

## **FFI's response to ESMA consultation on the review of MIFID II suitability Guidelines**

**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.**

Finance Finland (FFI) supports the European joint industry proposal to postpone the implementation of the MiFID II Delegated Act until 1 July 2023 (see the attachment). The investment service providers should have enough time to implement the regulation after all the relevant legislation and guidelines are finalised. Preferred time for the postponement would be 12 months.

In general, ESMA's Guidelines together with Delegated Regulation 1253/2021, Taxonomy and SFDR compose a very complicated regime for the market participants. The regulation should be simple enough to avoid divergent interpretations and implementation on the market, which is not the case at the moment. The need for additional guidance means that the requirement for unambiguous regulation has not materialised. We call for simplicity and predictability.

In general, we find it important to assess the clients' suitability preferences. However, as the approach taken to evaluate the preferences is excessively broad and very complex, we think it will be difficult for the clients to understand the questions even though the investment companies are required to help clients understand the concept of "sustainability preferences" and the choices to be made in this context. It should be noted that most of the clients are not familiar with the regulatory framework and the questions are therefore probably too difficult to understand and might lead to incorrect interpretations. For those clients who are not interested in ESG issues, only a brief explanation should be enough. Moreover, it is not very clear how the ESG preferences should be defined, what is relevant information to the client, and in which format the information should be delivered.

We agree that clients should be educated on the purpose of the suitability assessment, but there should be sufficient flexibility regarding the scope to genuinely implement information obligations to the assessment process in a practical way. It is important to consider the implications of the considered Guidelines to services provided through digital tools and in digital platforms. We share the objective of educating clients on the matter and think that the information obligations towards the clients should be formatted in a way that supports a seamless implementation of the Guidelines to a digital environment. The information is to be represented in an explicit and user-friendly manner, which means that in a digital environment, the use of different tools such as information boxes and hyperlinks to the sites providing further information (as applicable) should be accepted as adequate ways of providing information to the clients.

**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 do not think that the information requirement should be expanded further. Too extensive information requirements would not be in the best interest of the clients as the clients already consider the amount of information to be excessive. The risk is that aspects which would be important to the client will be lost in the information overload and seeking investment advice becomes too complicated.

**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.**

We agree in principle. However, we see that collecting sustainability preference information of all aspects mentioned in the definition of "sustainability preferences" as of 2 August 2022 is challenging due to limited data availability regarding the three aspects of sustainability preference definition. We further note that the regulatory environment is still uncertain as all applicable regulations are not yet in force. It follows that the firms have an obligation to track preferences before they have had a chance to update the product range to align with all the specific aspects under the "sustainability preference" definition.

Detailed comments:

- We support guideline 2, paragraph 25, the first point, where it is stated that the firm should collect the information from clients whether the client has any sustainability preferences. If the client does not have any of those preferences, it should not be necessary to ask any detailed preferences with regard to aspects a), b) or c) of the definition or to explain the meaning of those preferences. ESMA could clarify that the remaining questions mentioned in Article 2 (7) in the MiFID Delegated Regulation are not required to be asked from the client if the client states that they have no sustainability preferences. The supporting guidelines should not extend the scope of obligations.
- Regarding the minimum portion of sustainable investment (under guideline 2, paragraph 25, third point) it should be possible for the service provider to present pre-defined ranges according to taxonomy alignment rather than particular percentages defined by the client.
- Under guideline 2, paragraph 26, the fourth point, it is stated that when collecting client's preferences linked to alternative (c) PAI, information shall be collected regarding qualitative **and** quantitative elements. However, article 2(7)(c) of the MiFID Delegated Regulation states that information must be collected regarding qualitative **or** quantitative elements. We propose that the guideline is aligned with the text of the delegated regulation. It should also be noted that it is not always possible to define qualitative criteria in every financial product. It should be up to the investment service provider to define if the client is able to include qualitative PAI considerations to financial products that it offers.

- ESG considerations are not relevant for investments in FX or interest rate derivatives for hedging purposes. Therefore flexibility and proportionality should be allowed when providing this kind of service.
- It should be possible to adapt the process according to the type of investor. Investors should be able to decide whether they want the information or not, depending on their interest in ESG issues. Professional investors could have a simplified process in article 2(7)(a–c) or they could have the possibility to opt out of the requirements.

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

As we already stated under question 1, ESMA's Guidelines together with Delegated Regulation 1253/2021, Taxonomy and SFDR compose a very complicated regime for the market participants. The regulation should be simple enough to avoid divergent interpretations and implementation on the market, which is not the case at the moment. The need for additional guidance means that the requirement for unambiguous regulation has not materialised. We call for simplicity and predictability.

We agree with the suggested approach and do not believe that the Guidelines should be further clarified in this respect. Some amount of consideration and flexibility should be left to the firms so that they can take into account the evolving technical applications and meet the clients' preferences in the best way practical when considered together with other suitability factors. Furthermore, we especially want to emphasise that the assessment conducted by firms should be based on the clients' self-assessment of their sustainability preferences. Any additional detailed guidance could make the implementation more complicated.

