact Metrics.

characteristics and aspects of sustainability as defined by the new Article 2, point 7, of the Delegated Regulation (EU) 2017/565.

Therefore, it is clear that the "ESG ratings / scorings" - used in the context of the metrics developed or adopted by investment firms as specified above - already represent a valid "proxy" to identify the financial instruments capable of satisfying the sustainability preferences expressed by the client in the profiling questionnaire. The metrics and methodologies for detecting the characteristics of sustainability, also with respect to the drivers of the new SFDR, Taxonomy, MiFID II / IDD framework, are currently in a stage of further refinement and evolution, primarily by the info-providers themselves, also in the light of regulatory MIFID II evolution. We therefore expect that the correlation between the numerical output of the "ESG ratings / scorings" and the characteristics defined by the new regulatory framework will be increasingly strengthened over time;

- sustainability factors are dynamic quantities that change over time and that require a numerical and granular valuation approach, in order to intercept the lesser or greater sensitivity of an issuer, and the related financial instruments issued, the management of these factors with respect to the issue of sustainability, as it is already the case today for other risk factors (such as market risk, typically measured using VaR methods; credit risk, typically measured using expected / unexpected loss methods; liquidity risk);

- the adoption of “ESG rating / scoring” allows investment firms to graduate the level of the sustainability characteristics of each financial instruments, based not only on its belonging to a regulatory prescribed static category [i. e. yes-no letter a) art 2 (7) or yes-no letter b art 2 (7)], but on the percentage of sustainable objectives and / or the robustness of the indicators relating to the main negative impacts on sustainability factors and / or investment strategies, as well as on the organizational and governance measures adopted by issuers for the management of ESG factors and risks;

- the adoption of a single measure based on one or more “ESG ratings/scores” for all financial instruments that fall within the scope of application of MiFID II (wider than the scope of the SFDR) allows, in the case of investment firms that also manage sustainability issues with a portfolio approach, to calculate and monitor the sustainability level of the portfolio as a whole or with respect to the sustainable portion, in line with the expected level and / or the “sustainability-related ambition” indicated by the client in the profiling questionnaire;

- the “ESG ratings/scores” represent synthetic judgments of financial instrument sustainability ideal for providing a representation to the client in a clear, understandable way and with a not excessively technical language, and, therefore, its adherence to the sustainability preferences expressed in the profiling questionnaire;

- the use of the "ESG ratings / scores" was recently focused by ESMA itself in the recent Call for Evidence and by the European commission to regulate and enhance these sustainability assessments on issuers and ISINs products and which already today represent a best practice both for manufactures (i.e. asset management companies) and by distributors.

Guideline 5 – Updating client information

Q7. Do you agree with the suggested approach on the topic of 'updating client information'? Please also state the reasons for your answer

Answer: We agree with the proposal to adopt a gradual approach by proceeding with the acquisition of "ESG preferences" during the periodic re-profiling of the clients and according to the internal rules that each investment firm has adopted. It properly leaves room for a transitional period in order to collect the new information.

Guideline 7 - Arrangements necessary to understand 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.

Answer: We agree, but in addition we propose that the ranking of the products can be made also through the "ESG scoring/rating" of each financial instrument assigned by the main data-providers, as better explained in our previous answers to Q3 and Q6.

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.

Answer: See our previous answers to Q2, Q3 and Q6.

Guideline 8 - Arrangements necessary to ensure the suitability of an investment

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.

Answer: We agree under the condition it will be also possible to perform the suitability assessment at portfolio level (ESG instrument score which is assessed and matched with the average ESG portfolio score or the ESG score of the sustainable portion of the portfolio or referring to the proportion of financial instruments with ESG features), as an alternative to the assessment at the instrument level, as better explained in our previous answer to Q6.

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.

Answer: No, we do not agree.

Article 54 (10) and Recital 8 of the Delegated Regulation (EU) 2017/565 state that the client "should have the possibility" (and not "must") decide to adapt his sustainability preferences. In other words, the adaptation is a possibility, but not an obligation.

