



Luxembourg Newsflash - 28 September 2022

ESG in the banking sector – Updated ESMA Guidelines on MiFID II suitability requirements

On 23 September 2022, the European Securities and Markets Authority (“ESMA”) published its Final Report on Guidelines on MiFID II suitability requirements (the “2022 Guidelines”).

The 2022 Guidelines build on the text of a prior version issued by ESMA back in 2018 (the “2018 Guidelines”). They now specify how to integrate sustainability factors, risks and preferences into institutions’ organisational requirements and operating conditions, and integrate the good and poor practices observed as a result of the 2020 Common Supervisory Action. In so doing, the 2022 Guidelines bring the 2018 Guidelines into alignment with the ESMA guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements published on 3 January 2022 (ESMA35-43-2938), and take into account certain amendments introduced *via* the Capital Markets Recovery Package.

The 2022 Guidelines follow up on ESMA’s Consultation Paper of 27 January 2022 (the “CP”), summarising the responses to it and explaining how they have been considered. ESMA therefore recommends reading both documents together.

1. Key topics

The 2022 Guidelines are structured around the following 12 topics:

1) Information to clients about the purpose of the suitability assessment and its scope

2) Know your client and know your product

1. Arrangements necessary to understand clients
2. Extent of information to be collected from clients (proportionality)
3. Reliability of client information
4. Updating client information
5. Client information for legal entities or groups
6. Arrangements necessary to understand investment products

3) Matching clients with suitable products

1. Arrangements necessary to ensure the suitability of an investment
2. Costs and complexity of equivalent products
3. Costs and benefits of switching investments

4) Other related requirements

1. Qualifications of firm staff
2. Record-keeping

Each topic is linked to relevant legislation and includes general guidelines setting out the main rules along with supporting guidelines that provide additional explanations and examples.

The 2022 Guidelines also include a list of good and poor practices observed in the supervision of the MiFID II requirements on suitability.

2. Comparison with the CP

The 2022 Guidelines broadly reproduce the guidance already included in the CP.

In addition, they provide a few new clarifications and examples for most of the topics addressed (notably on information to clients about the purpose of the suitability assessment, the reliability of client information and the context for updating this information).

3. Application date

ESMA has decided to set the application date of the 2022 Guidelines to six months after translations of them are published in all official EU languages (rather than two months as originally set out in the CP). On that date, the 2018 Guidelines will cease to apply.

Despite this delayed application date for the 2022 Guidelines, institutions should remember that they are expected to fully comply with the obligations deriving from 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 organisational requirements and operating conditions for investment firms, which have applied since 2 August 2022.

Stay one step ahead of the game and do not hesitate to contact our experts to help you meet the challenges deriving from the constantly evolving ESG framework.

- [Read the 2022 Guidelines here_](#)
- [Read the CP here_](#)
- [Read our newsflash on integrating sustainability into the MiFID II framework here_](#)
- [Access our timeline on key ESG milestones in the banking and insurance sectors here_](#)

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