



Brussels, 19 February 2019

EACB Answer to ESMA Consultation Paper on integrating sustainability risks and factors in MiFID II

February 2019

The **European Association of Co-operative Banks** ([EACB](http://www.eacb.coop)) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,050 locally operating banks and 58,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 210 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 79 million members and 749,000 employees and have a total average market share of about 20%.

For further details, please visit www.eacb.coop

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



Introduction

The EACB welcomes the opportunity to participate in the ESMA consultation paper on integrating sustainability risks and factors in MiFID II. Co-operative banks are key players in sustainable finance and the EACB has actively been contributing to the various work streams on the topic. Indeed we have a representative on the European Commission's Technical Expert Group on sustainable finance (TEG) and were among the 17 early supporters of the UNEP FI Principles for Responsible Banking.

Our members also provide portfolio management and investment advice, which are the activities within scope of the Commission call for technical advice to ESMA and EIOPA back in July 2018. Therefore, as credit institutions providing portfolio management and investment advice but at the same time being subject to sustainable finance requirements under banking regulation, we wish to provide our point of view on integrating sustainability when providing the above services.

General Comments

As a general comment, the EACB is supportive of the high-level principles-based approach by ESMA in its consultation paper because at this point in time, there does not exist sufficient clarity on current definitions and concepts related to sustainable finance (as well as a lack of historical and standardised data) due to the taxonomy not being completed.

Notwithstanding the above, we still wish to highlight the fact that besides confusion on definitions used even at Level 1 of the sustainable finance legislative package, there also exist scope issues between the taxonomy and disclosures proposal that have direct consequences on the application of amendments to MiFID II, especially in relation to product governance and suitability assessment requirements. For example, in the instance that the taxonomy is finalised sooner than anticipated, it will still only focus on the E in ESG. On the other hand, the proposals being made by ESMA in relation to integrating sustainability within the investment management and advisory process appear to also focus on the social and governance factors.

Therefore, our opinion is that in some cases (particularly in relation to product governance and suitability, and keeping in mind the impact of the proposals on distributors of the financial products in scope) even the high level amendments being made by ESMA may be too forward-looking and should be withheld until the taxonomy is in place. That said, we still endeavour to provide proposals in our replies in the sections below for ESMA to issue clarifications on some topics.

In terms of definitions, we call for more clarity and consistency in the use of terms between the MiFID II proposed amendments and the changes being suggested in the ESMA Consultation paper on integrating sustainability risks and factors in the UCITS Directive and AIFMD e.g. the MiFID II consultation refers to ESG risks whilst the AIFMD/UCITS Directive paper refers to sustainability risks. Clarification on the difference between ESG preferences, ESG factors and ESG considerations would also be appreciated.

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



Finally, possible application of transitional provisions in the final report is very much linked to timing and cost issues for our members, especially in the case that the proposed amendments to product governance and suitability requirements are approved and enter into force. Since there are no grandfathering provisions proposed with respect to updating of client profiles for the suitability assessment and product governance amendments (should these be approved), it would be beneficial that ESMA confirms whether there would be a cut-off date to application of client profiles/financial products, and if not, when the applicable provisions would apply in any case e.g. before the next investment advice given to the client. Indication of timing of application is also important and we suggest at least 18 months from date of entry into force for all Level 2 measures which are necessary to interlink the rights and obligations of the manufacturers and the distributors, including but not limited to the delegated directive (product governance) to become applicable.

Transitional provisions and timing issues may impact entities in scope as only recently have several companies undergone lengthy procedures and heavy costs to update systems and client profiles due to MiFID II, and not to mention the standardisation work on MiFID II data exchange between manufacturers and distributors that has been developed. Companies need some time before they can update everything again and if there is no cut-off provisions then the costs could really run high. Considering that the taxonomy is not in place either, then these entities may need to update client profiles and systems once more in order to be compliant. This is a double cost-burden that should be avoided.

