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

General Comments.

The General Council of Economists of Spain welcomes the opportunity to participate in the ESMA's Consultation Paper on Guidelines on certain aspects of the MiFID II suitability requirements. The General Council of Economists of Spain is a public law corporation at the service of Economists and citizens in general, and represents 80% of the Financial Advisory Entities registered with the CNMV.

From the very beginning we would like to request that **the application of these guidelines be aligned with** the application **of different ESG rules.-** Firstly, we understand that it would be desirable that the integration of sustainability preferences both in the product governance and suitability processes were made at the same time.

Secondly, taking into account that the regulatory technical standards developing Regulation 2020/852 and Regulation 2019/2088 have been delayed, it would make sense to delay the application of the sustainability preferences delegated act until these level 2 measures have been completed.

There is great ignorance on the part of clients regarding sustainability preferences and this entails great complexity to apply it in the advisory process . Incomplete character of the current legal framework, lack of sustainability data and lack of sustainable products as well as significant cost will require to fulfill with these draft guidelines clearly support our position.

Finally, we would like to emphasize that a *sensible* transition period long enough to be able to implement the measures would be desirable.

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

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 information to be provided is excessive and complex. Clients are unaware of the taxonomy regulation. In addition, clients may not be interested in in-depth product knowledge, and may only have preferences for sustainable investing more generally.

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.

The clients that are not familiar with the legal definitions and the sustainability preferences concept (which we believe will be the majority for the time being), will not be prepared/willing to receive such a broad information on the concept of sustainability preferences.

Most clients are not familiar with the sustainability preferences concept and therefore will not be prepared to receive such extensive information about it.

For this reason, we consider that it is necessary for the advisory process to be simple. The introduction of complex explanations about the different options in relation to sustainability preferences can generate confusion in customers and, therefore, lose interest in this type of product.

In our opinion it professional clients may already have more knowledge about sustainable finance than retail clients, so the information requirement should be less.

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 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.

In our opinion paragraph 25 is excessively detailed, introduces great complexity and seems to introduce a set of strict criteria/requirements that entities should follow in order to obtain information from the client on its sustainability preferences.

The advisors have to explain the concept of sustainability preferences and ask clients whether they have an interest in such concepts. The majority of clients probably not be familiar with such concepts and will not even be prepared with this information.

We believe that ESMA's suggested approach could only be implemented gradually.

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

We believe that ESMA's suggested approach is too prescriptive and excessively detailed and more flexibility should be provided to firms when assessing client's sustainability preferences.. If too detailed questions are asked and no suitable products are available at the end, it may require more frequent sustainability reassessments necessary and this could be confusing and frustrating for clients.

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?

The client who defines and selects several preferences as sustainable can be offered financial instruments that fulfill only one of the selected preferences.

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.

Sustainability preferences should be considered by the entity for the entire advised portfolio .

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.

And it is.We agree with the suggested approach on the topic of 'updating client 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.

And it is. We agree with the suggested approach with regards to the arrangements necessary to understand investment products

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.

Do not.

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.

And it is. We agree with the ESMA proposal in paragraph 79 to ensure the suitability of an investment. Sustainability preferences should only be addressed once suitability has been assessed according to the criteria of knowledge and experience, financial situation and other investment objectives

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.

Delegated Regulation 1253/2021 provides the possibility of recommending a financial instrument that does not meet the client's sustainability preferences provided it is not recommended as meeting individual sustainability preferences. Adjustment of the sustainability preferences is not established as a prior requirement for recommending a product that initially does not meet the client's sustainability preferences

It should be possible to issue the recommendation that is not in line with the client's sustainability preferences, provided that:

- The recommended investment is suitable for the client according to the client's knowledge, experience, financial situation and investment objectives
- There is no suitable investment available that is suitable and in line with the client's investment preferences
- The client is informed that the investment is not in line with his sustainability preferences

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.

In this respect, the client decision to adapt its suitability preferences should always be respected and firms are not in the position to refuse - even if it should happen often. The need to adapt will depend on the market situation and investment firms' product offering which will be developed over time.

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 (ie 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)?

The customer should be informed of this circumstance when he is informed of the outcome of his suitability assessment

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.

If the customer does not express a preference for sustainability, there is no reason to have to inform him about the sustainability or non-sustainability characteristics of the products in which he invests.

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.

The client's sustainability preferences should be taken into account in the same way as the client's financial situation and investment objectives, at the level of the portfolio as a whole.

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?

In accordance with the MIFID II Delegated Regulation, firms can recommend financial products that do not meet the client's individual sustainability preferences, provided this is clearly stated, with no need for a mandatory adaptation of the client's preferences .

The firm is transparent with the client and provides the necessary information in a clear manner, the fact that clients adapt their sustainability preferences in a relatively frequent manner should not be considered problematic.

Guidelines 9 - costs and complexity of equivalent products

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

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.

It would be convenient to determine the content and scope of staff training as well as the timeframe to obtain the qualification.

Guideline 12 - record-keeping

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

We agree with the record presented. In our opinion, this corresponds to the process already in place.

<u>Other changes to the guidelines</u>

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.

And it is. We agree with an alignment of both sets of guidelines.

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

<u>Good and bad practices</u>

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

Do not

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)? When answering this question, please also provide information about the size, internal organization and the nature, scale and complexity of the activities of your institution, where relevant.

Entities will need financial resources to implement the guidelines: staff training costs, IT systems, control procedures, etc.