

Milan, 7 October 2022

**ESMA**  
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Prot. n. 52/22  
MFE/gc

**Re: ASSOSIM contribution to ESMA Consultation Paper “*Review of the Guidelines on MiFID II product governance requirements*”**

ASSOSIM<sup>1</sup> welcomes the opportunity to provide comments on the ESMA’s Consultation Paper in subject as better detailed here below.

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**Q1: Do you agree with the suggested clarifications on the identification of the potential target market by the manufacturer (excluding the suggested guidance on the sustainability-related objectives dealt with in Q2)? Please also state the reasons for your answer.**

As regards the reference to “*the results of the scenario and charging structure analyses*” set out in Guideline 14 we would request ESMA to clarify such reference with relating examples focused, in particular, on the “scenario” item. Furthermore, on this point we would propose ESMA to explicitly provide for the application of the proportionality principle with respect to the financial products from time to time considered in order to avoid excessive burdens (and relating costs).

We would like to express our opposition with respect to the insertion of the last paragraph in

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<sup>1</sup> *Associazione Intermediari Mercati Finanziari - ASSOSIM* is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian markets.

Guideline 19 d., where ESMA suggests to “*take into account relevant risks that may not be measured by the risk indicator*”.

Firstly, we note that the use of the risk indicator provided by the PRIIPs or UCITS regime ensures consistency and standardization which are of a paramount importance for level playing field and legal certainty purposes.

Secondly, we believe that the reference to risks non-measurable by the risk indicator is not clear (especially considering the manufacturer’s perspective) and that such risk assessment (if applicable) should have to be carried out by the distributor -who has the direct relationship with the client- in the context of the appropriateness/suitability test.

The same rationale applies, in our opinion, to the insertion proposed in Guideline 19 e. with respect to the “*potential impacts for clients of an early exit (for example in terms of costs)*”. In this case, we additionally note that the possibility of an early exit should be assessed on a single client’s basis taking into account, for instance, the holding period preference. It also has to be noted that all costs are already considered in the TM framework and in the suitability assessment.

In view of the above, we would request to maintain the current wording of the aforementioned Guidelines (e.g., without the insertions proposed by ESMA).

**Q2: Do you agree with the suggested approach on the identification of any sustainability-related objectives the product is compatible with? Do you believe that a different approach in the implementation of the new legislative requirements in the area of product governance should be taken? Please also state the reasons for your answer.**

As a preliminary remark we would like to reiterate some of the observations provided in our recent answer to ESMA Consultation Paper on the suitability requirements where ESMA suggested certain amendments relating to the sustainability preferences of the clients.

In that occasion we noted that, although intermediaries are making a significant effort to develop a sustainability culture among their clients, such outcome will not be fully achieved in a short period of time. As a matter of fact, the level of knowledge of sustainability topics among investors is rather low and limited to general information. Therefore, it is very difficult to combine such kind of knowledge with the level of granularity of the information to be obtained by the clients pursuant to Delegated Regulation 2017/565 as supplemented with regard to sustainability.

This circumstance is accompanied by an unsatisfactory level of ESG data (from a quantitative and/or a qualitative perspective) regarding financial products, which makes the sustainability preferences’ matching even more challenging.

Finally, we do not agree with the proposed criterion of the ESG “focus” set out in the new proposed version of Guideline 20. Firstly, it does not fall within the definition of “sustainability preferences” provided by the Delegated Regulation 2017/565. Secondly, it is too generic and as such it could even give rise to greenwashing.

**Q4: Do you agree with the suggested guidance on complexity in relation to the target market assessment and the clustering approach? Please also state the reasons for your answer.**

The proposed Guideline 24 provides that the target market has to be determined with “*the necessary level of detail*” in case of products to which a level of complexity is attributed. In this respect we would ask ESMA to confirm that such reference does not entail the need to identify further categories within the attributed target market and that it will be sufficient for the purposes of the Guideline in comment to identify the target market by using the ordinary categories.

As regards Guideline 27 and the reference therein contained to “structured products” we would ask ESMA to confirm that with respect to such products the clustering approach could be inappropriate only with reference to certain structured products (as expressly provided for OTC derivatives). In this respect, we understand that Guideline 26 draws an example of risky and complex products.

**Q7: Do you agree with the suggested approach on the determination of distribution strategy by the distributor? Please also state the reasons for your answer.**

We believe that the new proposed version of Guideline 56 should be carefully assessed because it could generally affect non-advised sales in case of complex products, conflicts of interest and/or inducements.

In this respect we would ask ESMA to confirm that the provision of the warning mentioned in the last paragraph of the Guideline continues to be appropriate in case of “advanced investors”.

**Q8: Do you agree with the suggested approach on the deviation possibility for diversification or hedging purposes when providing investment advice under a portfolio approach or portfolio management? In particular, do you agree that a deviation from the target market categories “type of client” and “knowledge and experience” cannot be justified for diversification or hedging purposes, neither in the context of investment advice under a portfolio approach, nor portfolio management? Please also state the**

**reasons for your answer.**

With regard to the individual portfolio management service, the indication not to deviate from the categories client type and client knowledge and experience does not take into account the characteristics of such service in which the investment decisions are taken by a qualified and professional person and not by the final client.

Considering the objectives of the CMU (e.g., *inter alia*, to promote investor participation in the financing of the real economy) and the unintended negative effects produced by the PRIIPs regime (where simple instruments without KIDs for cost reasons are precluded to retail clients), in the context of individual portfolio management the decision to deviate from the client type/knowledge and experience category could well be made for diversification/hedging purposes insofar as it was aimed at accessing products useful for these purposes.

Finally, we would suggest to amend Guideline 62 in order to include the improvement of the portfolio risk/return profile in the list of the purposes (e.g., hedging and diversification) allowing a sale outside the product target market.


**Q9: Do you agree with the suggested approach on the requirement to periodically review products, including the clarification of the proportionality principle? Please also state the reasons for your answer.**

We do not agree with the revised version of Guideline 72 where it provides, although for exemplification purposes, the sending of a questionnaire to a sample of clients that have bought a product under non-advised services.

For the purposes of the review process, the involvement of clients through participation in a questionnaire is complex, costly, and with results dependent on the level of knowledge and commitment of the clients involved. Moreover, it might give rise to legal risk and complaints. Therefore, we would ask to remove this example.

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We remain available for any further information or clarification.



Gianluigi Gugliotta  
Secretary General