The ongoing implementation issues with MiFID II (directive of which only became applicable in 2018) and the fact that even European standards for data exchange between distributors and product manufacturers are still under development, make a further case for not introducing sustainability measures on Level 2 of MiFID II for the time being until the taxonomy is finalised.

Organisational Requirements

Q1: Do you agree with the suggested approach and the changes to the Article 21 of the MiFID II Delegated Regulation on 'general organisational requirements'? Please state the reasons for your answer.

The EACB considers the proposed change to Article 21(1) of MiFID II Delegated Regulation (EU) 2017/565 as a moderate approach towards integrating ESG considerations into general organisational requirements, as it keeps in mind the principle of proportionality and that firms would need to apply such factors in the relevant context.

We also support this principles-based approach based on the fact that the Commission proposals on sustainable finance (taxonomy, disclosures, as well as, low and carbon benchmarks) have still not yet been finalised, meaning that any prescriptive requirements may eventually be subject to change in the near future (a cost-burden). Indeed, we propose in the interest of consistency with

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eachb.coop • e-mail : secretariat@eachb.coop



all sustainable finance files, that changes related to 'general organisational requirements' enter into force at the same time or after these files become applicable.

Q2: Do you agree with the suggested approach and the changes to the Article 23 of the MiFID II Delegated Regulation on 'risk management'? Please state the reasons for your answer.

The EACB agrees that the concept of 'sustainability risk' is still vague and thereby in principle supports the principles-based approach taken in Article 23 of the MiFID II Delegated Regulation. In particular, we envisage that due to the different subject matter/scope of the taxonomy and disclosures proposals, there may be different definitions of sustainability risks in the regulatory landscape. This reality is also reflected in an upcoming EBA report, which will form part of the current CRR/CRD review. The report will propose a definition for ESG risks in the context of bank financing activities. Therefore, we envisage a separate definition for sustainability risks in the context of MiFID II relevant to MiFID II activities i.e. portfolio management and investment advice, in the disclosures proposal until the taxonomy is in place. The only issue with this is that the taxonomy is very much focused on the E in ESG, whereas it appears ESMA shall be focusing also on the S and G of sustainability risks.

This uncertainty on what classifies as sustainability or ESG risks, coupled with the fact that Article 23 of MiFID II Delegated Regulation does not make reference to any specific risk (credit, operational, reputational etc.), inclines us towards opposing the proposed change. The rationale behind this is that specifically referencing ESG risks will give greater importance to such risks but since the taxonomy is not in place, banks will implement different risk frameworks for ESG which will create customer confusion, legal uncertainty and possible greenwashing. Even if the taxonomy were to be in place, banks would have to still create their own risk management processes for the S and G in ESG.

Furthermore, we do not support ESMA's understanding that the compliance and audit functions would have to consider issues related to sustainability risks as financial market participants should be able to decide which function is best suited to assess such risks.

Q3: Do you agree with the suggested approach and the new recital on 'conflicts of interest'? Please state the reasons for your answer. What would be specific examples of conflicts of interests that might arise in relation to sustainability considerations?

The EACB understands and highly supports the point-of-view of ESMA in having "appropriate arrangements to ensure that the inclusion of ESG considerations in the advisory process and portfolio management does not lead to mis-selling practices" but is weary if this can be achieved with the proposed additional recital 59 (bis) added to the MiFID II Delegated Regulation.

This amendment may be counter-productive to the aim of preventing mis-selling as details on other risks are not specifically mentioned in the relevant articles on conflicts of interest, and indeed the provisions are left 'open' so as to capture as many scenarios as possible. Furthermore, such amendment is confusing and does not have any added value since ESG conflicts of interest

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU



(as proposed) are being linked to performance of investments, whereas the articles in the delegated text refer to conflicts of interest between parties (investment firm and/or clients).

Q4: Do you think that on the topic of 'organisational requirements' other amendments should be made to the MiFID II Delegated Regulation in order to incorporate sustainability risks and factors? If yes, which ones? Please state the reasons for your answer.

