Warning Notice no. 1/24 of 25 July 2024

Complying with sustainability-related obligations in the provision of investment services

1. The legal framework

The rules applicable to the provision of investment services have been the object of recent significant amendments concerning the so called 'sustainable finance' by the EU legislator. These legislative changes are part of a broader package of EU initiatives aimed at steering markets and capital towards an inclusive and sustainable growth[1].

The main changes concern the following areas of investor protection rules under Directive (EU) 2014/65 (known as 'MiFID II'):

- incorporating new and specific sustainability-related transparency measures in the context of client disclosure obligations, pursuant to Regulation (EU) 2019/2088, the 'Sustainable Finance Disclosure Regulation' or 'SFDR' (as amended by Regulation (EU) 2020/852, the 'Taxonomy Regulation')[2];
- considering clients' 'sustainability preferences' as part of the assessment of suitability of investment transactions, by means of targeted amendments to Delegated Regulation (EU) 2017/565[3];
- integrating sustainability-related objectives in product governance processes, through ad hoc adjustments to Delegated Directive (EU) 2017/593 obligations applicable to manufacturers and distributors[4].

The above-mentioned requirements were implemented progressively over an extended period, with differentiated and consecutive timelines in the three areas of interest.

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[1] Following the adoption in 2015 of the United Nations '2030 Agenda for Sustainable Development' and the related 'Paris Agreement' on the climate in 2016, the EU defined its strategy for achieving the objectives contained therein, which is detailed in the 'Action Plan: Financing Sustainable Growth' of March 2018, subsequently renewed through the 'European Green Deal' announced in December 2019.

[2] The aforementioned level 1 measures, applicable from 10 March 2021, are supplemented by the provisions of Delegated Regulation (EU) 2022/1288, applicable from 1 January 2023, which provide details on some specific aspects (such as the content and presentation of information with regard to the 'do no significant harm' or 'DNSH' principle, sustainability and adverse sustainability impact indicators, as well as information on the promotion of environmental or social characteristics and sustainability objectives in pre-contractual documentation, on the web and in periodic reporting), together with level 3 clarifications provided over time by the European Commission and the three European Authorities (see 'Consolidated Q&A on the SFDR').

[3] See Delegated Regulation (EU) 2021/1253 amending the aforementioned MiFID II Delegated Regulation, applicable from 2 August 2022. In addition, the operational guidance provided by ESMA through the latest review of its Guidelines on certain aspects of the MiFID II suitability requirements, applicable from 3 October 2023 (see Consob Notice of 25 May 2023), is also relevant.

[4] See Delegated Directive (EU) 2021/1269 amending the aforementioned II Delegated Directive supplementing MiFID II, applicable from 22 November 2022 (transposed domestically into Consob's Intermediaries Regulation, through resolution no. 22430 of 28 July 2022). The above-mentioned provisions are accompanied by the ESMA Guidelines on Product Governance obligations under MiFID II, as last updated, applicable from 3 October 2023 (see Consob Notice of 27 September 2023).

Moreover, the EU legal framework on sustainable finance is already evolving, with the following areas of development being particularly relevant:

a) the review of Delegated Regulation (EU) 2022/1288, supplementing the SFDR, which is expected to be adopted by the European Commission (EC), in the light of the Final Report of the Joint Committee of the three European Supervisory Authorities ('ESAs'), published on 4 December 2023, concerning some specific proposals for amending the delegated act, also aiming at simplifying certain aspects of the requirements;

b) the launch of a comprehensive assessment process of the SFDR framework, aimed at identifying possible areas for amendment and improvement of the rules, including with regard to interactions with other frameworks (including, for example, the Taxonomy Regulation, the 'Corporate Sustainability Reporting Directive' (or 'CSRD') and MiFID II)[5];

c) the EC mandate to the three ESAs to analyse so called 'greenwashing' and the risks associated with it, along the entire 'sustainable investment value chain', including the phase of direct interaction with clients through the provision of investment services, in order to outline possible further regulatory measures, as well as to identify possible common supervisory and enforcement approaches aimed at preventing and addressing this phenomenon effectively[6];

d) the proposal for a new Regulation on the transparency and integrity of ESG rating activities[7] and the entry into force of corporate sustainability reporting obligations pursuant to the CSRD[8], due to the impact of such rules on the mapping process of financial instruments, which is relevant for the application of ESG requirements in the area of investment services.

