

6 October 2022

## ESMA Final Report on Guidelines on MiFID II Suitability Requirements

### Background

On 2 February 2022, the MFSA issued a [Circular](#) in relation to ESMA's Consultation relating to the revision of the ESMA Guidelines on certain aspects of the MiFID II Suitability Requirements, highlighting the fact that firms are expected to take into consideration sustainability factors of investment products as part of their policies and procedures. Further to the said Consultation, on 23 September 2022, ESMA published its Final Report on Guidelines covering certain aspects of the MiFID II suitability requirements. The report is available on our website and may be accessed [here](#).

The 2018 ESMA Guidelines have been reviewed to take into account:

- (a) the changes made to the MiFID II Delegated Regulation (EU) 2017/565 to integrate sustainability factors, risk and preferences into organisational requirements and operating conditions for investment firms;
- (b) the good and poor practices identified in ESMA's 2020 Common Supervisory Action (CSA) the application of the MiFID II suitability requirements. These good and poor practices will give practical guidance to firms in some areas where lack of convergence was identified; and
- (c) the amendments introduced through the Capital Markets Recovery Package to Article 25(2) of MiFID II.

The main amendments introduced by the Commission Delegated Regulation (EU) 2021/1253 and reflected in the guidelines on the topic of sustainability are:

- (a) Information to clients on the sustainability preferences – Firms need to help clients understand the concept of sustainability preferences and the choices to be made in this context. In this respect they need to explain the term and the difference between the different elements mentioned in the definition of "sustainability preferences" under paragraphs (a) to (c) thereof; as well as explain the difference between these products with and without sustainability features in a clear manner, avoiding technical language. Firms are also expected to explain what environmental, social and governance aspects mean;

- (b) Collection of information from clients on sustainability preferences – Firms need to collect information from clients on their preferences in relation to the different types of sustainable investment products and to what extent they want to invest in these products.
- (c) Assessment of sustainability preferences – Once the firm has identified a range of suitable products for the client in line with the criteria of knowledge and experience, financial situation and other investment objectives, the firm shall identify the product(s) that fulfil the client's sustainability preferences;
- (d) Organisational requirements – Firms will need to give staff appropriate training on sustainability topics and keep appropriate records of all relevant information about the suitability assessment and the sustainability preferences of the client (if any) and of any adaptation of these preferences (including a clear explanation of the reasons for such adaptation).

## Target Audience

The content of this circular is aimed at investment firms and credit institutions performing investment services and activities, especially firms which manufacture financial instruments or structured deposits as well as firms which distribute these financial instruments to clients. This circular also applies to alternative investment fund managers and UCITS management companies when providing investment services of individual portfolio management or non-core services within the meaning of Article 6(3)(a) and (b)(i) of UCITS Directive (Directive 2009/65/EC) and Article 6(4)(a) and (b)(i) of the AIFMD (Directive 2011/61/EU).

## Way Forward

In its Final Report, ESMA noted that it is aware of the challenges firms are facing to implement the EU sustainability legal framework and in light of this, the revised guidelines will apply as from **six (6) months** from the date of publication of the said revised Guidelines on ESMA's website in all EU official languages. The previous ESMA guidelines issued under MiFID II (that is, the existing 2018 ESMA Guidelines) will cease to apply on the same date.

**However, it is important to highlight that notwithstanding the decision made by ESMA on the applicability of this set of guidelines (as outlined above), the Firm is required to fully comply with the legal requirements as set out in Commission Delegated Regulation (EU) 2021/1253 as from 2 August 2022.**

The revised ESMA Guidelines on certain aspects of the MiFID II suitability requirements will be implemented in the Conduct of Business Rulebook in due course.