In our view it is only important that the investment firm does not present the financial instrument as meeting the individual sustainability preferences, in order to prevent and avoid a greenwashing practice (as specified also in the Recital 7). And for reaching this objective, it is necessary a specific information in the suitability report to explain this situation, while it is not required a mandatory adaptation of the client's sustainability preferences.

We do not also agree with the consideration that this possibility should be an exception, as better explained in our answer to Q13 (first scenario).

Having said that, we underline that if investment firms work with a portfolio approach, the client would not find himself in the circumstance of having to adapt his sustainability preferences if a specific instrument does not fall into categories a), b) and c) or it has a low ESG rating/score under the condition that the ESG portfolio scoring/ESG scoring of the sustainable portion of the portfolio remains consistent with the ESG ambition expressed by the client.

Notwithstanding the above, it is necessary to clarify in practice the concept of the "adaptation of the client sustainability preferences". More in details, we understood that the adaptation limited to a single investment is intended to work as a specific acknowledgement by the client that, for a specific investment advice/transaction (and only for the specific advice in question), the investment firm is recommending a financial instrument which does not satisfy the client's sustainability preferences.

In addition, see our answer to Q13.

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.

Answer: We agree under the condition outlined by the answers to Q11 and Q13. We underline that, as required by Article 54 (10), of the Delegated Regulation (EU) 2017/565, this should be made available as a possibility and not as an obligation for the client.

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)?

Answer: When investment firms adopt a portfolio approach, the client would not find himself having to adapt the sustainability preferences on the occasion of each single transaction / proposal if the ESG portfolio scoring/ESG scoring of the sustainable portion of the portfolio remains consistent with the ESG ambition expressed by the client or if the proportion of the client's portfolio invested in instruments with ESG features remains consistent with his/her preferences as stated in the MiFID questionnaire. The client would keep the possibility to modify the sustainability preference expressed formerly and declared in the suitability assessment, anyway.

Having said that, we believe it is very important to highlight two different situations that may occur:

1) **first scenario**: the investment firm <u>has</u> some ESG financial instruments included in its product range, but it chooses to provide an advice based on a not ESG financial instrument or on an ESG financial instruments not included in the definition of "sustainability preferences" (as defined by Article 2, point 7). This can be justified by several reasons, such as:

a. the opportunity to optimize and rebalance the portfolio risk or the asset allocation model or improve the credit risk or the diversification index. To reach this goal, a not ESG financial instrument could be better than an ESG one available in the product range);
b. the opportunity to recommend an ESG financial instrument not included in the definition of "sustainability preferences" (because not covered by SFDR/Taxonomy regulatory framework), such as equity or bond instruments, on the base of financial instrument ESG score/rating;
c. the opportunity to recommend as ESG financial instrument not included in the definition of "sustainability preferences" as defined by Article 2, point 7 (because not covered by SFDR/Taxonomy regulatory framework), such as SFDR "art. 8" mutual without a minimum proportion of sustainability investments but with a high ESG score/rating.

In this case the relevant parts of the proposed guidelines are No. 80 and 81 (point 32 e 33 of the background section) which require an "ad hoc adaptation" of the client sustainability preferences.

From the operational point of view, the client does not change permanently the sustainability preferences expressed in the original MiFID questionnaire, but simply accepts the specific investment advice through the suitability report, which will also explain the reason of the advice. Please, refer also to our considerations outlined in our answer to Q1 regarding the fact that clients will be assured to be fully informed about all sustainability aspects of the financial instrument / service provided;

2) **second scenario**: the investment firm does not have any ESG financial instruments in its product range. In this case the relevant point of the proposed guidelines is No 84 (point 34 of the background section) which provides for the possibility to adapt permanently the client sustainability preferences.
From the operational point of view, differently from the first scenario, the client can change the sustainability preferences expressed in the original MiFID questionnaire, and therefore the changes will apply also for future transactions. For this scenario, we agree that this possibility should not be the standard procedure, due to the fact that the investment firm should define a larger ESG product range available in order to support and facilitate the ESG investments by the clients, and the client should not be forced to change the real ESG preferences. It is basically a matter of fiduciary duties in a medium term horizon.