2. Consob's supervisory action

The legal framework outlined above, which is partly still in progress, is characterised by significantly new and complex features.

In this context, Consob has launched a specific supervisory action aimed at monitoring the approaches adopted by intermediaries for implementing EU sustainability-related requirements in the provision of investment services[9].

Overall, the outcome of this activity shows an ongoing process of gradual implementation of 'new' sustainability-related provisions by the national industry. This is also confirmed by the number of projects observed, sometimes still ongoing, showing a progressive adoption of operational solutions which are becoming more sophisticated and more consistent with the evolving legal framework.

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[5] See 'Public consultation on the implementation of SFDR' of 14 September 2023, as well as the publication on 18 June 2024 of the related ESAs Joint Opinion 'on the assessment of the Sustainable Finance Disclosure Regulation (SFDR)'.

[6] See ESMA's 'Progress Report' and 'Final Report' on the topic, published on 31 May 2023 and 4 June 2024, respectively.

[7] See the proposal for a regulation published on 13 June 2023, in relation to which a political agreement was reached in February 2024 on a compromise text in the trialogue, publication of which is pending in the EU OJ.

[8] The legislation establishes a system of differentiated application according to the type of company, beginning with those already subject to non-financial reporting rules pursuant to the NFRD, starting from the financial year 2024 (with the publication of the new report in 2025).

[9] See Consob's Strategic Plan 2022-2024 (updated December 2023).

That said, and without prejudice to the obligation of ensuring compliance with all sustainability-related requirements applicable to the provision of investment services, this document draws the attention of intermediaries to certain key elements of the legal framework which, in light of the monitoring activity conducted and of the operational approaches observed, are believed to be worthy of careful consideration at the current stage of implementation of the rules. This Warning Notice is accompanied by a list of initial good and poor practices (see Annex), emerged from the concrete implementation of the requirements, which may be useful to support intermediaries in adopting more consistent and enhanced application approaches, in order to better comply with the legal framework.

The principles and practices referred to in this document do not cover all issues worthy of attention, which may continue emerging in the course of supervision, given the complex and evolving legal framework on ‘sustainable finance’.

3. A reminder of the key elements of the applicable legal framework

3.1 Sustainability-related disclosure under the SFDR

The Sustainable Finance Disclosure Regulation (SFDR) was designed as a set of ‘cross-sectoral’ transparency rules incorporated into various legislations, including MiFID II, with the aim of achieving a harmonised and standardised representation of sustainability-related (or ‘ESG’) information in the financial sector, to facilitate comparability and support investors in making informed choices.

The transparency obligations under the SFDR concern both the intermediary (‘entity’) and its processes, as well as the ‘products’ and services provided and their related sustainability features, by integrating different types of information (on the web, pre-contractual, periodic).

From the perspective of the entity, the SFDR applies to intermediaries providing investment advice (in their capacity as ‘Financial Advisors’ or ‘FAs’) or portfolio management (in their capacity as ‘Financial Market Participants’ or ‘FMPs’), with additional and more detailed obligations applicable to the latter, being the portfolio management service treated as a ‘financial product[10]. In the SFDR framework, there are instead no proportionality elements in relation to the nature of the end investor receiving the sustainability-related information (retail vs. professional client).

With a view to making sustainability-related information understandable and useful also for less sophisticated clients, intermediaries’ attention is drawn to the obligation of providing fair, clear and not misleading information in accordance with the standards of MiFID II and its implementing provisions. Equally relevant are the general principles referred to in Article 2 of Delegated Regulation (EU) 2022/1288 supplementing the SFDR, concerning the obligation of providing the information subject to such regulation “*in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear and not misleading*”. It is also important that such information is kept up to date, taking into account the developments of the legal framework and any related changes in internal processes.

Against this backdrop, with regard to web disclosure, for example, it is necessary to adopt adequate solutions to ensure a quick and easy identification and access, through the intermediary's website, to

[10] In accordance with Article 2(12) of the SFDR, portfolio management service pursuant to Article 4(1)(8) of MiFID II falls within the definition of financial product, in addition to UCITS and alternative investment funds (AIFs), IBIPs, pension products and schemes as well as PEPPs.

the overall sustainability-related disclosure at entity level (pursuant to Articles 3, 4 and 5 of the SFDR) and, where applicable, to that relating to sustainable portfolio management services.

