



Public consultation on Review of ESMA Guidelines on MiFID Suitability Requirements

BIPAR RESPONSE TO CONSULTATION –27 April 2022

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General remarks

BIPAR supports the Commission's and ESMA's ambition to encourage investments in a more sustainable world.

Financial intermediaries play an important role in helping investors achieve their goals and objectives – both financial and non-financial – as well as in contributing to economic growth through signposting products promoting efficient allocation of capital.

Close to their customers, the intermediaries who are members of BIPAR's national associations, are one of the "cornerstones" for promoting the distribution of "sustainable" financial products throughout Europe.

We recognize the need for a concise framework on transparency of sustainability risks and factors towards consumers in order to build public trust and avoid miss-selling.

We agree that integrating ESG considerations into investment advice and creating a new framework for sustainable finance are necessary to channel investments into sustainable activities and strengthen financial stability.

To this purpose, it is **crucial to ensure that product providers and manufacturers provide correct, reliable and clear product information** to intermediaries and financial advisors and consumers.

BIPAR notes the will to introduce sustainability considerations in the investment value chain as a whole. Considering that the classification criteria specifying what is sustainable are still under examination and the supply of new sustainable products is still low, BIPAR calls for a reasonable approach in order to achieve **optimal sequencing between the relevant legislative initiatives**. Clear product information can only be delivered when the rules in this respect are clear. It is unnecessarily costly and inefficient to require market parties to adapt to a regulatory system which is not finalized.

This sequencing should be reflected in the application dates of various legal acts and in the alignment of the application dates.

BIPAR welcomes overall the draft guidance by ESMA on the sustainability requirements. BIPAR believes that the interpretation and application of the **guidance should allow for some flexibility**, in particular for smaller actors and in the first years. **Proportionality is key in this respect**. It is important to ensure that the requirements for larger entities do not apply uniformly to SMEs and micro intermediaries.

More specific comments on ESMA Consultation Paper

In some cases, potential investors may potentially be discouraged from investing in “green” financial instruments if the “explanations” are too “standardized”. The reviewed guidelines integrating sustainability aspects seem to be designed from an “algorithmic” perspective, while reality is still very often more “human” and the process less “linear”.

The relevant applicable proportionality criteria such as size, internal organisation and the nature scope and complexity of the activities in question should be always taken into account when applying or interpreting rules and guidelines.

For some clients, examples of real products with a sustainability factor may help to understand better what suits them. It is useful that intermediaries are able to use the pre-contractual information documents provided by the product manufacturers in order to comply with their duties under the MiFID level 2 rules as amended and match clients’ sustainability preferences with available products. Such an approach would also help the investor to define “his or her minimum proportion”. In particular, the EU Taxonomy being still at an early stage, it seems to be more realistic that, in particular in a first phase, only products with a limited degree of sustainability will become available.

It is crucial to ensure that product providers and manufacturers provide correct, reliable and clear product information (on different degrees of sustainability) to intermediaries and financial advisors and consumers.

This illustrates the close interlinkage between MiFID II rules and the upcoming SFDR/TR Regulatory Technical Standards (RTS) which specify the presentation and content of such sustainability-related product information. While these templates will start to apply from the 1st of January 2023, intermediaries will be required already from the 2nd August 2022 to take into account in their suitability assessment the customers’ sustainability preferences and match them with the “green” products. As a result, there may be a gap between the actual available information and the new legal requirements.

Overall BIPAR welcomes the Guidelines and believes that no further detailed guidance on the above topics is needed for the time being. BIPAR reiterates its comments mentioned above regarding the risks owing to complexity, uncertainty, and time sequencing and calls again for flexibility and proportionality.

3/Costs – Annex II

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.

It is not easy to estimate in advance the exact costs that the sustainability-related changes in the MiFID II may bring about to intermediaries. Feedback from our member-associations suggests that, in order to implement the overall suitability framework, financial intermediaries face significant additional costs, such as:

- new procedural and organizational arrangements,
- initial and ongoing IT costs,
- additional training costs for advisors and recruitment of specialists;
- access to additional (sustainability) data;

Further to implementation costs, BIPAR also expects additional costs to arise from reporting requirements to prove compliance with the amended rules on investment advice to integrate ESG preferences and with the new rules on ESG disclosure duties.

It should finally be kept in mind that adjustments might be needed after the application date of the SFDR level 2 rules, i.e. RTS, as of 1 January 2023.