It is important that the Guidelines are technology-neutral and work for both digital channels and physical meetings with 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?**

We do not think that additional guidance would be needed in this respect. To ensure the client's best interest, the firms as well as the advisors should have adequate flexibility to investigate and prioritise overlapping preferences. It should be ensured that the flexibility could also be applied with respect to any technical or digital implementations. In addition, the clients should also have a chance to flexibly choose which products with different ESG aspects would be the most suitable for their needs.

**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.**

In principle, we agree with the portfolio approach. Relating to the client's sustainability preferences, the service provider should consider using portfolio approach when it provides individual portfolio management. It should be possible to use portfolio approach only for those customer groups for which the service provider deems it appropriate. Service providers should be able to provide portfolio management or investment advice with portfolio approach or investment advice without portfolio approach to different client groups.

In point 27 on page 30, ESMA states that firms should ask the client which part of the portfolio (if any) the client wants to be invested in products meeting the client's sustainability preferences. This needs to be clarified, because now there seems to be a contradiction between portfolio approach and the possibility to target ESG preferences to a certain part of the portfolio. Although we support this possibility in general, it should be noted that in certain services or client groups it should be possible for the investment service provider to restrict the possibility to divide the portfolio based on the different clients' specific ESG preferences, for example by offering the client a model portfolio. Model portfolios are identical portfolios that can be used for large groups of clients. In model portfolios, it is usually not possible to divide the portfolio into parts in which a client's individual ESG preferences would or would not apply, and this should be acknowledged in ESMA's guidelines.

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

For purposes of carrying out business activities we understand the importance of updating the client information. Nevertheless, we deem that the information should not be required to be updated during the first client contact after the amendments' entry into force. The required time of the update should be clarified so that it would be adequate that the update is concluded as part of the next regular update of the client's information in connection with an investment meeting held after 2 August 2022. We consider this to be an investor-friendly approach. We also note that the client's sustainability preference information is to be viewed as a material part of the investment decision and in this respect deem that clients should be able to amend their preferences in a flexible manner. It is to be anticipated that clients' views and preferences could evolve even in short periods of time as sustainability is still a relatively new theme for many clients. The Guidelines should take the possible changes into account in a way that does not pose any additional burden to the firms (e.g. in the form of updating the suitability report).

**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.**

Yes, in our view the suggested approach is adequate. We support the possibility of forming groups of financial instruments for the purpose of the suitability assessment. However, the groups should avoid excessive complexity; e.g. PAI groups should be simple enough to prevent too complicated classification. We would also note that the technical standards are still pending.

**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.**

No, we do not think that further guidance and standards should be introduced. Enough consideration should be left to the firms to make the implementation of the sustainability factors seamless for the entire range of products while enabling firms to introduce new technical and digital applications. Too rigid standards may complicate the implementation unnecessarily as the Guidelines are not able to provide a waterproof method to suit all different product types. This could water down the objectives behind the Guidelines as the implementation would become unnecessarily heavy and the valuation process technical and complicated, which could limit the desires of firms to further develop their categorisations of products. The Guidelines should support the process of developing the policies and procedures and this cannot be done effectively through overly restricting criteria.

**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 do not think that additional guidance would be necessary in this respect and would like to underline the need to leave an adequate amount of consideration to the firms to better meet their clients' expectations. We consider it a welcome approach that the Guidelines leave flexibility and possibilities to recommend a product that does not meet the initial sustainability preferences of the client, provided that the client will be duly informed on the sustainability aspects of such alternative products. It should be noted that the product ranges of firms are still developing to more widely take into account the upcoming regulatory requirements.

In our opinion, ESMA's interpretation of the regulation narrows investment companies' options to implement the obligations. In which part of the suitability assessment the sustainability preferences are asked should make no difference as the preferences need to be taken into account in any case when recommending products. It should be up to the investment firms to decide how the obligations are implemented, and ESMA should not limit the companies' technical opportunities to implement the obligations.

Detailed comments:

- Paragraphs 80 and 81 concerning the client's adaptation of preferences are difficult to implement in practice.
- Paragraph 82 states that *"the firm should monitor whether those preferences are still met or not at portfolio level and issue appropriate recommendations as the case may be"*. An ongoing monitoring obligation is very challenging and only suited for tailored portfolios, not for model portfolios for a wide range of clients. It should be a recommendation instead of an obligation.
- Regarding paragraph 83 we propose that where a client does not have any sustainability preferences, there is no need to open or document the lack of sustainability references.

**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 do not think that any further guidance and standards should be introduced because enough flexibility should be left for any technical and digital forms of application in the future. The adaptation should be enabled in a way that is convenient for the client, for example by clicking an “acceptance button” or ticking a box by which the client confirms the adaptation. The client should not be required to answer the same questions again to adapt their preference in case the firm does not have any products to match with the client’s sustainability preferences or the client happens to be interested in a product with different sustainability features.