In addition, it is particularly noteworthy avoiding confusion in explaining the two key concepts of 'sustainability risk' and 'principal adverse impacts on sustainability' ('PAIs'). In fact, it should be remembered that these are two notions which, though distinct, are interconnected in defining the so-called 'double materiality' principle, which permeates the SFDR rules and the EU sustainable finance framework more generally. If investments are, on the one hand, subject to sustainability risk, defined as '*an environmental, social or governance event or condition that, if it occurs, could cause a negative material impact on the value of the investment'* [11], on the other hand, the investments themselves, depending on their specific type, can have negative impacts on the environment and society[12].

Both the above-mentioned variables must be considered in the selection process of investment products on behalf of clients by intermediaries. These processes must be reflected both in the disclosure pursuant to Article 3 SFDR on the integration of sustainability risk into investment advice or portfolio management, and in the Statement on the consideration of PAIs pursuant to Article 4 SFDR (where applicable). But since the underlying rationale may be different, as the purposes are distinct[13], special care must be taken by intermediaries in illustrating the respective policies with the necessary clarity.

Another concept often mentioned in the context of website disclosures pursuant to Article 3 of the SFDR, or also in the pre-contractual disclosure pursuant to Article 6 of the SFDR, is that of clients' 'sustainability preferences', which intermediaries must take into account in the investment advice or portfolio management process, for the purposes of assessing the suitability of investments[14]. In such cases, it should be noted that, for the purposes of clarity and correctness, it is necessary to provide a clear and simple explanation of the possible connection, in the intermediary's processes, between the selection of ESG products on the basis of sustainability risk and the ability to meet the sustainability preferences of clients[15].

With regard to those disclosure obligations for which the SFDR framework has defined specific templates and detailed related instructions pursuant to level 2 measures, such as, for example, the Statement on principal adverse impacts by FMPs and the pre-contractual and periodic disclosures of portfolio management service classified under Articles 8 and 9 SFDR, it is reminded the importance of complying with such templates and related instructions, as well as with the timing of publication.

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[11] See Article 2(22) of the SFDR.

[12] According to Recital 20 of the SFDR, "principal adverse impacts" means "*those impacts of investment decisions and advice that result in negative effects on sustainability factors*".

[13] Indeed, the integration of sustainability risk in the investment advice or portfolio management service aims to mitigate the impact in terms of reduction of products' value/return due to ESG issues, whereas the consideration of PAIs should direct investment choices towards those products that have fewer negative externalities on ESG factors. Still, by directing investments towards products with fewer adverse impacts in terms of sustainability, this should have a positive effect also in terms of mitigating sustainability risk.

[14] See paragraph 3.2 below.

[15] In this regard, it should be remembered that, on the one hand, the integration of sustainability risk in the product selection process is also relevant for clients who do not have any sustainability preferences, while, on the other hand, sustainability preferences should not be met only by mitigating sustainability risk, but also by taking into account other 'positive' factors of ESG investments. See also Recital 15 SFDR according to which "*financial advisors should disclose how they take sustainability risks into account in the selection process of the financial product that is presented to the end investors before providing the advice, regardless of the sustainability preferences of the end investors*".

This is because by abiding by the rules when providing these formats further contributes to improving the quality and effectiveness of the disclosure itself[16].

Finally, it should be recalled that the obligations specifically applicable to intermediaries in their capacity as FMPs when providing portfolio management services classified under Articles 8 and 9 of the SFDR include the publication on the web, in a specific section entitled 'Sustainability-related disclosures, pursuant to Article 10 of the SFDR, of information on the characteristics of such portfolio management services and the related periodic information pursuant to Article 11 of the SFDR.

3.2 Assessing clients' sustainability preferences as part of the suitability test

The EU legislator has introduced an elaborate and complex definition of clients' 'sustainability preferences'[17], which is integrated into his/her investment objectives, requiring intermediaries who provide investment advice or portfolio management services to take them into account as part of the suitability assessments.

Right from the stage when sustainability preferences are acquired, to allow clients to their preferences with awareness, intermediaries must illustrate the meaning of this new notion, with all its various components, and the key underlying concepts, using a clear language and avoiding the use of excessively technical terms[18].