We believe no other amendments should be made, as we support the high-level principles-based approach proposed by ESMA.

Product Governance

Q5: Which existing market standards or "labels" are you intending to take into account or already taking into account for the consideration of ESG factors? Do you see any issues when relying on current market standards or "labels"? Please describe.

Our members could not identify appropriate existing market standards or "labels" that could be used in an overarching manner over all other existing standards/labels, and noted that there are so many different approaches that this makes comparability hard in many aspects. Therefore the EACB would very much appreciate an ESG label or standard on a European level, but notes that this cannot be achieved before the finalisation of an EU-wide standardised taxonomy in order to reach this level of comparability. We reiterate our emphasis that even if such classification is finalised, the proposed taxonomy is mainly focused on climate/green/environmental aspects of sustainability. Standardisation in terms of social and governance factors will be very difficult to achieve.

The main issues envisaged due to lack of standards/labels are mainly in relation to suitability and product governance:

- challenge of explaining to investors the integration of sustainability through the use of labels which may be complex;
- different interpretation by issuers and distributors of the term 'sustainability' and other related terms which would lead to different client preference assessments;
- distributors relying on a few select issuers whom they trust in terms of classification of products that are sustainable, thus closing the available range of products to clients; and
- difficult to standardise client questionnaires and data exchange templates because ESG criteria is in itself not standardised.

Q6: Do you agree with the suggested approach and the proposed amendments to the MiFID II Delegated Directive Articles on 'product governance'? If not, please explain.

There are many arguments that prevent us from fully committing to the proposed amendments on product governance to the MiFID II Delegated Directive articles:

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



- **Taxonomy:** the taxonomy is not yet in place meaning the definition of ESG factors is not finalised, yet ESMA proposes the mandatory inclusion of ESG factors as a target market criterion in the target market assessment;
- **ESG preferences:** it is unclear when assessing client suitability, whether preference should be given to financial objectives first before sustainable objectives;
- **Manufacturer reliance:** As distributors, we in-principle welcome ESMA's proposal to integrate sustainability in the target market as a new target market criterion. This clarifies that the classification of a product as sustainable is the responsibility of the manufacturer who would have the necessary knowledge of the product to undertake the classification. However, many manufacturers are not captured by MiFID II and the delegated directive because they do not qualify as investment firms under the scope of MiFID II. Therefore, assessing the target market criteria with respect to the ESG factors and characteristics of the underlying company/issuer becomes the responsibility of the distributor who will have to rely on regulatory mandatory disclosures regarding the investment product such as the prospectus. However, if producers of investment products are not legally required to provide information regarding ESG factors, it is not legitimate to put the obligation to provide the same information on the distributors. The regulatory frameworks for UCITS/AIFs/Prospectus would have to be aligned with the product governance obligations for manufacturers in order to escape this issue (a sentiment similarly shared by ESMA in its Final Report 19 December 2014 / ESMA/ 2014/ 1569, par. 9, p. 52).

Based on the above, we are not in favour of such amendments to product governance (and suitability) requirements to be introduced at this stage but we divert your attention to our replies to Q7 in any case where we address possible areas of improvement to address certain issues in the event that such amendments are approved.

It is also striking that ESMA does not propose a period for the implementation of the additional requirements under product governance. In order to take account of the technically challenging adaptations (provision of the manufacturer's target market data for the distributors; adaptation of the IT-supported mapping processes of the distributors), an implementation period of 18 months from publication of the legislative text in the Official Journal of the EU is necessary. This point should be added to the ESMA draft should product governance amendments be proposed in ESMA's technical advice to the European Commission

Q7: Do you agree with the proposed changes to the ESMA Guidelines on MiFID II product governance requirements and the addition of an additional case study? If not, please explain what changes should be made and why.

Our negative stance on product governance amendments in the Delegated Directive as under Q6, is echoed in terms of similar amendments to the ESMA Guidelines on MiFID II product governance requirements.

