Feedback to the European Commission on the Draft Delegated Regulation amending Regulation (EU) 2017/565 (MiFID II suitability requirements) within the Sustainable Finance Initiative

The DDV very much welcomes the opportunity to give feedback on the amendments to the delegated acts under MiFID II as proposed by the European Commission to include ESG considerations in the investment advice provided to clients.

The DDV recognises that the alignment of the real economy towards sustainability is one of most important and pressing challenges of today's society. Given the central role of financial markets, it is understandable that they have been identified as a potentially effective leverage mechanism to reach this goal. The DDV further recognises, in principle, the potential demand of investors for sustainable financial products and is in general supportive of the approach chosen to integrate clients' ESG preferences into the suitability assessment. However, the DDV wishes to highlight the following issues:

1. Sequencing and schedule of implementation

Due to the potential impact on both the demand and supply sides of such a new delegated regulation, the sequencing of the implementation has to be carefully considered, especially in relation to the other regulatory proposals within the sustainable finance agenda of the European Commission.

It has been claimed that over half of private investors are in favour of sustainable financial (and banking) products – this figure, largely obtained through specific surveys, is often mentioned when trying to quantify the demand. However, the level of this demand is still imprecise. It can be assumed that, in many cases, retail investors in particular do not have a clear picture on how rather vague objectives can be translated into clear material investment preferences. The European Commission implicitly recognises this fact when stating in its proposal for a Regulation on the establishment of a framework to facilitate sustainable investment (the Taxonomy) that it aims to "ensure that the taxonomy will only be used once it is stable and mature" when the process "has created buy-in and a good understanding of the concept" vis-à-vis the various stakeholders (including representatives of the demand side). What is true for "environmentally sustainable investment" - where the proposed amendment to Article 2 of Delegated Regulation (EU) 2017/565 refers to the Taxonomy - also applies to "social investments" and "good governance investments". It is of utmost importance not to jeopardise investors' confidence at this early stage of "mainstreaming the financial sector" just because a (thus far) rather ill-defined demand cannot be met with concrete advice because of missing clarity with regard to sustainability concepts.

The DDV therefore proposes reserving the introduction of ESG criteria into the suitability assessment at least until the Taxonomy is finalised.

In addition, we want to highlight that MiFID II, through its Product Governance requirements, already considers "green" and "ethical" investments as possible investment objectives to be taken into account while defining a target market for a specific financial product (see ESMA Guidelines on MiFID II product governance requirements, 2 June 2017, ESMA35-43-620). The target market criteria have to be considered by both manufacturers and distributors when selling financial instruments. Investment firms subject to MiFID II have just implemented the new requirements, which required significant investment to partially redesign procedures, processes and IT systems.

As such, we urge the Commission also to consider the costs for investment firms for implementing additional new requirements, and to first evaluate the impact of existing requirements.

2. Broad understanding of investment

Investments in general can be of both a direct and indirect nature. This should also be recognised when introducing ESG criteria. An investment product could be "sustainable" without directly investing in a sustainable asset. For example, a structured investment product that tracks the performance of a "low carbon benchmark" or a "positive carbon impact benchmark", as proposed by the European Commission in its amendment to Regulation (EU) 2016/1011, could be considered environmentally sustainable from an investor's point of view. This is especially important in those cases where environmentally sustainable investment products are not (yet) available for retail investors and/or conflict with other investor preferences, such as regards availability, maturity or risk. In addition, derivatives and structured products contribute to the formation of prices, which may be especially important for the development of a market segment that is still relatively young. Finally, through the usage of these benchmarks by indirect investment products the promotion of these benchmarks will be promoted in general which in itself would be a contribution to the sustainability agenda.

We suggest considering this fact directly in the wording of the proposed amendment to Article 2 of Regulation (EU) 2017/565.

The DDV remains at the Commission’s disposal to discuss these matters further.

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