Amafi Association française des marchés financiers
FINANCIAL MARKET PROFESSIONALS

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CONSULTATION PAPER OF ESMA
Integrating sustainability risks and factors in MiFID II

AMAFI comments

INTRODUCTION

About AMAFI. *Association Française des Marchés Financiers* (AMAFI) is the legal trade organisation representing financial market participants in France. AMAFI members are investment firms and credit institutions (French, European and global firms), operating in and/or from France (corporate and investment banks (CIBs), brokers-dealers, market infrastructures, exchanges and private banks). AMAFI has been extremely active on MiFID II issues. We are involved in all regulatory matters that concern commercialization of financial instruments. As far as financial products are concerned, we mostly represent all issuers/manufacturers of products (CIBs) but, through our private bank members, distributors as well. AMAFI has more than 140 members operating in equities and fixed-income and interest rate products, as well as commodities, derivatives and structured products for both professional and retail clients.

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AMAFI welcomes the opportunity to give feedbacks on ESMA proposed amendments to delegated acts under MiFID II to include ESG considerations as well as to level 3 Guidelines. Indeed, AMAFI pays particular attention to the development of ESG criteria in the financial markets and welcomes this objective to develop sustainable investments which are vital for our future. In that context, AMAFI fully supports the objective of sustainable finance. This is why AMAFI read attentively ESMA proposals and would very much like to outline the following general points before answering to specific questions raised in the Consultation Paper (here after "CP").

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SUMMARY

Key messages

- **AMAFI is totally supportive of ESMA proposition of a principle-based approach**
- **AMAFI has concerns on the implementation schedule of those new requirements**

We urge ESMA, as well as the Commission, to consider giving a reasonable period of time for the implementation of the any new MiFID 2 requirements since investment firms would need time to:

- adapt consequently their internal processes (product governance set up, suitability questionnaire, suitability reports, staff training, etc.) and client's communication for integrating their ESG preferences and
- take into account those changes in exchanges between manufacturers and distributors, notably how a financial product could be considered as ESG.

An implementation period of 18 months is a minimum.

- **AMAFI would rather insist on the flexibility needed for taking into account ESG considerations.**

Investment firms should have flexibility for determining ESG considerations of the client as well as for identifying ESG features of products; at least at this preliminary stage.

- **ESG considerations should be identified as a single indicator and be considered as one among (and not superior to) the other factors included in the client's investment objectives**

SUMMARY OF ANSWERS

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'?
No, AMAFI disagrees.

Q2. Do you agree with the suggested approach and the changes to the Article 23 of the MiFID II Delegated Regulation on 'risk management'?
No, AMAFI disagrees.

Q3. Do you agree with the suggested approach and the new recital on 'conflicts of interest'?
Only partially.

Q4. Do you think that on the topic of 'organisational requirements' other amendments should be made?
No, we do not think so.

Q5. Which existing market standards or "labels" are you intending to take into account for the consideration of ESG factors?
Issues with labels come if those should be compulsory. It seems premature. Concerning current market standards, in France, for example, **AMAFI and AFG published guidance** for commercialisation of structured products and funds that have as underlying an "ESG" benchmark.

Q6. Do you agree with the proposed amendments on 'product governance'?
Partially, yes.

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?
AMAFI agrees with the proposed changes to the ESMA Guidelines. **But we disagree with both the wording and the content of the additional case study.**

Q8. Do you think extra guidance is needed on the elements listed in paragraph 15?
No we do not think that extra guidance is needed on such issues.

Q9. Please specify any approach you see to identify environmental, social and governance criteria separately from each other or as a single indicator.
AMAFI would consider ESG as a single indicator.

Q10. Which existing market standards or "labels" are you intending to take into account for the consideration of ESG factors?
Issues with labels come if those should be compulsory. As for now, we are lacking of stabilised, harmonised framework and reliable data.

