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Consultation Paper - Guidelines on certain aspects of the MiFID II suitability requirements

ANASF, the national Association representing financial advisors authorised to offer investment services outside the premises of financial intermediaries (*consulenti finanziari abilitati all'offerta fuori sede*), would like to express a few considerations regarding the subject of the consultation paper.

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.

Yes, we share ESMA's approach regarding the importance of the disclosure that must be provided to the investor for the purpose of the suitability assessment.

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.

Delegated Regulation (EU) 2021/1253 of 21 April 2021, the provisions of which will come into force on the next 2 August, lays down that investors should indicate their "sustainability preferences", choosing whether or not to integrate, and if so to what extent, in their investment one or more sustainable financial instruments according to the Taxonomy Regulation, the SDFR Regulation or taking into account the main negative effects of the investment on sustainability factors in qualitative or quantitative terms. Such a decision requires an in-depth knowledge of the investor's possible sustainability preferences and risks, as well as an assessment by the client of the extent of his portfolio that he intends to invest in sustainability.

It is well known that European citizens are not very financially literate and it is difficult to imagine that they are able not only to determine the essential elements of an investment, such as the time horizon or their risk tolerance, but now also to determine specifically which sustainable instruments and to what extent they should be included in their portfolio. It is clear that this choice can only be supported by a financial advisor who can transparently and clearly indicate to the client how it is possible to integrate sustainability factors, risks and preferences into their investments. The professionalism and competence of the financial advisor are also fundamental to the role of financial educator that the advisor habitually performs, not only with regard to all the typical elements of an investment, but also with regard to sustainability. We believe it is out of the question that the client can make these choices independently, for example by using automated platforms. We also believe that it will be particularly complex, at least in an initial

phase, to make the client understand the specific features provided by the reference legislation, with the risk that the client will be discouraged and renounce to sustainable investments, if she/he is not supported.
The indication of the minimum percentage of sustainability preferences is also particularly complex, considering that there are still few financial instruments available on the market at the moment that can be considered compliant with the provisions of the Taxonomy and SDFR regulations, especially since these regulations have not been fully implemented yet. Only through the support of an advisor can it be expected that investors will acquire a discrete financial culture, including on sustainable investments, sufficient for informed choices in the near future. It is also necessary to assess how onerous these integrations may be socially, financially and structurally, and therefore how much they may impact in terms of system-wide cost.

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.
We believe that the guidelines are unclear and difficult to interpret in some respects. Investors are not able to undertake a self-assessment that allows her/him to determine her/his sustainability preferences and expectations, she/he does not know how to deal with quality and quantity, and therefore financial advisor support is absolutely essential. Over the next few years, as the reference standards are finalized and implemented, we will gradually come to consider sustainability as a starting point, not an end point. The goal is that future investments will become more sustainable in the near future and clients more knowledgeable. This can only be achieved through client education by advisors.

Q4. Do you believe that further guidance is needed to clarify how firms should assess clients' sustainability preferences?
No, we believe that the Guidelines need to be clearer and more understandable, this is an ongoing issue.

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?
Financial advisors need to provide content-based, comprehensible and tailor-made answers to their clients. Sustainability is a factor that is still far from being known to clients, expect in general terms. At this stage, we do not believe that further detailed rules are needed.

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.
As indicated above, sustainability is not a fully acquired factor yet. Recently, the European Commission has proposed to integrate the suitability assessment in order to include a

personalized asset allocation strategy. This is an activity usually carry out by financial advisors as a part of the advisory service and which permits him/her to have a well-defined picture of the investor's situation in order to draw up a personalized investment plan linked to her/his life cycle. Integrating the asset allocation strategy would also be useful in assessing sustainability preferences.

Q7. Do you agree with the suggested approach on the topic of 'updating client information'? Please also state the reasons for your answer.
Updating the client's information about her or his sustainability preferences should be an addendum to the suitability assessment; all other elements included in the assessment should not be reviewed unless there are significant changes in the investor's personal situation or goals. In fact, it is necessary to empower the client and transmit through the advisory service also financial education, so that the client becomes aware of the importance of communicating to his advisor major changes in his personal situation or goals. Integrating the suitability assessment with sustainability preferences also allows the investor to emphasize the relevance of these elements.

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.
We do not believe further guidelines are needed. Most firms have begun a process of transitioning to include sustainability factors in investment products as part of their policies and procedures. Certainly, it will be critical to define the rules through the implementation of the taxonomy, once defined. Firms that do not adapt will be automatically excluded from the market.

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.
The additional guidelines are in accordance with MiFID II Directive. At the moment, clients are asked whether they are interested in investing in sustainable products and what their preferences are with respect to ESG elements, that are social, environmental or governance aspects. This assessment has no impact on the portfolio. We believe it would be useful in the future to integrate the suitability assessment with a personalized asset allocation strategy to take into account the client's sustainability preferences.

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.
No, we do not believe the guideline should be more detailed. As stated earlier we believe there should be an asset allocation strategy to ensure portfolio efficiency.

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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.
We believe it is accurate that there can be areas of adaptability in the professional relationship between financial advisor and client in both risk assessment and sustainability.

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)?
Firms generally have a wide range of products from different providers available, in order to diversify their offering. If the firm does not have sustainable instruments available it will be excluded from the market.

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.
Obviously, the client has the option of not expressing a preference for sustainability, but this does not preclude firms from including sustainable products in the client's portfolio. It is up to the financial advisor to explain to the client why certain products have been offered and to educate the investor on sustainability issues as well.

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?
Suitability assessments should be revised by incorporating clients' sustainability preferences. If there is a significant occurrence of clients adjusting their sustainability preferences the administrative costs of revisiting the portfolio should be reduced to zero.

Q17. Do you agree with the proposed amendment to supporting guideline 10? Please also state the reasons for your answer.
Yes, this guideline is already in place. It should be considered that the decision to make a switch is not motivated only by an assessment of costs/returns, but may arise from a changing needs of the client, which is identified by the financial advisor, who knows well the investor.

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.
Yes, we agree with the integration.

Q19. Do you agree on the guidance provided on record keeping? Please also state the reasons for your answer.
The documentation should only be recorded if the investment is for a specific investment. If simulations are conducted that do not result in an investment, they should not be compulsorily recorded.

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, we appreciate that there is provision for alignment between the two guidelines.

Q22. Do you have any comment on the list of good and poor practices annexed to the guidelines?
Firms have systems in place to identify some of the factors that may detect the need for an update of the client's portfolio, but it is also necessary to empower the investor and make it clear to him/her that he/she must point out to the adviser significant changes in his/her needs and expectations that may lead to adjustments in his/her portfolio.
In the annual statements, evidence is given of the cases in which the bail-in mechanism is applied; this mechanism is rarely explained to clients in the profiling phase.

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.
We believe that the implementation of the Guidelines can result in 1-1.5 % cost on product value.

Best Regards,

Luigi Conte
ANASF President

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