**Irish Fund’s response to ESMA’s Consultation Paper - Guidelines on certain aspects of the MiFID II suitability requirements (ESMA 35-43-2998)**

The Irish Funds Industry Association (Irish Funds) is the representative body for the international investment funds industry in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland. By enabling global investment managers to deploy capital around the world for the benefit of internationally based investors, we support saving and investing across economies. Ireland is a leading location in Europe and globally for the domiciling and administration of investment funds. The funds industry employs over 17,000 professionals across every county in Ireland[[1]](#footnote-1), providing services to 8,372 Irish regulated investment funds with assets of just under EUR 4 trillion[[2]](#footnote-2).

We welcome the opportunity to provide comment on ESMA’s consultation paper - Guidelines on certain aspects of the MiFID II suitability requirements (guidelines). We have detailed our responses to the consultation below, highlighting some considerations and improvements that could be made for the final guidelines.

# 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.

We broadly agree with the suggested approach clarifying that, as part of the suitability assessment, firms should help clients in understanding the concept of “sustainability preferences”, the different types of products included under the definition of “sustainability preferences”, along with the features and the choices to be made in this context. However, in our response to Question 2, we have highlighted some recommendations regarding the added supporting guideline.

###### 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.

We fully support the recognition that firms should explain the term and the distinction between the different elements of the definition of sustainability preferences and also the difference between these products and products without such sustainability features in a clear manner, avoiding technical language. A recent survey conducted by one of our member firms revealed that a *'majority of Irish savers don’t know what the acronym ESG (environmental, social and governance) stands for and are unsure what responsible investing actually means[[3]](#footnote-3)'*. Hence, it is vital that the supporting guideline recognises the need to simplify the explanation but at the same time provide flexibility for firms to do this in a way most suitable to their client base. For example, a firm that does not have regulatory permissions to deal with retail clients will likely communicate differently than a firm that does deal directly with retail clients. We also believe it is important that no obligation is imposed to directly use the legal terms outlined in the delegated act when simplifying the explanation. Furthermore, we recommend that ESMA clarify that, depending on the type of client, the last sentence in supporting guidelines paragraph 16 can be complied with as part of the wider discussion on the definition of sustainability preferences as opposed to it being a separate discussion as we would expect more sophisticated investors (e.g., professional clients) to be familiar with the “environmental, social and governance” concepts. The differentiation between retail and professional investors should provide firms with sufficient discretion to phrase the explanation as appropriate to their respective client bases and in a way that is consistent with how they communicate to these clients and the level of client knowledge.

In addition, we believe that the guidelines should focus on the outcome of the exploration process (that is, understanding individual preferences) rather than on the process itself (i.e., what questions to ask and/or in which order). While we appreciate ESMA’s examples in paragraphs 25 and 26 of the supporting guidelines, there needs to be an ability to adapt the process in order to ensure that the firm have all of the necessary information about a client’s sustainability preferences rather than prescribing the sequence (particularly if the questions that will be prescribed to be used are closed-ended). We, therefore, believe that the whole of paragraph 26 should be redrafted focusing on the elements of the process rather than its sequencing.

# 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.

While we understand ESMA's suggested approach, we are concerned that many investors and firms will not be able to obtain a proper understanding of the sustainability characteristics of the products available in the market. This is due to the evolving nature of the EU sustainable finance framework and mismatches in the timing and sequencing of interdependent disclosure obligations. It is very challenging for financial products to make ESG data related disclosures ahead of the companies in which they invest - ESMA has recognised this problem and the challenges in the data landscape in its Sustainable Finance Roadmap. Given the evolving state of the market, there will likely not be a sufficient number of sustainable investment products available to match the client’s sustainability preferences. The main reasons for this centre on the fact that:

* All aspects of sustainability characteristics rely on data that will only begin to become widely available when entities falling under the non-financial reporting directive start to disclose the taxonomy-alignment of their activities in 2023;
* The disconnect between the MiFID II date of August 2022 and the SFDR Level 2 implementation date of January 2023, which means that the majority of the elements required in relation to sustainability preferences will not be readily available for investment funds as they are not required to be disclosed until the start of next year; and
* The material expectation gap between ESG preferences and current investor portfolios.[[4]](#footnote-4)

In practice, this means that it will not be possible for firms to implement the suggested approach for at least 12 months after 2 August 2022. ESMA therefore needs to allow for a transition process during this time where firms can collect the relevant data to be able to provide reliable information to clients about the sustainability characteristics of the products. Overall, there is a clear and present risk that the current approach, if not modified to reflect the data deficit in the market, will likely deter, rather than encourage clients to invest in sustainable finance products.