Q11. Do you agree with the suggested approach and the amendments to the suitability guidelines?
No, AMAFI disagrees since it contradicts the objective of a principle-based approach.

Q12. Please specify any approach you see to assess environmental, social and governance criteria separately from each other or as single preferences.
AMAFI would consider ESG as a single indicator.

Q13. Do you agree with the suggested approach and the amendments to the suitability guidelines?
Yes, AMAFI agrees with the suggested amendments to paragraph 70.

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AMAFI ANSWER

GENERAL COMMENTS

1. AMAFI is totally supportive of ESMA proposition of a principle-based approach.

As rightly pointed out in the CP, integration of sustainability risks within MiFID II requirements is better achieved through a high level principle-based approach. Proceeding otherwise, and especially at such an early stage, could result in regulatory errors considering that there are several ongoing work streams in this area. This is why AMAFI fully shares the views of the SMSG especially with regards to avoiding being overly prescriptive on such a forward-looking topic considering that the industry as a whole has not yet reached maturity on ESG stakes.

To make sure that the clients who do have ESG preferences are being offered or advised the accordingly ESG investments, prerequisites are *(i)* appropriate and harmonized ESG definitions, market standards or labels and *(ii)* available, usable and reliable underlying issuers' data. Capacity of investment firms to qualify a product as such depends on the data availability and usability. We foresee that could and should be possible in the next future but as today, the issue is probably not mature enough.

However, AMAFI noticed that despite this welcome principle-based approach, it is sometimes undermined in some of the points developed in the Paper (*see below answers to Questions 6, 7 and 11*).

2. AMAFI has concerns on the timing and implementation schedule of those new requirements.

The implementation schedule of all those new requirements should be carefully considered. Indeed, AMAFI considers that a cost-benefit analysis approach should be taken, between *(1)* the relative emergency of such measures to be enforced, *(2)* costs for investment firms to implement additional new requirements as well as disturbing for clients whose have been recently questioned once or twice with MiFID II implementation:

(1) If developing sustainable investments is clearly an important and urgent issue, we would like to outline that MiFID II, through Product Governance requirements, already consider as a kind of 'good practice' "*green*" and "*ethical*" investments as possible investment objectives to take into account into target market definition of financial instruments. This ESG consideration is therefore somehow already included in the new distribution framework post MiFID II of financial instruments by both, manufacturer and distributors.

(2) Investment firms subject to MiFID II just ended tremendous work in implementing the reform, including review all clients on boarding process in line with new requirements that apply only 12 months ago. The changes incurred by the amendments contemplated will oblige to partially redesign procedures, process and IT systems developments, to question again clients (and redefine all on boarding questionnaires), as well as training staff. At that time, investment firms would have changed their systems three times in four years, which seems excessive.

In any cases, we urge ESMA, as well as the Commission, to consider giving a sufficient and reasonable period of time to apply these new requirements. An implementation period of 18 months is an absolute minimum. All the proposed changes to the MiFID II delegated acts should enter into force at the same point in time.

Furthermore, the sequencing of publication especially in relation to other regulatory proposals within the sustainable finance agenda of the European Commission has to be carefully considered. Indeed, it is important to ensure a proper coordination with other legislative initiatives of the Commission's Sustainable Action Plan.

3. AMAFI would rather insist on the need for flexibility.

Another important point in our view is that it seems absolutely essential to maintain for investors the possibility of *not* having ESG objectives or considerations. Investment firm should benefit from flexibility in determining and collecting ESG considerations of the client. It could be required from the firm to ask for information on that aspect but it should not be required to actually getting it. When a client does not have ESG consideration or does not wish to disclose its preferences, this should not prevent the investment firm from providing him advisory or portfolio management services.

This is particularly crucial where the client is a professional client. Firms have generally more difficulty to collect "personal" information from professional clients and in some context; ESG considerations might not be relevant at all for those professional clients where acting on their own behalf. That is why future guidance from ESMA on that particular point might be appreciated to reaffirm that expectations should be lower in the context of the wholesale market.