At the same time, we propose some amendments to the Guidelines to take account of the particularities of the target market criterion of sustainability. These include the following aspects:

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



a) Practical design of the target market characteristics

The big problem with sustainability is that the taxonomy is still being developed and there are no legal guidelines on how a manufacturer evaluates the sustainability of its product when the new product governance requirements come into force. This distinguishes the new target market criterion from other criteria, such as client category or the risk/reward profile, for which legal provisions exist, on which manufacturers can base the target market definition (client categories under MiFID II or PRIIPs-SRI).

In order to achieve a certain standardisation in the case of the new target market criterion too in spite of the lack of corresponding guidelines, ESMA could provide information on the target market characteristics. Otherwise, it is to be feared that the open architecture pursued by the Guidelines on Product Governance (see Guideline 16 of the ESMA Guidelines on Product Governance) cannot be achieved in the case of the ESG criteria.

At the same time, it could be borne in mind that the extensions currently preferred for the suitability assessment and product governance are only a first step. In this respect, a high-level approach could also be chosen for the target market characteristics (at least in a first step). In our view, the target market criterion could be described in two forms until legal requirements exist:

Sustainable: Yes (the product is declared to be sustainable by the manufacturer)

Sustainable: No (the manufacturer has not declared the product to be sustainable)

Concerning the negative target market we refer to our remarks below under d).

In view of the lack of a taxonomy, all further characterisations would lead only to IT-relevant implementations now being undertaken, which within a short time would no longer correspond to the legal requirements. This would mean that investment firms would have to bear a double burden of very high implementation costs. This would be contrary to the principle of proportionality, which is very strongly emphasised precisely in relation to product governance (see Guideline 11 of the ESMA Guidelines on Product Governance) and should be avoided at all costs.

b) Assistance for manufacturers in the classification

In view of the lack of a taxonomy, there is great legal uncertainty for manufacturers as to when they can declare a product to be sustainable. Many manufacturers are currently refraining from declaring their product to be sustainable due to potential liability risks.

For manufacturers which are subject to MiFID and therefore in future will be required to classify their products with regard to sustainability in the target market definition, the assistance of the supervisory authorities is an absolute must until a legal framework is in place. ESMA could therefore stipulate in the Guidelines or in the Final Report that the determination of the target

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



market criterion of sustainability can occur, for example, through certification by independent certification bodies (such as the certification bodies listed in footnote 6).

Such a clarification would clearly boost readiness to declare products to be sustainable. Otherwise it is to be feared that manufacturers will continue to be very reluctant to declare their products to be sustainable, which may lead to the distributors being unable to offer any suitable products to their clients with sustainability preferences. The aim pursued by the legislator of strengthening sustainable investments would therefore fail. In this respect, ESMA could provide information in the Final Report so as to reduce legal uncertainty with respect to the taxonomy.

c) Linking to manufacturer information

In order to provide clients with greater transparency, ESMA could include the indication that a manufacturer which declares its product to be sustainable in the target market should also do so (as far as possible) in the relevant product-related information documents. Here it is essential for synchronisation to be achieved between the information provided by the issuer to the distributor (as machine-readable data) and the information used to describe its product in the relevant product information document:

In the key information documents under the PRIIPs Regulation, a reference appears under the heading “What is this product?”, since in Article 8(3)(c)(ii) of the PRIIPs Regulation, provision is already made for an indication if a product pursues environmental and social objectives (this opportunity should be taken by the European legislator, however, to adopt the delegated act provided for in Article 8(4), which, to our knowledge, is still outstanding).

In the case of investment funds, a corresponding reference could be included under “objectives and investment policy” in the key investor information document.

d) No negative target market

It is very positive that ESMA stated in the Consultation Paper that a positive declaration of the target market suffices and a negative differentiation via the negative target market is not necessary (see CP p. 14, point 10).