In addition, as referred to in our response to question 2, while the examples in paragraphs 25 and 26 of the supporting guidelines are appreciated, further flexibility is needed to ensure that firms have the necessary information about a client’s sustainability preferences (recognising that different approaches may be appropriate for retail clients compared to professional/institutional clients) rather than prescribing the sequence (particularly if the questions that will be prescribed to be used are closed-ended). Many retail clients may not understand the question ''do you have any sustainability preferences?” and therefore the sequence described by ESMA could hamper a client’s understanding of the advisory process. For this reason, we understand that ESMA’s suggested approach could only be implemented gradually (increasing granular requirements at the same pace as sustainability data, legal certainty and availability of sustainable products/assets allows it). For the time being, a pragmatic approach that provides firms with the flexibility to communicate with clients is necessary, since it will be the only way to get a proper understanding of their preferences and to avoid disengagement on sustainability matters.

This notwithstanding, legal definitions should be used to match clients’ preferences with available product groups, and the suitability report might be appropriate for the inclusion of extended information regarding definitions used to analyse suitability.

We believe that it would be preferable to combine ESMA’s proposed sustainability preference self-assessment with a “menu” driven approach that is based on the firm’s available sustainable investment products and which takes a proportionate approach to ‘granularity’ by using ranges and grouping principal adverse impact (PAI) indicators by category. Some features of this approach include:

1. At the outset, after explaining the purpose of the suitability assessment and the 3 categories (defined as a), b) & c) of the definition according to Article 2(7) MiFID II Delegated Regulation), the firm should have the flexibility to explain to the client that it has a menu of sustainable investment products available and which of the 3 categories the menu covers. If any of the 3 MiFID categories (or types of products within a category) are not covered, the firm ought to be able to explain this, and inform the client accordingly that: a) it will not be able to provide the client with this sustainable investment product category; and b) if this is a prerequisite, the client will be unable to invest with this firm.

1. Notwithstanding the products that are available and are included in the menu, clients are also asked regarding their ultimate ambitions in respect of the 3 categories. As part of the next regular update, these preferences are considered to see if there are new sustainable investment products available that are a closer match to these preferences.

Combining self-assessment with a menu driven approach should allow for: (a) ensuring that the process will not be frustrating for clients as they will be presented with what is currently available in the market and (b) capturing a client’s overall ambitions which firms need to consider not just as part of the suitability review cycle but on a wider product governance basis, particularly in relation to future product developments.

3. In terms of the level of detail, this needs to be approached in a way that is understandable to a retail client and manageable for the firm. Specifically:

* Combinations: We think there should be no obligation for clients to be expressly asked about all combinations of the 3 categories. This is likely to be academic as many potential combinations will not be available in the menu and some combinations happen by default (e.g. taxonomy aligned-investments are a sub-set of sustainable investments, so a product that meets category 1 meets category 2 as well). We acknowledge that where combinations are possible, given overlaps between sustainable investment product categories on the menu, then this should be explained as part of the process. This is more targeted and avoids discussion about combinations that are not available.
* Sub-Categories: When discussing preferences for Environmental, Social or Governance; minimum proportions of taxonomy aligned or sustainable investments; and PAI indicators, these should be grouped into manageable categories or sub-categories within the menu.

For example, a firm may have available:

* A group of products that have ‘high’, ‘medium’ and ‘low’ proportions of sustainable investments (on this point, the ranges ought to be able to be presented to clients as simply as possible). However, we think the firm will still have to underpin these ranges by setting percentage thresholds. But initially, these may be relatively low percentages. Any such thresholds should not be defined by the guidelines but rather determined separately by each firm, particularly given the evolving state of the regulation and the market.
* A group of products that all consider Environmental and Social.
* Groups of products that consider a wide range of PAI indicators.
* Groups of products that consider specific PAI indicators because they are themed, e.g., climate funds.