Flexibility is also essential for identifying ESG product. Manufacturers responsible for defining such target markets of products, face a challenge regarding data availability and reliability. Manufacturers rely on a variety of ESG data providers which do not necessarily have harmonized methodologies. In practice, only a limited number of companies today issues clear, comprehensive and usable sustainability data although the situation keeps improving on developed countries. Also, there is still a variety of different methodologies to measure a company carbon footprint as each methodology is highly sector specific and may also be specific to the data provider.

Regarding the target market definition in compliance with Product governance requirements, the **assessment of ESG features should be limited to products that are manufactured with a specific ESG investment objective.** It would be inappropriate and disproportionate to require investment firms to assess the ESG characteristics of non-ESG investment products. In addition, this new assessment should not be required for products marketed before the date of its application but only taken into account for the next regular reviews of target markets.

4. ESG should be identified as a single indicator and be considered as one among other factors included in the client's investment objectives.

AMAFI has strong reservations on the proposal to identify E, S and G criterion separately as it would be impossible:
(1) for the large majority of clients to identify what is behind each of those concepts. Most of time, clients ask for a product that takes into account all dimensions;
(2) for firms, identifying products that could fit in only one and each letter; as well as
(3) matching clients' overly precise ESG preferences with products available in the market. Otherwise, it would lead to a more limited scope of products available for investors.

In addition, for AMAFI, ESG consideration of the client, if any, should only be a sub criterion of its objectives and needs, on the same level and at least with the same weight that investment horizon and purpose of the investment. Otherwise, it could result in **overestimating such potential ESG preferences and misselling** a very risky product to a client that is actually risk adverse just because it matches ESG preferences. A client may have ESG preferences but that are not more important than the time horizon or the preservation of its capital...

This idea is highlighted in ESMA consultation paper (§14, p. 23). However, we believe that it should appear in the guidelines themselves. For instance, guidelines could provide that if the product does not fulfil client's ESG preferences, the client should be warned (for instance, via the suitability report). Hence, the client could take an informed investment decision, without limiting the range of product available and suitable (with regard to usual suitability criteria).

5. The consideration of ESG criteria must not have negative impacts on the financial markets.

ESMA must keep in mind that this new obligation to take into account the ESG criteria should not be too prescriptive; otherwise it may have negative effects on the financial markets as a whole.

Without being able to qualify precisely which products offered today are or are not ESG, we can presume that the ESG offer is not fully mature yet. That is why, **this new obligation should not create regulatory risk for investment firm which sell allegedly non-ESG product to a client with ESG preferences even though this non-ESG product is suitable with all other client features** (investment horizon, knowledge and experience, etc.) and especially where there are no ESG products that match all of theses. For example, if a client like a corporate with ESG preference in general wants to hedge itself against a currency risk, the investment firm would suggest him a currency swap that perfectly covers the risk; the investment firm should not be blamed for the fact that such **currency swap is not ESG**. If there is any possible doubt about that fact, the risk is that investment firms would be disheartened to continue to offer such products, at the detriment in the end of investors. Hence, the possible negative effects on the financial markets.

6. AMAFI disagrees with proposal to integrate ESG considerations in organisational requirements.

Finally, **AMAFI does not think it is relevant to develop ESG consideration on the organisational requirements of MiFID 2**. We have doubts that amending those requirements is the appropriate way to integrate sustainability risks in the "*advisory process*" of firms. We do believe that amendments in product Governance and Suitability requirements are relevant – and sufficient – to that objective.

Similarly, we noted the mandate from the Commission specifically states that "*it should be clear that these requirements should only apply for investment firms as defined in article 4(1)(1) of MiFID II which provide portfolio management and/or investment advice*". However, ESMA proposed amendments to articles 21, 23 and the new recital 59 (bis) apply to all investment services such as execution of orders, underwriting and operation of MTF/OTF. ESMA's proposals therefore go **beyond what is necessary to achieve the objectives of the Commission**.