Intermediaries are also required to ensure an adequate level of granularity in the collection of information on clients' sustainability preferences, by taking account of the different variables that characterise the aforementioned legal concept, in addition to any additional elements deemed necessary, based on the algorithm adopted for the assessment of suitability (such as, for example, the percentage of sustainable investments at the portfolio level desired by the client)[19].

Therefore, an extremely simplified approach for the acquisition of sustainability preferences, which simply investigates, for example, the interest in sustainable investments in general, and/or in the individual sustainability pillars (E, S, G) and/or the percentage of the portfolio to be allocated to ESG investments, would not allow clients to communicate their preferences to a sufficiently granular level.

With regard to the products mapping step of the suitability test, it is also important for intermediaries to analyse products' sustainability characteristics with an adequate level of detail, so as to enable an effective comparison with clients' preferences[20].

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[16] The clarifications provided over time by the EC and the ESAs (see 'Consolidated Q&A on the SFDR', JC 2023 18) are also relevant.

[17] Pursuant to the new point (7) of Article 2 of Delegated Regulation (EU) 2017/565, 'sustainability preferences' means "*a client's or potential client's choice as to whether and, if so, to what extent, one or more of the following financial instruments shall be integrated into his or her investment: a) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council* [Taxonomy Regulation]*; b) a financial instrument for which the client or potential client determines that a minimum share must be invested in sustainable investments pursuant to Article 2, point 17, of Regulation (EU) 2019/2088 of the European Parliament and of the Council* [SFDR Regulation]; *c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client*".

[18] The ESMA Guidelines on suitability requirements also focus on this aspect (see paragraph 16).

[19] See, in particular, paragraphs 26-27 of the aforementioned Guidelines on suitability requirements.

[20] See, in particular, paragraphs 72-73 of the aforementioned Guidelines on suitability requirements.

In this regard, it should be noted that the increasing availability of data and other information useful for qualifying products in terms of sustainability now makes it possible to implement more sophisticated and granular mapping processes, thus going beyond the approaches simply aimed at distinguishing between 'ESG' and 'non-ESG' products (according to a so-called 'on/off' logic), without graduating the classification also in terms of the level of sustainability 'ambition'[21].

The 'models adopted for 'matching' the client's sustainability preferences with the ESG features of the products observed in practice are structured in different ways. In particular, there are cases of 'pure' portfolio approach, 'mixed' approaches (i.e. with a component of the test based on the portfolio, accompanied by a check at product level) or models based only on the 'assessment at the level of the single product'.

In this context, although intermediaries are free to independently choose and adopt the operating models considered most appropriate to them, also taking into account the characteristics of their clients, the content of the services provided and the range of products offered, it is important to highlight that excessively simplified operational solutions may not be able to ensure that the investments recommended (or made on behalf of the client) are actually suitable in terms sustainability preferences, which is the goal that the legal framework aims to achieve with a view to also mitigating the risks of greenwashing and mis-selling[22].

Moreover, it should be remembered that, within the mechanisms adopted for the assessment of sustainability preferences, intermediaries are required to ensure that the client is always given the possibility of 'adapting' his/her sustainability preferences if no product meets them, so long as a record of the decision taken is kept. But this decision should not determine a change in the client's sustainability preferences initially acquired through the questionnaire[23]. Indeed, this measure has been specifically introduced, acknowledging that products with different sustainability ambitions are available, to mitigate the risk of greenwashing by allowing that a negative result of suitability assessment can be 'overcome' with respect to sustainability preferences, provided that the client is duly informed (and provided that the product is suitable with respect to the other parameters of suitability assessment)[24].

In this context, the monitoring of adaptation cases is particularly important as it represents a means to verify that the procedures for assessing sustainability preferences are correctly structured and implemented in their various phases (e.g. recording an extremely small number of cases could be

[21] For example, by referring to the categories pursuant to Article 2(7)(a), (b) and (c) of Delegated Regulation (EU) 2017/565.

[22] Indeed, Recital 7 of Delegated Regulation (EU) 2021/1253 highlights that "*it is necessary to address concerns about 'greenwashing', that is, in particular, the practice of gaining an unfair competitive advantage by recommending a financial instrument as environmentally friendly or sustainable, when in fact that financial instrument does not meet basic environmental or other sustainability-related standards. In order to prevent mis-selling and greenwashing, investment firms should not recommend or decide to trade financial instruments as meeting individual sustainability preferences where those financial instruments do not meet those preferences. Investment firms should explain to their clients or potential clients the reasons for not doing so, and keep records of those reasons*" (emphasis added).