The above provides a comprehensible set of options for a client to consider their sustainability preferences against and is more likely to be understood by the client and to result in a ‘matching’ outcome.

It is important to find pragmatic approaches as proposed above until there is a sufficient supply of highly aligned sustainable investment products (which may take several years) matching a client’s sustainability preferences. The suggested approach should mean that financial product providers continue to be challenged to develop more “sustainable” products while, at the same time, allow firms to properly manage clients’ expectations. When introducing these new sustainability concepts, creating a dialogue is crucial to enable investors to understand what kind of products are currently available on the market. Unfortunately, the current draft guidelines do not appear to allow this to happen.

Further guidance to clarify how a firm should assess clients’ sustainability preferences is not needed. Instead, the proposed draft guidance should be made more flexible and less prescriptive (as described above) so that the process works in practice. It is also imperative that ESMA and national competent authorities (NCAs) consider the timing issue given that these guidelines are unlikely to be adopted until after the suitability changes to MiFID II come into effect. Therefore, ESMA and NCAs should set a reasonable transition period (e.g. 12 months) for adhering to the guidelines. This would mean that the high level MiFID requirements apply from August 2022 until firms need to meet the full process requirements under the guidelines.

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

We believe that it is difficult for the current guidelines to be effectively applied given there are so many different categories of client and asset classes in the market and therefore the supporting guidelines should provide as much flexibility as possible to allow firms to determine the most effective approach to receiving all the necessary clients’ information.

Clarification that the questions suggested within the guidelines could be re-arranged or that more open-ended questions could be included where this would help accelerate the exploration process (e.g., being allowed to ask the client whether they have specific sustainability preferences) would be helpful. We believe that this flexibility, which firms should be able to tailor to the nature and type of client that they are dealing with, is essential to arrive at understanding a client’s sustainability preferences as efficiently and naturally as possible. We also have concerns with paragraph 27 of the supporting guidelines which indicates that “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”, as this does not appear to provide sufficient flexibility. Although ESMA’s draft supporting guidelines paragraph 27 appears to be aimed at the type of investment service, this has direct implications for the type of client. In practice, the collection of information is linked to the type of client and/or products being offered. We, therefore, would suggest that supporting guidelines paragraph 27 is better aligned with existing in supporting guidelines paragraphs 74 and 86 – or even integrated into the latter instead of creating a new paragraph.

With regard to PAI considerations, we strongly support ESMA’s proposed flexibility on grouping PAI indicators as laid out in the fourth bullet point of supporting guidelines paragraph 26. Nevertheless, the same bullet point needs to be revised to clarify that the PAI information collected can cover “qualitative OR quantitative elements” rather than “qualitative AND quantitative elements” currently mentioned in the draft supporting guidelines in order to align them with the MiFID II Delegated Regulation which refer to “qualitative or quantitative elements” (when defining sustainability preferences).

In relation to the “minimum proportion” for aspects (a) and (b), we support ESMA’s suggestion in the third bullet point of supporting guideline 26 to allow for ranges rather than particular percentages. These ranges should, however, not be tied to specific percentages for several important reasons: Firstly, markets will evolve and so will their ranges. While a “high” range may have a very low (e.g. taxonomy-aligned) percentage at the beginning, these figures will eventually increase over time. Thus, especially in these early days, sufficient flexibility must be given to firms to translate these ranges (or particular percentages) to match them with the range of existing products in the market or offered by the firms. This will allow firms to progressively address the biggest hurdle in introducing sustainability-related aspects into the advice process which currently suffers from a clear mismatch between investors’ very high sustainability-related expectations and the products currently available on the market (or those being able to disclose themselves as such at times of insufficient SFDR reporting). This is crucial as specific products and percentages will increase over the coming years. Not allowing for such flexibility, would lead to a very large number of cases where, currently, no products can be offered to the client. Furthermore, financial market participants should be afforded with flexibility to use both the commitments disclosed in the pre-contractual template (from 1 January 2023) and the actual results in the periodic reporting templates when matching products against client's sustainability preferences.

###### 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?

Member feedback indicates that we are not expecting clients to have very specific preferences as laid out in a) to c) but more an interest in ESG strategies, e.g. exclusions, thematics, impact investing etc.