More practically, we find it **unclear how the integration of ESG into some of these general organizational requirements is intended to be carried out in practice**. At the least, we would feel that further clarification through level 3 Guidelines that would include several specific examples of measures expected from investment firms in the way procedures are drafted, internal controls are performed or record keeping is done with consideration of sustainability risks? In our view, the objective is to take into account any ESG preferences of clients so should only impact commercialisation of financial instruments – not the way firms are organised.

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RESPONSES TO ESMA QUESTIONS

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.

No, we disagree.

Like pointed out in our general comments, we do not believe that the changes proposed to the Article 21 of MiFID II DR on 'general organisational requirements' are relevant to integrate sustainability risks on the advisory process of firms. If one takes one by one the dispositions of such Article 21, it remains quite unclear how and why the firm should add the assessment of sustainability risks.

For example, item (e) of Article 21.1 requires firms to "*establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment firm*". How are they supposed to doing that while taking account ESG factors? Does that mean that such communication should not be taking the form of printed paper since it is not a green way to communicate? If so, who shall supervise this kind of requirement? Are national authorities are competent to supervise or fine any breach in that matter? Same example and question with item (f), to "*maintain adequate and orderly records of their business and internal organisation*". Does that mean that record keeping shall be "ESG compliant" but in what way? It is not clear to us.

As outlined above, we noted the mandate from the Commission specifically states that "*it should be clear that these requirements should only apply for investment firms as defined in article 4(1)(1) of MiFID II which provide portfolio management and/or investment advice*". However, ESMA proposed amendments to articles 21, 23 and the new recital 59 (bis) apply to all investment services such as execution of orders, underwriting and operation of MTF/OTF whereas, like ESMA duly noted, only "***some*** of the service offered by investment firms and activities they carry out should be impacted by sustainability risks". Therefore, it does not make much sense to amend such a general article that has a very wide scope. ESMA's proposals therefore go beyond what is necessary to achieve the objectives of the Commission.

For AMAFI, this new requirement to take into account clients' ESG preference is not an additional risk for investment firms to manage. It should be an additional objective that clients may have. Therefore, it does not seem justified to amend MiFID II organisational rules.

Instead, AMAFI suggests adding a new recital – like ESMA proposes on conflicts of interests' issue. In our point of view it would address more appropriately the issue. For example, a new recital 29 (bis) could be drafted as follows:

New recital 29 (bis) of the MiFID II Delegated Regulation to be added Where relevant for advisory process of the clients' firm, sustainability risks should be taken into consideration and reflected as such in the relevant internal procedures.

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.

For the same reasons as detailed in Q1, we do not agree with that amendment as the new requirement to take into account "ESG preference" is not an additional risk.

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?

Only partially.

As well put out by ESMA in the CP, the main issue here is the conflicts of interests that could rise from the distribution of financial instruments. Therefore, AMAFI agrees with the reasoning of ESMA.

Yet, AMAFI would like to comment that ESG products can - by nature - be more costly than their non-ESG equivalents, related for some instance to the cost of ESG screenings and scoring of underlying stocks. Such factor should not be material and should not been seen as a conflict of interest as ESMA describes as "*an excuse to sell own-products or more costly ones*".

In addition, AMAFI believes that MiFID 2 provisions on conflict of interests have a broader scope that the question of distribution of financial instruments and it should remain as it is. Therefore, we do not really understand nor agree with the proposal to amend the text on that aspect.

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.

No, we do not think so.

As detailed in our general comments, we believe on the contrary that the ESG issue should focus on the consideration of any ESG preferences of clients for their investments.

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.

Issue with labels is that they are mainly investment niches and it will therefore be problematic if those should be compulsory for all ESG products. As for now, we are lacking of harmonised framework and data.