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.

Answer: We agree under the condition that it will be possible to perform the suitability assessment at portfolio level as alternative to the assessment at the instrument level, as better explained in our previous answer to Q6.

Q15. Do you agree with the proposed approach with regard to the possibility for clients to adapt their sustainability preferences in the case of portfolio approach? Do you envisage any other feasible alternative approaches? Please provide some possible examples.

Answer: When investment firms adopt a portfolio approach, the client would not find himself having to adapt the sustainability preferences on the occasion of each single transaction / proposal under the condition that the ESG portfolio scoring/ESG scoring of the sustainable portion of the portfolio remains consistent with the ESG ambition expressed by the client or that the proportion of the client's portfolio invested in instruments with ESG features remains consistent with his/her preferences as stated in the MiFID questionnaire. See our previous answers to Q11, Q13 and Q14.

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?

Answer: In order to avoid opportunistic re-profiling, clients – as mentioned before – shall be duly provided with full disclosure about the financial instrument offered / the service provided without being asked to update/change his/her/their sustainability preferences. In particular, within the suitability report it may be defined a new section in which the client is informed of the result of the suitability assessment in relation to his/her/their sustainability preferences.

Guidelines 10 - Costs and benefits of switching investments

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

Answer: We do not agree as the proposed amendment to supporting guideline 10 reflects the wording of Article 25 (2), second sentence, of MiFID II, which is not coordinated with what is already provided in this regard by Article 54 (11) of the Delegated Regulation (EU) 2017/565.

The new provision requires investment firms to communicate to the client "*whether or not the benefits of the switching of financial instruments are greater than the costs involved in such switching*". It is therefore in partial contradiction with the aforementioned Article 54 (11) of the Delegated Regulation (EU) 2017/565, which requires investment firms to "demonstrate that the benefits of the switching are greater than the costs" and considers this essential element for the positive outcome of the suitability assessment. The provision of the Delegated Regulation is therefore stricter than the corresponding provision included in MiFID II.

In order to better clarify the issue, we highlight that, according to the Delegated Regulation:

- ✓ the suitability assessment procedures adopted by most investment firms provide for a blocking check with reference to the outcome of cost-benefit analysis, with the consequence that the recommendation can be provided only if this outcome is positive;
- ✓ in the suitability report, where such assessment is conducted, an indication is provided in this regard only in the event of a positive outcome, since in the event of a negative outcome the recommendation is not provided.

In light of the above and in order to avoid potential misunderstandings and problems with clients, we ask ESMA to clarify whether the new Article 25 (2), second sentence of the MiFID II Directive, as amended by Directive 2021/338, as first level legislation has or has not intended to modify (and not only integrate) the requirements of cost-benefit analysis of switching investment, previously regulated only by Delegated Regulation (EU) 2017/565, and to make it possible - in the case of investment advice - to recommend the switch even if the deriving benefits are lower than the costs.

Guideline 11 - Qualifications of firm staff

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.

Answer: We agree with the additional guidance regarding the qualification of firms' staff.

Guideline 12 - Record-keeping

Q19. Do you agree on the guidance provided on record keeping? Please also state the reasons for your answer.

Answer: Yes, we agree.

Other changes to the guidelines

Planned alignment with ESMA guidelines on appropriateness and execution only

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.

Answer: Yes, we agree.

Q21. Do you have any further comment or input on the draft guidelines?

Answer: No, we do not have any further comment or input.

Good and bad practices

Q22. Do you have any comment on the list of good and poor practices annexed to the guidelines?

Answer: No, we do not have any comment.

Q23. What level of resources (financial and other) would be required to implement and comply with the guidelines (organisational, 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 relevant.

Answer: We understand from investment firms that the impact will be very high and that this will be as much higher as more granular it will be the information to be collected from clients on their sustainability preferences.