Given the challenge that may arise in matching client expectations, we strongly believe that if a client expresses a preference for a combination of one or more of the 3 categories a) to c), the firm should be allowed to provide further explanations on what types of products are available rather than just noting the client's preference, especially when the firm does not have such products available.

###### 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.

# Subject to the comments made in relation to Questions 3, 4 and 5 we generally agree to apply the same approach for client exploration regarding portfolio management or investment advice on a portfolio level. However, the final guidelines need to provide sufficient flexibility for all client types and products. In the consideration of a professional client, in the context of the offering of portfolio management and investment advice, certain presumptions should equally be applicable to sustainability preferences.

# 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.

# We recognise the importance of updating client information to reflect sustainability preferences where a firm has an ongoing relationship. However, we think it is important to also take into account that the approach taken for new clients could be different from those ongoing client relationships given that the latter were taken on by the firm when the concepts associated with sustainability preferences did not exist. As such, in addition to a transition period to adopt the guidelines as referenced above, we recommend an approach whereby firms are able to share sustainability-related information regarding an existing clients' portfolio and use this as a starting point to discuss any updates required to incorporate any sustainability preferences of a particular client. It should be recognised that this will be a different journey to new clients who are on-boarded after the Delegated Regulation comes into effect. Therefore we think that paragraph 55 of the supporting guidelines should not specify as to when this information should be updated but instead offer flexibility to decide on when this update should occur depending on the service provided and type of client, as long as this update is done within a reasonable timeframe (e.g. 12 months) from the guidelines coming into effect.

# 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.

As guideline 7 refers to “product governance obligations”, we would like to take the opportunity to highlight an ongoing disconnect of concepts and terminology between ‘sustainability preferences[[5]](#footnote-5)’ in the MiFID organisational requirements of the MiFID II Delegated Regulation and ‘sustainability related objectives[[6]](#footnote-6)’ within MiFID product governance requirements of the MiFID II Delegated Directive. It is essential to align, as closely as possible, the interpretation of sustainability-related objectives with sustainability preferences as otherwise, manufacturers will be providing information that distributors will not use in other processes. Whilst sustainability-related objectives could be viewed to have a broader definition, there should not be additional obligations imposed on manufacturers that will have no corresponding bearing on the subsequent process (e.g., suitability assessments).

This being said, we are broadly aligned with the proposal that firms should have procedures and methodologies to consider, and understand, the range of sustainable investment products they are distributing. We agree that it will be important that firms have a clear understanding of the sustainability of investment products being offered to their clients to ensure both suitability and consistency with the client's sustainability preferences.

###### 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.

# The guidance is relatively clear on how firms should take into consideration the investment products’ sustainability factors as part of their policies and procedures. However, additional practical guidance around the review process and frequency would be of benefit.

# 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.

We agree with ESMA’s proposal to only address sustainability preferences once all other criteria have been assessed, but we have concerns around whether ESMA’s approach, regarding the collection of preferences and clients’ self-assessment, will support the overall political aim of the changes to MiFID, i.e. providing both the client with a clear view on sustainability but also supporting the transformation of Europe’s economy into a greener, more resilient and circular system.

To elaborate further, our concern is that if firms ask their clients about their sustainability preferences (with respect to the elements of Article 2(7) of the MiFID Delegated Act) without the firm also being able to provide the context of what is available in the market or currently considered “best in class” at this point, the client could perceive the whole process as unnecessarily burdensome and futile because of the potential for a significant expectation gap to occur between the client’s preferences and what is available for investment in the market.

Hence, we strongly recommend that firms should be able to explain from the outset the available ranges of products with respect to sustainability factors without this falling foul of the guidelines in relation to the approach being neutral and unbiased. For example, as part of asking the extent of the sustainability preference on aspect (a) of sustainability preferences, firms should be allowed to include information regarding current taxonomy-alignment without the risk of this being seen as influencing the response that will be provided by the client.

###### 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.

While we agree generally with the concept that the firm can recommend a product that does not meet the client’s sustainability preferences, once the client has adapted their preferences, we do not agree with the suggestion that the possibility for the client to adapt the sustainability preferences should not be the standard procedure.