Indeed, AMAFI wishes to stress out that manufacturers rely on a variety of ESG data providers which do not necessarily have harmonized methodologies and capture a mixed of quantitative and qualitative information from multiple sources subject to their availability. Indeed, as today, only a limited number of companies issue clear, usable and standardized data on the sustainability of their activities and behaviors.

Concerning current market standards and labels, in France, for example, AMAFI and AFG published guidance[1] for commercialisation of structured products and funds that have as underlying an "ESG" benchmark. AMAFI propose to ESMA to recognize this Guidance as a "label". The Guidance set out conditions under which a benchmark could be considered as "ESG". It provides a useful guidance to tackle both the risk of misselling too complex (and therefore not understandable) products to retail investors and the risk of green washing which may undermined the reputation of the industry.

[1] See AMAFI-AFG http://amafi.fr/news/fr/guide-amafi-afg-commercialisation-des-produits-financiers-sur-indices-esg (*AMAFI / 18-40*).

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.

Partially, yes.

First, AMAFI wishes to support the analysis of ESMA when concludes that "*the target market is therefore the preferred choice for the integration of ESG considerations*". We also totally agree with the principle-based approach for both amendments. Indeed, it is very much welcome that ESMA leaves sufficient flexibility for implementation and supervisory approaches.

On the analysis covering proposals on the Delegated Directive, AMAFI thinks though that some of the paragraphs of the paper are not totally compliant with the principle based approach and lack of flexibility.

For instance, § 8 seems overly prescriptive to impose that firms "***should*** rely" on the categorisations that are being defined by the Commission in the taxonomy whereas it is still ongoing work. It is inappropriate to require firms to rely on preparatory work without any guarantee on the final conclusions.

Furthermore, even once adopted **the Taxonomy should not be viewed as the sole reference to qualify ESG products** as it only aims at defining economic activity that could be qualified as "green activities". **That means that it does not take into account ESG integration by entities irrespective of its economy activity**. For instance, a firm that does not carry out green activities could still have a "good ESG behaviour" (such as using less water, lower their carbon impact, improving governance issues, etc.) – for instance a petrol company that carries out reforestation programs. Yet, an investment firm may wish to consider an investment in a "non green" firm (here, the petrol company stock) that drastically improved its ESG behaviour (reforestation programs) as **an investment suitable to a client with ESG preference**. It's the so-called "***best in class***" or "***best in universe***" methodologies.

Also, § 9 where ESMA notes that "manufacturers and distributors ***should specify with a meaningful level of granularity*** *which ESG preferences the investment product fulfils*" goes beyond the principle based approach and the duty to avoid being inflexible and overly prescriptive on such a forward-looking topic.

Instead, AMAFI would expect ESMA to recommend firms, to make their best effort to identify ESG features the product could correspond to. Moreover, such "*meaningful level of granularity*" goes beyond the industrialisation needs of investment firms. Indeed, most firms have to carry out a very high number of target markets assessments. To be properly managed, these assessments must remain most of the time automatable and therefore should not be too precise.

Additionally, it needs to be stressed out that the ESG issues are not so straight forward and not easy to understand by clients. The more we will ask for details on these criteria, the harder it will be to understand for clients.

AMAFI totally support ESMA reasoning developed in § 10 to 13 and in particular, **agrees with ESMA proposal to include "*where relevant*" in § 9, 14 of Article 9 of the MiFID 2 Delegated Directive.**

AMAFI **also agrees with ESMA that the idea that only "positive" ESG characteristics of a product shall be identified**. Firms should not be expected to identify products that have so called negative impact on these objectives. Like ESMA, we believe that is **would be inappropriate to require defining a negative target market as far as ESG features are concerned**.
That's why, for the sake of better clarity, we would like to suggest an amendment in the proposition made p. 16 of the Paper in Article 9(9) of the MiFID II Delegated Directive:
"*Member States shall require investment firms to identify at a sufficiently granular level the potential target market for each financial instrument and specify the type(s) of client for whose needs, characteristics and objectives, including ESG preferences (where relevant), the financial instrument is compatible. As part of this process, the firm shall identify any group(s) of clients for whose needs, characteristics and objectives*

the financial instrument is not compatible. ***With regard to any ESG preferences in the 'objectives and needs' category, a negative target market does not need to be identified***".
We would have the same comment for article 9(14), 10(2): it has to be clear that negative market does not apply when it comes to ESG characteristics.