In our view, however, this aspect should also be stipulated directly in the Guidelines. For example, a corresponding reference could be considered in Guideline 68 of the ESMA Guidelines on Product Governance that no negative target market has to be defined with respect to sustainability.

e) Restriction to investment advice

In the Guidelines on Product Governance, ESMA correctly takes account of the fact that in business without provision of investment advice, distributors can consider only the target market criteria of clients’ knowledge and experience (see in particular Guideline 45 of the ESMA Guidelines on Product Governance).

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l’Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



ESMA could include a reference in the Final Report to the fact that sustainability also does not have to be taken into account in the case of orders without investment advice or in execution only business. This already results from the fact that sustainability is a characteristic of the target market criterion of client objectives and needs. For reasons of legal certainty, we could nevertheless welcome explicit clarification in the Final Report.

f) Synchronisation with the suitability assessment

In the passage concerning the suitability assessment, ESMA correctly points out that a sustainable product which is sold to a client without ESG preferences is not per se unsuitable for the client. Conversely, a product declared as not sustainable need not automatically be unsuitable for a client with ESG preferences.

This correct evaluation concerning the suitability assessment could also apply for the target market assessment:

- ESMA already correctly stated in the Consultation Paper that the sale of a sustainable product to a client without ESG preferences does not represent non-compliance with the target market (CP p. 15, paragraph 13).
- Conversely, it could be stated in addition that the sale of a product declared not to be sustainable to a client with sustainability preferences is also possible with appropriate justification.

Both aspects are immensely important in business practice. This is particularly the case for the latter aspect mentioned, if it is borne in mind that, in view of the existing legal uncertainty, manufacturers could continue only restrictively to declare their products to be sustainable. It should be made clear that distributors can nevertheless recommend investment products to their clients.

In this respect, the possible two-stage approach proposed for the suitability assessment should also be transferred to the target market assessment. Furthermore, this aspect should be stipulated in the Guidelines themselves and not only in the Final Report. A supplement could be considered here to Guideline 70 of the ESMA Guidelines on Product Governance.

g) Consequences for the feedback regime to the manufacturer

The points presented above under f) also have an impact on the feedback regime to the manufacturer. Since in the first configuration mentioned (client without sustainability preferences is recommended a sustainable product), no target market non-compliance exists, any feedback from the distributor to the issuer can also be dispensed with.

We request corresponding clarification on this aspect in the Guidelines (for example, in Guideline

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



74).

h) Example should be omitted

The EACB believes that a case study could have added value but the one provided in the consultation paper should be omitted, as the target market described there is too granular. As far as we know, the description extends far beyond the target market definitions used in the market.

First and foremost, impact funds currently take up only a very limited part of the total amount invested by (retail) investors. Besides, the described funds are hardly available in the current market. It therefore is not a representative case as the goal of the Sustainable Finance Action Plan is to redirect capital flows from non-sustainable assets (which arguably is not an impact fund) to more economic sustainable activities i.e. economic sustainable assets.

Second, the example is described as a fund that has relatively low risk. The fund will be investing in renewable energy, organic farming, sustainable real estate, nature and landscape projects and environmental technology. The fund aims to provide explicit positive impact on the environment, measured in carbon footprint, as well as a positive cash flow to its investors, created by the projects funded. The fund invests mainly in loans, secured by mortgages, (state) guarantees, or alternative collateral. The risk indicator of this fund is 2 on a scale of 7 (low risk, low return). More than 70% of the fund is invested in projects certified as "green projects". The activities that this fund invests in, especially in the short term, could arguably not be described as low risk. For example, liquidity in these activities could be classified as rather low compared to other listed securities. The fund is described as an open-end fund, whereas the activities typically would better fit in a fund structure classified as closed-end.

Third, investing with specific ESG preferences like a positive impact on the environment by investing capital in green projects, while preserving capital seems contradictory. Investing in the example fund or projects mentioned (with a positive impact effect) could reduce performance.

Q8: Do you think extra guidance is needed on the elements listed in paragraph 15 above? If yes, please provide details.