Article 54(10) and Recital 8 of the Delegated Regulation (EU) 2017/565 state that the client “can” (and not “must”) decide to adapt his/her sustainability preferences. ESMA’s guideline 8, paragraph 80 states that: “it can only do so once the client has adapted his/her sustainability preferences”. Thus the requirement of a mandatory adaptation of the client’s sustainability preferences doesn’t exist. There seems to be a difference between regulation and guideline regarding the adaptation of sustainability reference.

We propose that if the investment firm’s product range does not include any financial instruments meeting the client’s sustainability preferences, the firm should be allowed to recommend a product if it informs the client that the recommended product does not meet the client’s sustainability preferences but is otherwise suitable for the investor. After that, the client can adapt his/her sustainability preferences to receive recommendations for other suitable products.

**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.**

It is important that the clients are given the possibility to adapt their sustainability preferences as the investment companies might not have suitable products available and as the client might not understand the impacts of his/her suitability preferences to the product offering. We fear that if a client is not able to adapt his/her preferences to fit with the current market situation, he/she is not able to invest in any financial instruments. That’s why FFI is concerned with the statement that the possibility to adapt “should not be standard procedure” (paragraph 81).

In practice, we think that the clients’ expression of their will to invest in a certain product should be sufficient indicator of an adapted preference. In our view, there should be flexibility in interpreting the preferences, and the clients should have a right to choose between different types of products freely notwithstanding their initial answers regarding sustainability preferences. Individual deviations from the client’s initial sustainability preference should always be possible to make without conducting the whole assessment again, provided that such deviation is recorded and the client is duly informed on the sustainability aspects of the selected product. Furthermore, documenting the adaptations requires further technical adjustments which might be challenging to implement already in the given timeline.

FFI suggests that ESMA’s guideline (paragraphs 80 and 81) is modified so that the reference to the “standard procedure” is omitted, and it is enough to document to the suitability report if the client has modified his/her preferences following the investment advice.



**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)?**

We refer to the previous answer regarding the adaptation procedure.

To implement the Guidelines, it is crucial that the sustainability preferences may be interpreted in a flexible and adaptable manner. As a starting point, the system and operational model should be built to primarily consider the client's general profile as a whole and not to be based on products with unsuitable features. This would ensure that recommendations are not too dependent on sustainability preferences once submitted by the client. In a practical manner, the implementation of this flexibility could be carried out with an "acceptance button", by clicking of which the client may choose a certain product regardless of their sustainability preferences.

**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.**

In general, we agree with the proposed flexible "sustainability-neutral" approach in the said situations and do not deem that there is need to be more prescriptive. It is important that the client can choose not to express any preferences and even leave questions unanswered.

However, we do not fully agree with the approach. As part of the suitability assessment, all clients are asked about their sustainability preferences. If the client has no sustainability preferences, it should not be necessary to explain the sustainability features of products/portfolios to the client as this is not in the interest of the clients' preferences. A regular introduction of the key elements of the product should be sufficient. In addition to this, the following obligation in paragraph 83 should be deleted: *"The firm's product offer should be documented and explained to the client with a mention of the products/portfolio's sustainability features."*

**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.**

See our previous Q11, Q13 and Q14 answers.

**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 our view it is not a viable approach to monitor situations where there is a significant occurrence of clients adapting their sustainability preferences, as these preferences may be influenced by any change of circumstances or personal views. Such monitoring would be excessively costly to the firms

and results of which would behave inaccurate results at best. In principle, we understand the objective behind this proposition but nevertheless in practice think that these obligations should not be imposed via the guidelines.

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

We agree that the clients should be informed on the costs of switching investments as well as on the characteristics of the new product. On the contrary, assessing the benefits of the switch should not be included in the Guidelines, as such assessment would be excessively costly and merely an estimate which could later prove to be materially inaccurate.

**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.**

Generally, it is a good objective that the staff have the necessary knowledge and competence with regard to the criteria of the sustainability preferences and are able to explain the different aspects to clients in non-technical terms. It should be up to the investment service provider to define the need and level for appropriate training for staff.

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

As noted in answer to Q12, record keeping requires further technical adjustments which might be challenging to implement as early as August 2022. In our view, the record keeping requirements are somewhat heavy. Clients should be given unlimited opportunities to update and adapt their preferences. To make this possible in practice, the firms should not be imposed with heavy record keeping or involvement obligations with respect to these activities.

**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.**

FFI strictly opposes the alignment of the two sets of guidelines, because there are differences in these two processes. The only common thing for both guidelines is the assessment of knowledge and experience based on the MiFID Delegated Regulation (2017/565) article 55. However, if the client is offered the discretionary portfolio management, and the asset manager makes the investment decisions on behalf of the client, there is no need to have as profound understanding compared to the situation where the client makes his/her own investment decisions.

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

ESMA states that if the firm does not have any products with sustainability related factors matching the client preferences available or if the client adapts his/her preferences, this should also be



documented in the suitability report. For the avoidance of doubt, ESMA could clarify that the suitability report does not need to be given when providing portfolio management.

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

**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.**

The implementation costs of the regulation and guidelines related to sustainability preferences are significant. The costs consist of e.g. significant one-off IT costs and ongoing costs related to staff, training and the maintenance of IT systems.

Attachment: Letter to Commission 28 th January 2022