Firstly, this is inconsistent with Recital 8 of the MiFID II Delegated Regulation[[7]](#footnote-7) wherein it stated that the client should have the possibility to adapt information on their sustainability preferences. Secondly, in the short-term (and potentially up to the medium-term), we would expect to see a gap between client expectations and the reality of what products are currently available. It has been well documented that many consumers do not understand ESG-related concepts and as such a consumer might expect an Article 9 product to have a high percentage of Taxonomy-aligned investments. However, ESMA’s Final Report on Article 8 Taxonomy Regulation[[8]](#footnote-8), state that less than 3% of funds have an estimated taxonomy alignment of at least 5% and with approximately a quarter of funds estimated to have a taxonomy alignment of 0%. We understand that as financial market participants we have a role to play in consumer education and making sure no one is left behind in the ESG journey, however, given the current disconnect between consumer expectation and market reality, we find it hard to accept that adaptation will not be a standard procedure. Lastly, existing clients were taken on prior to sustainability preferences concepts being introduced so we believe it will be unrealistic to expect adaptation of sustainability preferences to be other than standard when updating client information.

To ensure that investors are being presented with financial products that incorporate sustainability-related features, we propose the following in line with our previous comments:

1. Allow more flexibility in using concepts that link to legal definitions rather than requiring firms to use the legal definitions of aspects (a) to (c) of Article 2(7) MiFID II Delegated Regulation.
2. Allow ranges for the minimum proportion of aspects (a) and (b) while not requiring concrete percentages, rather forcing firms to ensure that these ranges reflect the range of products currently available on the market.
3. Allow firms to indicate to clients that products with certain features or investment proportions might not be available and inform them whether or not they can offer other products that, even if not matching certain features or proportions, are close thereto or otherwise aligned with clients’ expressed preferences (i.e., “second-best” products for clients’ preferences).
4. In line with Recital 8 of the Delegated Regulation, where no financial instruments meet a client’s individual sustainability preferences, on a general basis allow firms to recommend others by way of the client adapting their 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.

Please see our response to Q11.

###### 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)?

Given the current limitations in the market we believe that firms should be able to include the three specific preferences but then also be able to explain that the firm has other ESG products meeting the Article 8/9 requirements but not necessarily aligned with the preferences. Our response to Q3 details our proposal on a menu focussed approach based on what products are currently available in 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.

Where a client does not express any sustainability preferences, we do not believe that firms should be required to explain and document the sustainability features of the products/portfolios being offered to the client, noting that clients will receive the fund offering documents which will clearly articulate the ESG characteristics as required by SFDR.

###### 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.

We agree that clients should be able to adapt their sustainability preferences in the case of a portfolio approach and believe that the focus here should be to enable the firm to work with their client at the outset to help the client understand what type of products the firm has and matching the client’s sustainability preferences to what is available. Otherwise, we believe that the process could be frustrating for all parties.

###### 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?

# We do not believe that there should be an explicit requirement to monitor instances of adapting sustainability preferences. As previously mentioned, we believe that the main reason for adapting sustainability preferences for the foreseeable future will be due to clients’ expectations being too different from the products which firms have available in the market. We think that firms will be very interested to understand where their current product offerings diverge from the expectations of clients in the market and that firms will be working hard to bridge any "expectation gap" through further product development and through investor education activities. Firms already have compliance monitoring arrangements in place which will address the MiFID suitability requirements.

# GUIDELINE 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.

We have no objection to the slight wording amendment that has been introduced in the text of guideline 10 to align the guideline with Article 25(2) of MiFID II.

# 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.

# We support the requirement for staff to have the necessary knowledge and competence regarding sustainability preferences and we generally agree that appropriate training would be the most effective way to ensure that this is achieved. We note that the new supporting guideline requires that staff should be able to explain to clients the different aspects in 'non-technical terms'. We suggest that this requirement be tailored to apply only in respect of retail clients (who may not have sufficient knowledge and experience in relation to sustainable products) rather than applying more generally to include professional clients (who would have a greater level of sophistication in this regard). In line with our overall call for flexibility, firms should be provided with the flexibility to determine the type and extent of training required depending on their client base and whether or not they have direct contact with retail clients. Notwithstanding this, and on a more fundamental level, we are unsure whether this requirement should be reflected within the suitability guidelines instead of the knowledge and competence guidelines given the amendments to Article 21 of the MiFID Delegated Regulation.