Since the changes are being proposed to a Delegated Directive, then there may be different application by Member States which will not ensure comparability of products, markets and ESG objectives. Therefore, we would welcome extra guidance in reference to the elements listed in paragraph 15 in the event that ESG factors are in fact integrated in product governance and suitability requirements.

From our point of view, the following applies from a business perspective:

a) How should the target market assessment and the matching of a client vis-à-vis the target market be done if a product does not have ESG characteristics while the client has certain ESG preferences?

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



In this configuration, it should be borne in mind that, in view of the existing legal uncertainty, manufacturers could continue only restrictively to declare their products to be sustainable. It could be made clear that distributors can nevertheless recommend investment products to their clients.

In this respect, it could be stated in the Guidelines that the sale of a product declared not to be sustainable to a client with sustainability preferences is also possible with appropriate justification. This would correspond to the possible two-stage approach proposed for the suitability assessment. This could also be transferred to the target market assessment.

This aspect could be stipulated in addition in the Guidelines themselves and not only in the Final Report. A supplement could be considered here to Guideline 70 of the ESMA Guidelines on Product Governance.

b) Can ESG considerations be either specified separately from each other or as a single indicator?

The big problem with the ESG criteria is that the taxonomy is still being developed and there are no legal guidelines on what is to be understood by sustainability when the new product governance requirements come into force. This distinguishes the new target market criterion from other criteria, such as client category or the risk/reward profile, for which legal provisions exist, on which manufacturers can base the target market definition (client categories under MiFID II or PRIIPs-SRI).

In order to achieve a certain standardisation in the case of the new target market criterion too in spite of the lack of corresponding guidelines, ESMA could provide information on the target market characteristics. Otherwise, it is to be feared that the open architecture pursued by the Guidelines on Product Governance (see Guideline 16 of the ESMA Guidelines on Product Governance) cannot be achieved in the case of the ESG criteria.

At the same time, it should be borne in mind that the extensions currently preferred for the suitability assessment and product governance are only a first step. In this respect, a high-level approach should also be chosen for the target market characteristics (at least in a first step). In our view, the target market criterion could be described in two forms until legal requirements exist:

- Sustainable: Yes (the product is declared to be sustainable by the manufacturer)
- Sustainable: No (the manufacturer has not declared the product to be sustainable).

Concerning the negative target market we refer to our remarks to Question 7 under d).

In view of the lack of a taxonomy, further characterisations would lead only to IT-relevant implementations now being undertaken, which within a short time would no longer correspond to the legal requirements. This would mean that suppliers would have to bear a double burden of very high implementation costs. This should be avoided at all costs.

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



c) How should the target market assessment and the matching of a client vis-à-vis the target market be done if ESG considerations of a product are specified separately from each other and a client has differing preferences in all or some of these criteria (e.g. a product shows strong environmental criteria and little governance criteria while the client has little environmental preferences and strong governance preferences)?

If the target market criterion of sustainability is subdivided into small parts (for example into environmental, social and good governance), implementation would be considerably more complex for investment houses. The background is that client surveys would have to be considerably more granular and the storage of client data in the advice would be considerably more extensive. The assessment would also be considerably more complex, since the corresponding special characteristics of clients and products have to be reconciled. The problems become clear in the example that ESMA has incorporated in the question.

In view of the still outstanding taxonomy and the associated immense legal uncertainty in product classification, the inclusion of sustainability in the suitability assessment and the product governance should occur (at least in one step) in general form. Further subdivisions should occur only when the legal bases exist (i.e. the Taxonomy Regulation has been finalised).

This gradual approach is also in accordance with the principle of proportionality, which has been explicitly highlighted in both the legal bases (Article 9(1), second subparagraph, and 10(1), first subparagraph, MiFID II Implementing Directive) and in Guideline 11 of the ESMA Guidelines on Product Governance. Against this background, no further subdivisions should occur at present.

Q9: Please specify any approach you see to identify environmental, social and governance criteria separately from each other or as a single indicator. Please explain how the criteria would interact with each other and how the target market assessment and matching would be performed in such cases.

