

Milan, 26 April 2022

ESMA
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Prot. n. 17/22

Re: ASSOSIM contribution to ESMA Consultation Paper “*Guidelines on certain aspects of the MiFID II suitability requirements*”

ASSOSIM¹ welcomes the opportunity to provide comments on the ESMA’s Consultation Paper “*Guidelines on certain aspects of the MiFID II suitability requirements*” in subject as better detailed here below.

In terms of introductory remarks, we would like to underline the difficulties that intermediaries are facing to comply with the new sustainability provisions. They are mostly given by the fact that the necessary information is still largely unavailable and in any case not easily comparable and usable. Therefore, also in light of the short period before the Delegated Regulation (EU) 2021/1253 applies (August 2nd), we would request ESMA to:

- (i) consider the adoption of a phase-in approach with respect to the introduction of sustainability items in the suitability assessment processes;
- (ii) promote a supervisory approach by competent Authorities which takes into account the aforementioned data issues.

¹ *Associazione Intermediari Mercati Finanziari* - ASSOSIM is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian markets.

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.

Intermediaries are making a significant effort to develop a culture of sustainability within their staff, but this cannot be fully achieved in a short period of time. Furthermore, the level of knowledge of sustainability topics among investors is rather low and limited to general environmental matters. Therefore, we would expect that competent authorities take all the above into account in their supervisory activities with respect to sustainability provisions' enforcement.

With regard to paragraph 16 of the proposed Guidelines and to the reference herein indicated about "*avoiding technical language*" when liaising with clients, we think that such guideline is quite difficult to be implemented considering the cross reference to "*a) to c)*" sustainability preferences. Given the complex regulatory language of "*a) to c)*" provisions, it is challenging "*avoiding technical language*" and being compliant with the explanatory approach suggested by the same paragraph 16.

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 believe that the information requirement should not be expanded further.

With respect to the new supporting guideline, we note that, given the limited data currently available on ESG products and the wide diversity of ESG product profiles, labels, methodologies and approaches available in the market, ESMA's expectation relating to information to clients on ESG items imposes a high level of responsibility on intermediaries against the aforementioned low data level/quality.

The aforementioned issues about the lack of sufficient ESG data are also recognised by the ESAs which, in their last "*Report on risks and vulnerabilities in the EU financial system*", expressly state that "*data gaps continue to challenge the incorporation of ESG considerations into financial institutions' risk management, investment processes and investment advice*".

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.

ESMA states that firms must gain information from clients on all the three elements of the "sustainability preference" definition (with high level of granularity) in order to apply them cumulatively or in different combination. Given the difficulty in gaining data on such elements (as also mentioned in the answer to Q1 above), we believe that such combination would be very difficult to be implemented. Moreover, when ESMA talks about "*a combination of one or more*"

of the three aspects”, it should properly refer to the “sustainability factors” (environmental or social factors) and not to the a), b) or c) elements of the definition of sustainability preferences (which make reference to types of financial instruments).

We support ESMA’s approach when it states that firms can use ranges and sizes to collect information on preferences (rather than being limited to specific percentages). This allows flexibility and takes into account that, generally, clients do not have an adequate level of financial education regarding ESG items.

As a consequence, we expect that in most cases clients will only provide information as to whether they have sustainability preferences (by simply answering “yes” or “no”), without any further details.

We appreciate the approach relating to PAI preferences; in this respect, we understand that there is no minimum number of PAIs to be considered.

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

We believe that no further guidance is needed

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?

We believe that Guidelines should specify that the client is expected to provide a prioritization in case of simultaneous/overlapping preferences. In case no prioritization is given, then the advisor could make such assessment in the client’s best interest and will recommend him/her accordingly. However, we think that a prioritization is possible when considering ESG factors in general and not the a), b), c) elements of the sustainability preferences given the basic level of clients’ ESG financial education, especially when referring to regulatory concepts.

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.

We agree with the proposed approach.

Q7. Do you agree with the suggested approach on the topic of ‘updating client information’? Please also state the reasons for your answer.

We understand that the firm can freely choose any proposed occasions (i.e. they are alternative) to update clients’ information. For the sake of clarity, we would propose ESMA to expressly rephrase the guidance accordingly, also considering that the Delegated Regulation (UE) 2021/1253 states that “*investment firms should have the possibility to identify the client’s*

individual sustainability preferences at the next regular update of the existing suitability assessment”.

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

In this respect, please consider that -considering the aforementioned difficulties in gaining ESG data and the type of information that can be purchased from info providers (i.e. sustainability rating)- the suggested approach should take into account ESG features and ratings and not the financial instruments’ classification under a), b) and c).

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.

We agree.

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.


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.

An alignment could be appropriate only according to the criterion proposed by ESMA (i.e., where common provisions exist).

Therefore, such alignment would not consider the sustainability preferences, also given that ESMA *Final Report on certain aspects of the MiFID II appropriateness and execution-only requirements* does not include any reference to sustainability preferences.

We remain at your disposal for any further information or clarification.

Yours faithfully,


Gianluigi Gugliotta
Secretary General