Finally, AMAFI would recommend that all relevant delegated acts should be published and with a reasonable delay for implementation, like a minimum of 18 months between the date of publication and the entry into force. Only after that period of time, any amendments of the level 3 could be finalised with again the necessary time to implement accordingly the new requirements.

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.

AMAFI agrees with the proposed changes to the ESMA Guidelines on Product Governance requirements.

AMAFI fully supports ESMA approach as developed in § 12 and 13 of the CP and the amendments proposed in § 18 of the Guidelines.

Marginally, one may question the relevance of keeping "green investment" at the end of the § if the sentence "including ESG preferences of the client where relevant" is added at the beginning.

It is also very welcome that the addition of ESG preferences is made within the item (e) being the criteria of client's objectives and needs. It helps to clarify further that ESG preferences are only a sub criterion of the criterion objectives and needs and not a new nor a superior criterion (see above our general comment n°4).

On this point, we noted however that § 7 of the CP is a bit confusing when it says "*ESMA proposes an explicit reference to 'ESG preferences' for manufacturers in specifying the type(s) of client for whose needs, characteristics and objectives the financial instrument is compatible with*" where it should actually says an "*explicit reference to ESG preferences* ***in client's objectives and needs in specifying which target market*** *the financial instrument is compatible with*".

But AMAFI disagrees with the wording of the additional case study.

Most importantly, we disagree with the level of granularity the ESG considerations are described in this example that appears way too detailed, specific and overly prescriptive. Additionally, now that the EMT (European MiFID Template developed by the European Working Group) is used throughout the EU for funds and structured products, in our view, ESMA should use the criteria developed in the EMT to develop a target market. But we also generally disagree with the way the target market itself is defined that is as well too granular and do not reflect how firms have implemented on a necessary more industrialised way target market requirements.

We also regret that only one type of financial instrument – here, a fund – is taken as an example of ESG investment. It may imply an idea that only direct investments could be considered as ESG investments. AMAFI would like to remind that an investment product could be "ESG" without "directly" invest in an ESG asset. For instance, this could be the case for a structured product that tracks performance of a basket of shares of companies selected on the basis of an environmental or sustainable rating. Another example could be a product that replicates the value of a "low carbon benchmark" or a "positive carbon impact" as proposed by the Commission in its amendment of Regulation (EU) 2016/1011. Such investment from the investor point of view, promote environmental standard through general promotion of ESG performances. It could indeed induce companies to reach good ESG rating. Therefore, such "indirect" environmental investment could be considered as suitable for a client that has environmental preference.

For all these reasons, **AMAFI would like to suggest a different case study** as follows:

Alternative Case study: Positive target market for a structured product with an underlying ESG benchmark

Product features: **Structured Product on ESG underlying**

A structured product that:
- Matures in: 6 years;
- Linked to the performance of three companies (one company of wind turbine, one company of water utilities and one sustainable real estate stock);

At the end of the term:
- If all three shares are priced at above the initial value, the product aims to repay the investor's initial capital plus the average capital return of the three shares;
- If one or more of the shares has fallen below the initial value by the end of the term (but not by more than 20%), the product aims to return the initial capital at the end of the term;
- If the final price of any of the three shares is below 20% of its initial value, the investor suffers capital loss in line with the worst performing company.

The underlying components (derivatives and fixed interest securities) are issued by the same investment bank, which has a credit rating of BB. The product has a legal structure of notes issued by the same EU-based bank. A prospectus is issued in accordance with the Prospectus Directive.