[23] According to the ESMA guidelines, the possibility of adapting the client's preferences should be considered as 'transaction-based' (i.e. linked to single investment choices) and it should be limited only to sustainability preferences, thus not applying to the assessment of the other 'ordinary' parameters of suitability. See paragraphs 82-83 of the ESMA Guidelines on suitability requirements.

[24] See Recital 8 of the aforementioned Delegated Regulation (EU) 2021/1253, according to which "*in order to allow for further recommendations to clients or potential clients, where financial instruments do not meet a client's sustainability preferences, the client should have the possibility to adapt information on his or her sustainability preferences. In order to prevent mis-selling and greenwashing, investment firms should keep records of the client's decision along with the client's explanation supporting the adaptation*".

indicative of approaches not particularly stringent in terms of mapping or control thresholds, while conversely, a very high number of adaptations could be a sign of opportunistic conducts by the intermediary or a range of ESG products on offer that is not consistent with the preferences of the clients).

When providing the service of investment advice to retail clients, it is also necessary to provide, through the 'suitability report' (or 'statement on suitability'), appropriate details on the positive result of the suitability test, including in terms of sustainability preferences, as well as on the client's possible decision to adapt their preferences.

3.3 Consideration of sustainability-related objectives in product governance processes

In pursuing the EU sustainable finance strategy, product governance requirements have been integrated to ensure that sustainability factors[25] and sustainability-related objectives of target clients are incorporated into intermediaries' processes adopted to define the range of products to be manufactured and distributed, as this "*encourages investors' demand for sustainable investments*"[26].

Intermediaries, in their capacity as manufacturers and distributors, are therefore required, when defining the target market for the products they intend to manufacture and distribute and the related distribution strategy, to specify among the objectives of clients, in addition to those of a typically financial nature, also 'any sustainability-related objectives'.

As clarified by ESMA in the latest update of the above-mentioned Guidelines on product governance requirements, sustainability-related objectives should be set out, with an appropriate level of granularity, within the target market category referring broadly to the 'client's objectives and needs'[27]. For example, in addition to the distinction between products that consider sustainability and those that do not, the elements that characterise the definition of 'sustainability preferences' referred to in letters (a), (b) and (c) of Article 2(7) of Delegated Regulation (EU) 2017/565 could also be taken into account, in line with the ESMA guidance[28].

In line with the general goal of promoting the dissemination of 'sustainable products', i.e. those that consider sustainability factors, it should also be recalled that intermediaries are not required to identify the 'negative' target market [29], solely with respect to the driver of sustainability-related

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[25] '*Sustainability factors*', pursuant to Article 2(24) of the SFDR, means "*environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters*". This definition is specifically referred to in Article 1(5) of Delegated Directive (EU) 2017/593.

[26] See Recitals 4 and 5 of the aforementioned Delegated Directive (EU) 2021/1269 amending Delegated Directive (EU) 2017/593 supplementing MiFID II.

[27] We are referring more generally to the following five 'categories' identified by the ESMA Guidelines for the purpose of defining products' target market (both 'potential', by the manufacturer, and 'actual', by the distributor): type of investor, knowledge and experience, client's ability to bear losses, risk tolerance, client's needs and objectives.

[28] In particular, see paragraph 20 of the ESMA Guidelines, relating to manufacturers, to which paragraph 42, relating to distributors, specifically refers to.

[29] According to Recital 7 of Delegated Directive (EU) 2021/1269, in fact, "to *ensure that financial instruments with sustainability factors remain easily available also for clients that do not have sustainability preferences, investment firms should not be required to identify groups of clients with whose needs, characteristics and objectives the financial instrument with sustainability factors is not compatible*".

objectives, without prejudice to the application of this obligation on the negative target market in relation to the other categories[30].

In this regard, intermediaries' attention is drawn to the fact that, for products that do not consider sustainability factors ('so called 'Non- ESG' products), as clarified by the EC, it is instead necessary to assess on a case-by-case basis, taking into account the specific features of the products themselves, whether a negative target market in terms of clients' sustainability objectives should be identified[31].

As regards distributors, in particular, it should be noted that since sustainability-related objectives are among the parameters that contribute to the 'ex-ante' identification of the range of investment products and services on offer, in line with the needs, characteristics and objectives of target clients, they should also influence the processes related to the definition of commercial and marketing policies, budgets and personnel remuneration systems[32].