Reference is made to our answer to Q8 in this regard whereby a single indicator is preferred due to the incomplete taxonomy framework and the lack of sufficient legal clarity on the definitions of ESG.

Suitability

Q10: What current market standards or “labels” are you intending to take into account or already taking into account for the consideration of ESG factors? Do you see any issues when relying on current market standards or “labels”? Please describe.

Reference is made to our answer to Q5.

Q11: Do you agree with the suggested approach and the amendments to paragraph 28 of the suitability guidelines? If not, do you have any suggestions for developing a more

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l’Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eachb.coop • e-mail : secretariat@eachb.coop



detailed approach with regard to (a) the collection of information from clients and (b) the assessment of ESG preferences with the assessment of suitability?

The EACB could potentially be in favour of the suggested approach although as described in previous sections, does not support ESG preferences being applied to suitability requirements. That said, we are definitely not on board with having a more detailed approach before the taxonomy is in place as it would be premature for ESMA to determine the questionnaires to be used for client profiling of investment objectives:

Paragraph 11 of this section states that "...ESG preferences should only be addressed once the suitability has been assessed in accordance with the criteria of knowledge and experience, financial situation and investment objective...". This could be clarified in the Guidelines as it is unclear whether financial goals and risks will be looked at first and then sustainability goals and risks afterwards on a recommendation basis. Depending on the sustainability preferences and risk tolerance of the customer, investment services could already be filled in by banks. For example, there are customers who only want to invest in a sustainable manner if they do not have to make concessions in terms of risk and return. In addition, there are customers who are prepared to accept lower returns or take more risks for a more sustainable portfolio. However, we would propose for such clarification in the guidelines to be introduced after the taxonomy comes into place. This is because as far as banks are concerned, the suitability test as it exists today already provides enough openings for determining this 'sustainability profile' without being too granular as proposed in the consultation paper.

That said, we would appreciate the following clarifications on:

- Paragraph 12: it should be made clear that the examples given are non-binding examples in the event that a portfolio approach is chosen and that a portfolio approach is (still) not mandatory with regard to suitability; and
- Paragraph 14: In our view, ESG considerations are only of relevance in investment advice, so that instead of the "investment and advisory process", paragraph 14 should refer solely to the "advisory process".

Q12: Please specify any approach you see to assess environmental, social and governance criteria separately from each other or as single preferences. Please explain how the criteria would interact with each other and how the suitability assessment would be performed in such cases.

Reference is made to our answer to Q8.

Q13: Do you agree with the suggested approach and the amendments to paragraph 70 of the suitability guidelines?

We do not agree with the proposed amendment to paragraph 70 of the suitability guidelines as it is written in the way of an obligation and not recommendation. Furthermore, the taxonomy is not yet in place to account for such provision (prematurity).

The voice of 2.914 local and retail banks, 81 million members, 209 million customers in EU

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



Costs

Q14: What level of resources (financial and other) would be required to implement and comply with the proposed changes (risk-management arrangements, market researches and analyses, organisational costs, 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 relevant²¹.

The EACB does not find it appropriate to provide cost information on an aggregate basis but will leave it to its individual members to submit such data for reasons of accuracy in answering the above question.

That said, our members commented that although ESMA has analysed greater benefits than costs in its approach, this depends on whether all customer investor profiles need to go through (few hundred thousand) updates for ESG factors and consequent changes have to be made in IT, product governance and investor profile systems. The costs related to these changes may not be so small in the end especially for organisations with large client bases who will have to endure lots of time and labour costs to collect the relevant information from clients. Of course these costs may vary based on technical solutions and customer contact preferences but may still be costly.

Therefore, we reiterate our consideration of including grandfathering provisions to the application of the Level 2 requirements.

Contact:

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department (marieke.vanberkel@eachb.coop)
- Ms Tamara Chetcuti, Adviser, Financial markets (tamara.chetcuti@eachb.coop)