N°	Investor type
1	Retail client

N°	Knowledge and/or experience
2	Informed investor: meaning investors have at least one of these characteristics: - Some knowledge of the financial instruments in question; - Moderate experience of financial markets.

N°	Client ability to bear losses
3	Investor can bear capital losses Meaning Investor can bear capital losses strictly equal to 100% of the invested amount (risk of losing all invested capital)

N°	Risk tolerance
4	SRI : usually 4 or 5

N°	Client objectives and needs
5	**Investment profile** : Growth Meaning the client expect a growth return from his investment
5	**Client investment horizon** : Long term Meaning the client may wish to keep his investments for a period longer than 5 years
5	**ESG preference** : Yes

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

No we do not think that extra guidance is needed on such issues:

- Non-ESG product *vs.* client with ESG preference: as developed above, AMAFI is on the view that a non-ESG product may still be suitable with a client with ESG preference based on other objectives and needs;
- Three indicators (E, S and G) *vs.* single indicator: as also explained above (notably in General comment 4), AMAFI is on the view that ESG can only be considered as a single indicator;
- On the third issue (how dealing with ESG considerations of a product specified separately from each other and a client has differing preferences), again, AMAFI does not think that ESG considerations should be specified separately.

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.

As developed in our General comment 5, **we would consider ESG as a single indicator.**

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.

As developed in Q5, issues when relaying on "labels" would be to make them compulsory. At least, it seems premature. Indeed, the real issue for product manufacturer is data availability to qualify a product as ESG. There is no harmonised framework yet.

Concerning current market standards and labels, in France, for example, AMAFI and AFG published guidance[2] for commercialisation of structured products and funds that have as underlying an "ESG" benchmark. AMAFI propose to ESMA to recognize this Guidance as a "label". The Guidance set out conditions under which a benchmark could be considered as "ESG".

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

No, AMAFI disagrees with the proposed amendments of paragraph 28 since it contradicts the objective of a principle-based approach.

By requiring that information collected on clients' ESG preferences "***should be granular enough*** to allow the firm to assess the suitability of the investment", ESMA is overly prescriptive. Again, for AMAFI, ESG preference should only be considered as a single indicator.

Therefore, on the contrary, AMAFI does not wish for a more detailed approach with regard to both the collection of information from clients and on the assessment of ESG preferences. More precisely, AMAFI disagrees with the statement of ESMA in § 11 of the CP saying that "*ESG preferences should only be addressed once the suitability has been assessed in accordance with the criteria of knowledge and*

[2] See AMAFI-AFG (*AMAFI / 18-40*).

experience, financial situation and investment objectives". As already pointed out, ESG preferences are a sub criterion of the investment objectives criterion and not something to assess in top of them.

Moreover, as explained in our General comment 3, it should be clearly indicated in the guidelines that although investment firms have to question their clients about their possible ESG preferences, a negative answer from the client or a lack of response should not prevent the investment firm from providing this client with the service of investment advice or portfolio management.

AMAFI has concerns with the plural used in paragraph 28 "*should ask* ***questions***"*.* Indeed, that would result into an overly granular approach and do not reflect how firms have implemented on a necessary more industrialised way target market and suitability requirements. Thus, it would not seem incoherent for an investment firm to ask a single question to its clients to determine if they have ESG preferences.

Finally, where requiring that it also "***should be consistent with EU's classification system***" whereas such system is not yet adopted. Also, like developed in our answer to Q6, the **Taxonomy should not be viewed as the sole reference to qualify ESG products** as it only aims at defining economic activity that could be qualified as "green activities". That means that it does not take into account ESG integration by entities irrespective of its economy activity. Yet, an investment firm may wish to consider an investment in a "non green" firm that drastically improved its ESG behaviour as an investment suitable to a client with ESG preference.

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.

As developed in our General comment 5, **we would consider ESG as a single indicator.**

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

Yes, AMAFI agrees with the suggested amendments to paragraph 70.