Finally, it is important to recall that manufacturers and distributors are also required to take into account any sustainability-related objectives for the purposes of the periodic review of the products manufactured and distributed. More specifically, intermediaries should identify the sustainability features of products that more likely may be subject to changes and monitor them, in order to verify the need for a possible target market modification in terms of sustainability-related objectives or (in the case of distributors) for changes in the range of products offered.

4. Conclusions

In light also of this Warning Notice, Consob will continue its supervisory action focused on the approaches adopted by intermediaries for implementing sustainability-related requirements in the provision of investment services.

This activity will also be carried out in coordination with ESMA, in particular as part of the Common Supervisory Action already announced for 2024, which is focused on MiFID II sustainability-related requirements regarding suitability assessments and product governance[33].

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[30] On this point, the clarifications provided in the ESMA Guidelines on product governance (see paragraph 81) are also noteworthy.

[31] See the following Q&A sent by ESMA to the EC on 2 October 2023 and published in March 2024 (ESMA_QA_1966 to the European Commission): "*When conducting the negative target market assessment for a product that does not consider sustainability factors, should a firm also consider any clients' sustainability-related objectives the product is not compatible with? Yes. According to Article 9(9) and 10(2) of Commission Delegated Directive 2017/593, any clients' sustainability-related objectives shall be considered when specifying the type(s) of clients whose needs, characteristics and objectives the product is compatible with ('positive target market assessment'). This also applies to the identification of any group(s) of clients whose needs, characteristics and objectives the product is not compatible with ('negative target market assessment'). <u>In practical terms, whether, and if so, which sustainability-related objectives may be relevant for the identification of the negative target market for a particular product that does not consider sustainability factors, will depend on the characteristics of the product</u>. Indeed, firms are required to consider whether the product would be incompatible with some sustainable related objectives, but this evaluation might conclude, in some specific situations, that there is no incompatibility with those objectives, so no negative target market would be determined in those specific situations for the criterion "sustainability related objective". Reversely, in other situations the consideration should lead to the identification of a negative target market in relation to the product's sustainabilityrelated objectives*" (emphasis added). *See* https://www.esma.europa.eu/publications-data/questions-answers/1966 .

[32] See, in particular, paragraphs 34-36 of the ESMA Guidelines.

[33] See ESMA to launch Common Supervisory Action on MiFID II sustainability requirements (europa.eu).

In addition, Consob will continue interacting at the appropriate levels to ensure a uniform application of the SF legal framework at EU level, as well as contributing to the ongoing debate on the review and simplification of the requirements outlined above.

THE CHAIRMAN
Paolo Savona

Annex

Initial examples of 'good' and 'poor' practices[34]

SUSTAINABILITY-RELATED DISCLOSURE (SFDR)[35]

I) Practices relevant both for 'FAs' and 'FMPs'

WEB DISCLOSURE AT ENTITY LEVEL (PURSUANT TO ARTICLES 3, 4, 5 SFDR)		Type of practice
ACCESSIBILITY AND PROMINENCE OR VISIBILITY	On the HOMEPAGE of the intermediary's website, there is a link to a section dedicated to sustainability, with a clear and simple title, that is easy to distinguish and identify (e.g. 'Sustainability', 'Sustainability-related information in the financial services sector', 'Sustainable investments', 'ESG'), through which all SFDR web disclosure at entity level can be accessed.	+
	On the HOMEPAGE of the intermediary's website, although there is a link to a section dedicated to sustainability, with an explicit title (e.g. 'Sustainability', 'Sustainable Investments', 'ESG'), the SFDR web information is not easily identifiable within this section. In particular, more prominence is given to other ESG-related information (e.g. the non-financial statement of the intermediary or the sustainable policies adopted by the entity) and/or marketing material regarding sustainability, without highlighting the SFDR web disclosure at entity level through any title/heading/graphical solution.	-
	On the intermediary's HOMEPAGE there is a link to a section dedicated to sustainability, with an explicit title (e.g. 'Sustainability', 'Sustainable Investments', 'ESG'), which does not include the SFDR web disclosure at entity level. Instead, this disclosure can be accessed only through a different path, often difficult to identify (also due the use of poorly visible graphics, for example, with fonts and colours that do not stand out from the background).	-
	The HOMEPAGE does not have an ad hoc section dedicated to sustainability and the SFDR web disclosure at entity level is accessible by following a particularly difficult path, or only by using keywords from a search engine (as it this disclosure is contained in pdf files not directly available from the website).	-
Integrating sustainability risk into investment advice or portfolio management		**Type of practice**
CLARITY AND FAIRNESS	The disclosure focuses mainly on an abstract illustration of the relevant legal framework , with numerous references to the legal basis which the client may not be aware of (e.g. Regulation (EU) 2020/852 on the Taxonomy) or Regulation (EU) 2019/2088 on sustainability-related disclosures), dedicating very little details to the description of the policies actually adopted by the intermediary for the integration of sustainability risk into investment advice or portfolio management.	-
	There is an excess of information, which makes it difficult to identify the key and substantial elements of the policy adopted for the integration of sustainability risk into investment advice or portfolio management.	-

