

EFPA's Response to ESMA Consultation on Guidelines on certain aspects of the MiFID II suitability requirements

12 April 2022

Question 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 understand that the contribution of financial advisors at the present time to clients' understanding of sustainability preferences is a good measure, notwithstanding the technical complexity of the legal definition. Financial advisors are requested to express in a nutshell the complex definition of sustainability preferences stated in the Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 (according to Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021). To better fulfil this task, ESMA should approve templates to be used by advisors. This would provide advisors with a safe harbour in this delicate task of making the complex clear. In any case, advisors' knowledge and competence on sustainability preferences should be reinforced through professional certifications.

Question 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 believe that, as far as possible, the requirement for clarity and comprehensibility of concepts should be generalised. This is a requirement common to the customer's assessment of both financial and sustainability preferences.

Question 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.

The proposed system shifts the detailed analysis of sustainability preferences to the client. We consider it difficult to require the advisor to collect from the client the minimum proportion of certain aspects of their sustainability preferences including quantitative and qualitative criteria. We propose a simplification of this process to ensure its feasibility.

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

We refer to the answer given to Question 3.

Question 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 refer to the answer given to Question 3.

Question 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.

Yes, we agree, without prejudice to the comments made in Question 3.

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

Yes, we agree, considering that the need to update is common to the financial and sustainability assessment.

Question 8. 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.

We understand that these arrangements necessary to understand investment products should be accompanied by measures to strengthen the knowledge and competence of employees. ESMA should ensure the implementation and high-level harmonisation of these knowledge and competence requirements in all Member States.

Question 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.

We understand that these orientations are sufficient for the correct application of the SFDR and the Taxonomy Regulation.

Question 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.

We strongly agree with the two-step model of first assessing financial suitability and then sustainability preferences. Besides, simple questions on sustainability would allow to complement the client’s financial profile (first step) with the client’s sustainability profile (second step).

Question 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.

It must be reminded that the advisor must act in a neutral manner and do not influence the client’s sustainability preferences.

Question 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.

We refer to the answer given to Question 11.

Question 13. 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)?

Not available.

Question 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.

It should be clear that when customers do not answer or answer that they have no sustainability preferences, the assessment should be carried out exclusively on the first step (financial profile) as there is no assessment of the second step in the absence of sustainability preferences.

In any case, the advisor must act in a neutral manner and do not influence the client's sustainability preferences.

Question 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.

As in Questions 11 and 12, the principle of neutrality must be kept in mind.

Question 16. 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?

As in Questions 11, 12 and 15, the principle of neutrality must be kept in mind.

Question 17. Do you agree with the proposed amendment to supporting guideline 10? Please also state the reasons for your answer.

We agree, as an improvement in transparency.

Question 18. 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 agree that staff should have the necessary knowledge and competence regarding the criteria of the sustainability preferences according to Article 2(7) of the MiFID II Delegated Regulation and be able to explain to clients the different aspects in non-technical terms.

Consequently, this amendment should also entail the amendment of ESMA Guidelines on the assessment of knowledge and competence, so that they require knowledge and skills on assessment of sustainability risks and factors for providing advice and giving information and explaining to clients the different aspects of sustainability preferences in non-technical terms. According to the criteria stated in ESMA Guidelines on the assessment of knowledge and competence, and this new Guideline on certain aspects of the MiFID II suitability requirements, firms should *ensure* that staff possess appropriate knowledge and competence on sustainability preferences. To that end, firms should require a relevant certificate (according to NCA's Technical Guides implementing ESMA Guidelines on the assessment of knowledge and competence) and eventually affording staff's appropriate trainings.

These requirements on qualification of firms' staff should be complemented by a consumer education campaign on sustainable finance. This would facilitate the dialogue necessary for the assessment of sustainability preferences.

Question 19. Do you agree on the guidance provided on record keeping? Please also state the reasons for your answer.

It is a good measure. We believe that the record keeping criteria on financial and sustainability issues should be aligned as far as possible.

Question 20. 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 agree.

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

We refer to the answer given to Question 1.

Question 22. Do you have any comment on the list of good and poor practices annexed to the guidelines?

We agree on the desirability of maintaining an annex 4 on sustainability good and poor practices. However, these are criteria that should be generalised both for the assessment of financial and sustainability preferences.

Question 23. 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 comments.