# GUIDELINE 12: RECORD-KEEPING

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

# We generally agree with the guidance on record-keeping provided but question the inclusion of the second bullet point of supporting guidelines paragraph 109 which requires recording “the types of financial instruments that fit that profile and the rationale for such an assessment, as well as any changes and the reasons for them”.

# QUESTIONS NOT RELATED TO SPECIFIC REVISIONS

###### 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.

Where common provisions exist in the regulations for the assessment of suitability and appropriateness, we agree that the supporting guidelines related to those common provisions should be aligned to eliminate any inconsistencies mindful that the guidelines need to continue to adhere to and not go beyond the legal requirements in the relevant regulations.

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

We would like to reiterate our concerns regarding the overall timing regarding the introduction of the sustainability considerations into MiFID II.

From the start, there has been an overall sequencing issue. While MiFID II’s new suitability processes were meant to be based on available SFDR data, this data delivery has now been delayed to January 2023 (with the first available data only becoming available in Q1 2023) but the subsequent MiFID II timelines were not adapted accordingly. This leaves firms in an awkward position of having to consider sustainability elements without their underlying data being available yet. This is particularly the case regarding percentages of sustainable investments and details regarding consideration of principal adverse impacts.

Additionally, ESMA’s final guidelines will be published either too close to the start of the application date of the MiFID II Delegated Regulation or will only be published afterwards – leaving fund managers and other firms to start the implementation or to revise its established processes based on unofficial guidelines. This situation creates unnecessary costs and proves ultimately detrimental to clients. Based on these observations, we would encourage ESMA to accelerate this process and allow a 12-month implementation period following the publication of the final guidelines.

We expected the revised product governance guidelines to be consulted on simultaneously as it is paramount to ensure that the newly introduced concepts and requirements around sustainability are the same in both the suitability and product guidelines. The suitability process is partially built on the target market information and must be aligned to ensure that meaningful processes can be set up by firms. We are, however, still awaiting this second consultation and urge ESMA to ensure that those two guidelines are aligned as much as possible.

We are also concerned regarding inconsistencies between ESMA’s proposed guidelines and EIOPA’s proposal. For example, general guideline 2 (supporting guidelines paragraph 26) in ESMA’s consultation allows the use of ranges or sizes as long as these ranges are presented in a neutral way. However, EIOPA is of the view that ranges should not be used as this would risk preventing products with higher proportions from being recommended to the customer.

We urge ESMA to work with EIOPA to ensure that there are no fundamental inconsistencies between the two sets of guidelines (per section 2.1 paragraph 10 of the consultation) as otherwise clients will have different experiences depending on the guidelines being adhered to notwithstanding the concepts being operationalised are exactly the same.

Additionally, we ask ESMA to provide firms with flexibility to use both the commitment disclosed in the pre-contractual template and the actual results provided in the periodic reporting templates during the matching process as per our response to Question 4.

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

No comment proposed

###### 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.

No comment proposed

1. Source: Economic Impact of the Funds & Asset Management Industry on the Irish Economy, Indecon, 2021. [↑](#footnote-ref-1)
2. Source: Central Bank of Ireland, January 2022. [↑](#footnote-ref-2)
3. The [Irish Times](https://www.irishtimes.com/business/financial-services/majority-of-irish-savers-unsure-of-terms-esg-and-responsible-investing-survey-1.4803397#:~:text=The%20majority%20of%20Irish%20savers,of%20global%20investment%20firm%20Amundi.) [↑](#footnote-ref-3)
4. https://finance.yahoo.com/news/majority-investors-see-gap-between-120700289.html [↑](#footnote-ref-4)
5. [“Sustainability preferences” as per the additions to Article 2(7) amending Delegated Regulation (EU) 2017/](https://ec.europa.eu/finance/docs/level-2-measures/mifid-2-delegated-act-2021-2616_en.pdf)565 [↑](#footnote-ref-5)
6. Article 1(2) of Commission Delegated Directive (EU) 2021/1269 [↑](#footnote-ref-6)
7. Commission Delegated Regulation (EU) 2021/1253 [↑](#footnote-ref-7)
8. [ESMA Final Report – Advice on Article 8 of the Taxonomy Regulation](https://www.esma.europa.eu/sites/default/files/library/esma30-379-471_final_report_-_advice_on_article_8_of_the_taxonomy_regulation.pdf) [↑](#footnote-ref-8)