ASSORETI
Association of Intermediaries which provide investment advice service

Rome, 27th April 2022
Ref. no. 43/22

To ESMA
European Securities and Markets Authority
201-203 rue de Bercy
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Via ESMA website

Object: Consultation Paper - Guidelines on certain aspects of the MiFID II suitability requirements (Ref. ESMA ESMA35-43-2998)

Assoreti – Association of intermediaries which provide investment advice service through their network of qualified natural financial advisors – is grateful to ESMA for the opportunity given to market participants to make comments on certain aspects relating to retail investor protection.

Q.1. 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.

We do not agree with the suggested approach on the information to client about the purpose of suitability assessment and its scope. In particular, we outline the undue burden on the head of the intermediary that provide investment advice service required to "*explain the term and the distinction between the different elements of the definition of sustainability preferences under a) to c) and also between these products and products without such sustainability features*" (new paragraph 16 of the Guidelines).

Actually, the sustainability issue stands out for its high technical detail and sophistication and it is therefore difficult to fulfil the said paragraph 16 also considering that the notion of sustainability preferences under a) to c) of the Article 2(7) of the MIFID II Delegated Regulation and the concepts embodied in the acronym "ESG" are not readily comprehensible and easily accessible for the clients.

As explained below, it has also to be taken into account that, especially in this first phase, intermediaries will have to face with a lack of data: the risk of frustration is high.

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In addition, we point out that the different product scope of MiFID II, the SFDR and the Taxonomy Regulation makes it very difficult for the financial intermediaries to provide a clear and comprehensive mapping of the financial product range. It is important to identify sustainable financial instruments which are out of the SFDR scope.

That stated, we are in favour of a more general and gradual approach to explain ESG issue to the costumers.

It is worth remembering that also in the field of the sustainable finance, scholars have outlined an information overloading risk (see Larsson, Månsson, Understanding the Implications of Sustainability Inclusion. A Case Study of the Role of the Financial Advisor and Sustainability, KTH Royal Institute of Technology School of Industrial Engineering and Management, Stockolm 2021).

Q.2. 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.

We do not believe that the information requirement should be expanded further. We would prefer a high-level and future proof approach ensuring more flexibility to the intermediary. In our view, a too granular guidance runs the risk of frustrating the objective to effectively promote investment in sustainable economic activities.

Q.3. 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.

Although we appreciate the openness to self-assessment, we do not agree with the suggested approach for gathering information from clients on their sustainability preferences.

We believe that the guidelines and the step outlined in paragraph 25 of the guidelines are too detailed and based on too demanding criteria, and it is feared that such a detailed declination could lead to a rejection by customers of the financial products available.

It this respect, it has to be outlined that:

– the concept of sustainability preferences and the options within this are new concepts that customers are not used to and clients could not be currently aware of their ESG preferences;

– concepts such as “to what extent” are difficult for customers to understand; instead of basing the questions of the questionnaire on the definitions outlined in the MiFID Delegated Regulation, it could be more useful to investigate the customers’ ESG attitude and the percentage of the portfolio in which they intend to invest in ESG financial products, without obliging to investigate the different ESG financial products;

– the granularity requirement does not grow in line with the level of maturity of the market of ESG financial products;

– in the initial phase of the MiFID application, few instruments will meet the ESG requirements;

– an entirely reliable, clear, trusted system of ESG rating and scoring is still lacking: in this regard, we welcome the recent targeted consultation of the European Commission on the functioning of the ESG ratings market in the EU and on the consideration of ESG factors in credit ratings and we suggest to differ the application of the present ESG framework when these ratings will be available and functioning;

– the ESG questions are too many compared to the portfolio approach that should be followed in the current stage, characterized by the substantial absence of ESG product mapping.

More generally, as better indicated in the subsequent answers, we believe that the correct approach in detecting ESG preferences should be the portfolio approach.

Q.4. Do you believe that further guidance is needed to clarify how firms should assess clients’ sustainability preferences?

As previously stated, we do not believe that further guidance is needed as the outlined approach is, in our view, already too prescriptive.

Q.5. 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?

We believe that more flexibility should be granted to the financial advisor when investigating and prioritizing the simultaneous/overlapping preferences of the client; this flexibility should be so broad as to allow the intermediary to collect ESG preferences at portfolio level.

Q.6. 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 further elaborated (see infra answers to Q10 and ff.), we believe that a portfolio approach should be adopted at the present time, as a default approach.

Q.7. Do you agree with the suggested approach on the topic of 'updating client information'? Please also state the reasons for your answer.

On the topic of "updating client information", we outline that, especially in the initial phase of the MiFID application, by reason of the mentioned gap data, the distributors would not be able to match the customers' ESG preferences with the products; for this reason, we will appreciate that this Authority considers the best effort that intermediaries would place in fulfilling the legal requirements.

Q.9. 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.

As already noted, we do not believe that further guidance is needed; vice versa we believe that the proposed approach should be simplified in all its parts.

Q.10. 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.

As better specified in the following answer, we are not entirely satisfied with the additional guidance provided regarding the arrangements necessary to ensure the suitability of an investment concerning the client's sustainability preferences.

Q.11. 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.

We do not 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 in response to the adaptation. In particular, we support the idea of operating the adaptation process on a portfolio basis: adopting a wider and more flexible approach in this field could help to achieve a right balance between a high level of investor protection, the sustainable finance objectives and the current availability of financial products.

Q.12. 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.

As already explained in the previous answer, we do not agree with the approach outlined with regard to the situation where the client makes use of the adaptation process. Further to the previous point on the need to introduce a portfolio approach in order to make the adaptation more effective, we outline that:

– the possibility for the client to adapt the sustainability preferences should not have exceptional nature, but rather standardised, at least at the current stage, where the ESG market has not yet attained the needed maturity;

– the way to keep record of the procedure should be implemented at the discretion of the financial intermediary (and not necessarily embedded within the suitability report);

– the suggested approach seems to contrast with the fact that no negative target market is identified for ESG products.

Q.14. 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.

As already noted, we do not believe that, even where a client does not express sustainability preferences, the supporting guideline should be more prescriptive.

Q.15. 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.

We agree with the portfolio approach proposed in the supporting guideline no. 82.

Q.21. Do you have any further comment or input on the draft guidelines?

Paragraph 97 of supporting guideline 10 refers to art. 25 (2) of MiFID II as amended by directive (EU) 2021/338. In this regard, we would like to ask this Authority to clarify the scope of application of the latter provision in relation to the provision contained in art. 59 (11) of the Delegated Regulation (EU) 2017/565, that is not expressly repealed and pursuant to which the intermediary is required to carry out "*an analysis of the costs and benefits of change, in such a way to be reasonably able to demonstrate what the benefits of change are higher than the related costs*".

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Assoreti wishes to thank you for the attention provided and is available for any collaboration requests.

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