



Vereniging van Vermogensbeheerders & Adviseurs

ESMA

Response to a consultation

Amsterdam, 26 April 2022

Re: Consultation on Guidelines on certain aspects of the MiFID II suitability requirements

Dear Sir/Madam,

Please allow us to introduce ourselves before replying to the consultation document "Guidelines on certain aspects of the MiFID II suitability requirements".

1. Short introduction

The Vereniging van Vermogensbeheerders & Adviseurs ('Association of Asset Managers and Advisors') is a Dutch branch organization.

The Netherlands has two categories of investment firms: banks and non-banks.

The primary objective of the VV&A is to represent and address the common interests of the non-bank investment firms. All these firms are registered as independent investment firms with the Dutch regulator, the Autoriteit Financiële Markten. At present 60% of all Dutch non-bank investment firms are members of our association the VV&A.

The VV&A is authorized by her members to represent their interests in discussions and consultations. The VV&A is also responsible for handling several other issues which have a specific impact on the whole sector together with other associations such as the Nederlandse Vereniging van Banken (NVB) and the Dutch Fund and Asset Management Association (DUFAS).



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The VV&A itself has a managing board of four professionals, all of whom in turn are managing directors of independent investment firms affiliated with the VV&A. The VV&A stimulates an active form of both face-to-face and online exchange of opinions and information with her members, gaining where necessary extra input from an expert external team of legal advisors.

2. Views of the Dutch branch organization.

The purpose of this position paper is to share our views on the consultation by ESMA regarding the Guidelines on certain aspects of the MiFID II suitability requirements.

The guidelines are divided in the following sub topics:

- (i) Information to clients about the purpose of the suitability assessment and its scope;
- (ii) Know your client and know your product;
- (iii) Matching clients with suitable products;
- (iv) Other related requirements.

In paragraph 3 of this document we will give our response to the two-step assessment and in paragraph 4 our response to the situation whereby a product does not meet the preferences. Paragraph 5 is about the collection of information of sustainability related expectation of the client. In paragraph 6 of this document we make a statement about the granularity.

We prefer to share our general views with you instead of response to all individual guidelines as we believe that this is more helpful to ESMA.

3. Two-step assessment

3.1 The consultation document describes the two-step assessment as follows:

*“Firms should **first** assess the suitability of a transaction in accordance with the criteria of knowledge and experience, financial situation, other investment objectives and then, as a **second** step, consider the client’s sustainability preferences.”*



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3.2 Furthermore, the consultation document addresses that:

*“Sustainability preferences should only be addressed once the suitability has been assessed in accordance with the criteria of knowledge and experience, financial situation and other investment objectives. Once the range of suitable products has been identified following this assessment, in a **second** step the product or, with regard to portfolio management or investment advice with a portfolio approach, investment strategy that fulfils the client’s sustainability preferences should be identified.”*

3.3 We would like to let you know that we are in favour of the two-step assessment as described in the consultation document. In our opinion it gives a clear view on the distinction of the suitability on the one hand and the sustainability preferences on the other hand. However, we would like to point out that the content of the suitability preferences may not set aside the financial preferences.

Conclusion

3.4 The VV&A is satisfied with the clear distinction which the ESMA makes in the consultation documents in regard to the two-step assessment.

4. When a product does not meet the preferences

4.1 The second point of the consultation envisages the situation whereby a product does not meet the sustainability preferences and is described as follows:

*“Where a firm intends to recommend a product that **does not meet** the initial sustainability preferences of the client in the context of investment advice as referred to in Recital 8 of the MiFID II Delegated Regulation, it can only do so once the client has adapted his/her sustainability preferences. The firm’s explanation regarding the reason to resort to such possibility as well as the client’s decision should be documented in the suitability report.”*



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4.2 We agree that firms may recommend a product that does not meet the initial sustainability preferences of the client only once the client has adapted such preferences.

4.3 We furthermore agree that the firm's explanation and the client's decision should be documented in the suitability report once both parties agree on the recommendation of a product that does not meet the initial sustainability preferences of the client.

5. Collect information

5.1 In paragraph 26 of the consultation document the following is written regarding the collection of information of sustainability preferences:

*"First, firms **could** collect information on the degrees of sustainability related expectation of the client which would refer to one or more of the aspects expressed through a) to c) of Article 2(7) of the MiFID II Delegated Regulation ("qualitative aspect of sustainability preferences").*

When doing so, firms could also assess whether the client would only prefer one certain degree of sustainability-related expectation or whether more or all of them should be part of its preferences. This aspect could be assessed through closed-ended yes/no-questions. [...]"

5.2 Given the fact that ESMA uses the word 'could' rather than 'should', we conclude that it is **not** mandatory to ask to the client they have a preference for E,S or G. However, this conclusion is based on the word usage.

5.3 We therefore, would like to see that ESMA clarifies whether it is mandatory or not to ask a client for their ESG preferences.



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6. Sufficiently granular

6.1 In paragraph 24 of the consultation document is written that:

*“ESMA considers that the level of information to be collected from clients should include all aspects mentioned in the definition of “sustainability preferences” and should be **granular** enough to allow for a **matching** of the client’s sustainability preferences with the sustainability-related features of financial instruments and to allow for a combination of the different aspects included under the definition of sustainability preferences.”*

6.2 We agree that the level of information to be collected from clients should include all possible aspects, however we are hesitant that firms must collect too much information.

6.3 In that light, we propose the level of information collected from clients should be limited to the level whereby the firm could recommend an article 8 or 9 SFDR product. More granularity is not necessarily in the benefit of the client.

6.4 In respect of portfolio management, we are of the opinion that it is sufficient to agree with the client on a mandate that imposes on the portfolio manager to invest in article 8 products (or article 9 products) without any further specification or more details instructions, in the light of the limited availability of sufficient ‘green products’ enabling client and the portfolio manager to agree on more granular mandates.

7. Final note

7.1 We have taken note of the consultation response submitted by the Dutch Banking Association dated April 2022.



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7.2 The Dutch Banking Association has identified some issues regarding the effect on consumers (for example regarding the disability to match preferences to products, general principles of investor protection, behavioral insights and disbalanced focus on ESG compared to financial risk/return). They furthermore submitted their comments on the guidelines specifically.

7.3 In general, we support the content of their response to the consultation.

Yours sincerely,

Theo Andringa
Chairman