[34] Good practices are marked with a '+' sign and poor ones with a '-' sign. In addition, these practical examples are only referred to the implementation of obligations on sustainability-related transparency and on the assessment of sustainability preferences in the context of suitability, as the evidence on the implementation of product governance requirements relating to sustainability is currently more limited, also due to the later application date of the level 2 measures.

[35] The section is divided into three parts, to distinguish the relevant transparency practices common to FAs and FMPs from those specifically related to FAs or FMPs.

CLARITY AND FAIRNESS	The disclosure does not provide a simple and effective explanation of how the policy adopted actually allows sustainability risk (as defined by the SFDR) to be 'integrated' into investment decisions and advice. For example: - in illustrating the processes adopted for the selection of products, it is not explained how these processes concretely affect sustainability risk, as in the case where reference is made to 'exclusion' policies without clarifying that these aim to avoid 'ex-ante' the possibility of investing in the products most exposed to the risk of loss of value due to an environmental, social or governance event/condition; - when referring to the consideration of clients' 'sustainability preferences' in the investment advice process (in light of the approach followed for selecting ESG products), no explicit explanation is provided regarding the link between this processes and sustainability risks.	**-**
	In the disclosure, the key legal concepts relating to sustainability (in particular, the notions of 'sustainability risk' and 'PAIs', as well as 'sustainability factors') are explained in a confusing manner, making it hard to understand the content and purpose of the policy for the integration of sustainability risk into investment advice or portfolio management processes.	**-**
	The disclosure, after a brief and clear introduction regarding SFDR legal obligations, includes a simple and brief explanation of the approach adopted by the intermediary to integrate sustainability risks into advice or investment decisions (in the context of portfolio management service).	**+**
	The disclosure includes some practical examples of concrete events that represent 'sustainability risks', explaining why these may affect the value of the investment (for example, by referring to 'adverse weather phenomena' and the consequent impacts on the entities that endure them).	**+**
	To improve the clarity of disclosure, a glossary is included with the definition of some 'key' terms regarding sustainability, typically those related to the legal framework (e.g. sustainability risk, sustainability factors, sustainable and environmentally sustainable investment, PAIs, etc.).	**+**
Consistency between remuneration policies and the integration of sustainability risk		**Type of practice**
CLARITY AND FAIRNESS	A summary of the disclosure required by the SFDR is provided including a reference to corporate documents stemming from other legal requirements (e.g. Report on remuneration and compensation policy) or to the 'ESG framework' on the parent company's website.	**+**
	The disclosure on how to integrate ESG risks into remuneration policies, although included in broader documents stemming from other legal requirements (e.g. Report on remuneration and compensation policy), is clearly and easily identified, also by means of a graphical solution.	**+**
	A mere reference to the corporate documents stemming from other legal requirements is provided (for example, the Report on remuneration and compensation policy), without it being easy to find the SFDR disclosure within these broader documents; nor any criteria for identifying such disclosure are provided. In particular, the relevant information is spread throughout the document, and it is overall hard to grasp how sustainability risks are integrated into remuneration policies.	**-**
	In the event that the disclosure required respectively by Articles 3 and 5 of the SFDR is provided through a single document (the title of which refers explicitly to both obligations), there is a separation of the related information by means of separate paragraphs/sections, which are highlighted by means of different font sizes/formats to allow for a prompt identification of the respective areas.	**+**

