

Rome, 6th October 2022
Ref. no. 77/22

To ESMA
European Securities and Markets Authority
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CS 80910
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Via ESMA website

Object: Consultation Paper - Review of the Guidelines on MiFID II product governance requirements (Ref. ESMA ESMA35-43-3114)

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 product governance.

Q.2. Do you agree with the suggested approach on the identification of any sustainability-related objectives the product is compatible with? Do you believe that a different approach in the implementation of the new legislative requirements in the area of product governance should be taken? Please also state the reasons for your answer.

Q3: What are the financial instruments for which the concept of minimum proportion would not be practically applicable? Please also state the reasons for your answer.

Q9: Do you agree with the suggested approach on the requirement to periodically review products, including the clarification of the proportionality principle? Please also state the reasons for your answer.

Paragraph 19 sets out the target market categories that manufacturers and distributors (paragraph 42, applicable to distributors, refers to paragraph 19) should take into account when identifying the target markets for financial products. Paragraph 20 sets out that, within the broad category of clients' objectives and needs, firms should specify any sustainability-related objectives the product is compatible with, in line with the current market practice e.g., the European MiFID Template. It is not clear, however, whether distributors are also required to further specify the aspects (in line with the



definition of 29 “sustainability preferences” according to Article 2(7) of the MiFID II Delegated Regulation²³ and as further detailed in the ESMA Guidelines on certain aspects of the MiFID II suitability requirements) of:

- The minimum proportion of the product that is invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852;
- The minimum proportion of the product that is invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088;
- Whether, where relevant, the product has a focus on either environmental, social or governance criteria or a combination of them;
- Which principal adverse impacts (PAI) on sustainability factors are considered by the product, including quantitative or qualitative criteria demonstrating that consideration. Firms could use the categories presented in the SFDR RTS (instead of an approach based on each PAI indicator) such as “emissions”, “energy performance”, “water & waste”, etc..

From the wording of paragraph 20 it appears that, while the disclosure of information concerning the sustainability-related objectives is mandatory (“*the firm should also specify any sustainability-related objectives*”), the additional information concerning the more granular aspects of minimum proportions, the focus of the products on environmental, social or governance criteria or a combination of them and the principal adverse impacts is optional and left to the distributors’ discretion (“*firms may specify, where relevant, the following aspects*”). On the contrary, requiring such additional set of information would impose a disproportionate burden on distributors, given the complexity of the information. Complexity that seems to have been acknowledged also by the European Supervisory Authorities in their list of queries on the SFDR requiring the interpretation of Union Law sent to the Commission (JC 2022 47 of the 9th of September 2022).

In light of the above, we would not consider the set of information of paragraph 20 as mandatory for distributors and we would invite ESMA, when assessing the appropriateness of such intricate additional information, to consider whether it is necessary with regard to the product governance, also given the fact that the sustainability-related objectives are already accounted for in the current template used by the market (the European MiFID Template). In the hypothetical case where this Authority deems the additional set of information of paragraph 20 as mandatory, we invite ESMA to consider differentiating the required granularity of information on the basis of distributors’ distribution strategy. For example, requiring less granular information when a product is distributed under an advised distribution strategy, since more detailed information are provided to and received from the clients in compliance with the suitability requirements of MiFID II.

In conclusion, based on the above analysis, we would not see any other applicable approach other than the approach whereby the information of paragraph 20 is left to the distributors’ discretion and we hope that ESMA might confirm it in its Final Report, especially when distributors operate on an advised basis.



Q.4. Do you agree with the suggested guidance on complexity in relation to the target market assessment and the clustering approach? Please also state the reasons for your answer.

Paragraph 28 of section 3.3.2 of the Draft Guidelines lists key factors that manufacturers should consider when clustering products. The same paragraph applies to distributors as well, as set out by paragraph 47 of section 3.3.3.

It appears that the list of key factors of paragraph 28 is illustrative (*“Manufacturers should consider multiple key factors when clustering products, such as.”*), and distributors are not required to take every such key factor into consideration for every product, but the key factors considered relevant on a case-by-case basis, following the proportionality principle. This seems to be confirmed by paragraph 34 of section 2.2 of the background: *“In order to ensure an appropriate level of granularity, ESMA proposes including a non-exhaustive list of multiple key factors that should be considered when defining the clusters”*.

Based on the above analysis, we would not see any other applicable approach and we hope that ESMA might confirm it in its Final Report.

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Assoreti would like to thank you for your attention and remains available for any clarifications.

Marco Tofanelli