



ABBL Position paper: ESMA consultation - Guidelines on certain aspects of the MiFID II suitability requirements

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Background

On 27 January 2022, the European Securities and Markets Authority (ESMA) published a well-aimed [consultation](#) on options to enhance the suitability assessments by capturing the client's sustainability preferences.

- The consultation addressed the main changes included by the Delegated Regulation¹ on:
- The collection of information from clients on sustainability preferences i.e., identifying the client's preferences in relation to the different types of sustainable investment products and to what extent they want to invest in them.
- The assessment of sustainability preferences i.e., identifying the products that meet the client's sustainability preferences.
- The organisational requirements i.e., providing staff with appropriate training on sustainability topics and keeping updated records of the sustainability preferences of the client.

The ABBL appreciates the opportunity to share its members' views on the ESMA consultation being part of the ongoing adaptation of the MiFID II framework.

Statement

We are endorsing the primary objective of the European Commission and legislators to promote a more sustainable future.

The ABBL fundamentally agrees with the given approach to bring the concept of sustainability preferences closer to investors by:

¹ [Commission Delegated Regulation \(EU\) 2021/1253](#) of 21 April 2021 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organizational requirements and operating conditions for investment firms

- raising awareness of environmental impact and
- promoting sustainability education as a key driver for achieving environmental goals.

In our response, we have highlighted the following focus points:

- The suitability assessment performed should allow a clear view of the client's intentions and being in adequation with its investment profile.
- The Guidelines are going beyond what is required by the text of the Delegated Act², article 1 (c):

To meet a client sustainability preference, a financial instrument should consider Principal Adverse Impacts on sustainability factors, where qualitative or quantitative elements demonstrate that the consideration is determined by the client or potential client.

- Training of the clients facing staff

According to the Guidelines, the client facing staff should also possess the appropriate knowledge and competence to be able to explain the sustainable criteria to customers in non-technical terms.

A clear wish of the financial market is **to see developed a documentation or dedicated training material** for bankers/ client facing staff illustrated by practical use cases.

- Significant data problem

At this stage, our greatest concern is the **unavailability of underlying data** to properly respond the client's suitability preferences.

However, consideration must be given to the fact that, in addition to the suitability criteria, product governance rules will also apply, and we do not yet know what data on financial instruments and accessible products will be available by 2 August 2022 to meet the captured sustainable preferences of clients. This is especially true since detailed reporting requirements for investment products will apply as of 1 January 2023.

Conclusion

Unfortunately, the guidelines did not bring more clarity to market participants who were already advanced on the implementation of the directive. They even more enhanced

² [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments



uncertainties and made them re- evaluate their implementation roll-out, and consequently resulting in additional costs.

One should keep in mind that Institutions will require appropriate time and greater certainty to adapt their processes to the final guidelines, as it is crucial to communicate openly with clients and give them a clear picture of the actual investment possibilities they have.

We are therefore of the opinion that ESMA should foresee a reasonably long implementation period after the publication of the Level 3 guidelines.

[About the ABBL](#)

The ABBL is the largest professional association in the financial sector, representing the majority of financial institutions as well as regulated financial intermediaries and other professionals in Luxembourg, including law firms, consultancies, auditors, market



infrastructures, e-money and payment institutions. This makes us truly representative of the diversity of the Luxembourg financial centre, placing us in a unique position, able to give the entire sector a voice at both national and international level.

We provide our members with the intelligence, resources and services they need to operate in a dynamic financial market and in an increasingly complex regulatory environment. We facilitate an open platform to discuss key industry issues and to define common positions for the entire sector.