PRE-CONTRACTUAL DISCLOSURE (PURSUANT TO ARTICLE 6 SFDR) integration of sustainability risks into investment advice and likely impacts of sustainability risks on the return of financial products		Type of practice
PROMINENCE/EASE OF IDENTIFYING THE INFORMATION	The disclosure is provided through a specific section/paragraph, clearly identified by means of a graphical solution (for example, by using bold or uppercase letters and/or larger size fonts).	+
	The disclosure is provided through a dedicated paragraph included in the context of the description of products' other (financial) risks, clearly highlighted by means of a graphical solution (for example, using bold or uppercase letters and/or larger size fonts).	+
	The disclosure is incorporated into the pre-contractual documentation, without being highlighted by any graphical solution which may facilitate its identification.	-
CLARITY AND FAIRNESS	The key concepts are presented in a non-organic and ineffective way. By way of example: – there is an overly broad preliminary description of the evolution of the ESG legal framework, – the illustration of the policies adopted includes excessively detailed and 'technical' explanations of some legal concepts (such as sustainability preferences, sustainability risk, etc.).	-

II) Practices relevant for intermediaries in their capacity as 'FAs'

WEB DISCLOSURE AT ENTITY LEVEL (PURSUANT TO ARTICLE 4 SFDR) Transparency of adverse sustainability impacts		Type of practice
ACCESSIBILITY AND PROMINENCE OR VISIBILITY	The Statement of whether PAIs are considered or not is provided together with the disclosure on the integration of sustainability risks (pursuant to Article 3 of the SFDR) and, sometimes, also with the disclosure concerning the remuneration (pursuant to Article 5 of the SFDR), instead of being provided through the separate website section titled, respectively, 'Statement on principal adverse impacts of investment/insurance advice on sustainability factors', or 'No consideration of adverse impacts of investment/insurance advice on sustainability factors.	-
CLARITY AND FAIRNESS	In the case that PAIs are considered by the intermediary , the details provided on the process adopted to select the financial products the intermediary advises on are a very generic, without specifying whether it is envisaged the use of ranking criteria, or the identification of thresholds, on the basis of the PAIs referred to in table 1 of Annex I of Delegated Regulation (EU) 2022/1288, describing the related methodology in this case.	-
	The explanation provided for not considering the PAIs are not very meaningful, being, for example, linked to the lack of clarity of the regulatory framework, or to the generic limited data availability or to unspecified upcoming implementations.	-

III) Practices relevant for intermediaries in their capacity as 'FMPs'

WEB DISCLOSURE AT ENTITY LEVEL (PURSUANT TO ARTICLE 4 SFDR) **Transparency of adverse sustainability impacts**		**Type of practice**
ACCESSIBILITY AND PROMINENCE OR VISIBILITY	The statement on PAIs consideration (titled 'Statement on principal adverse impacts of investment decisions on sustainability factors'") can be accessed both from the intermediary's website section dedicated to the disclosure of sustainability-related information about portfolios managed, titled 'Sustainability-related disclosures', as well as from the section of the HOMEPAGE that refers to all the SFDR web disclosures (e.g. through a specific link).	**+**
CLARITY AND FAIRNESS	The illustration of the narrative parts of the 'Statement on principal adverse impacts of investment decisions on sustainability factors'' is excessively generic. For example: - the section 'Actions taken, and actions planned, and targets set for the next reference period' in the table is filled in with generic phrases, providing little clarity on the actual approach adopted; - the section relating to 'Description of policies to identify and prioritise principal adverse impacts on sustainability factors' includes other information that does not make the selection criteria clear, or it focuses exclusively on the distribution of competences in this area among corporate bodies the, without describing the contents of the policy implemented; - in the section of the template concerning the 'Engagement policies', it is only specified that the intermediary does not adopt such policies, without explaining the reasons, or the details provided focus on the intermediary's engagement policies with its own shareholders (rather than the engagement policies with the shareholders of the financial instruments the portfolio managed are invested into).	**-**
	The reasons for not considering the PAIs are not very meaningful, being, for example, linked to the lack of clarity of the regulatory framework, or to the generic limited availability of data or just to unspecified upcoming implementations.	**-**

CONSOB

ASSESMENT OF SUSTAINABILITY PREFERENCES AS PART OF THE SUITABILITY TEST

<table>
<tr><th colspan="2">EXPLANATIONS ON THE CONCEPT OF ‘SUSTAINABILITY PREFERENCES’
AND UNDERLYING KEY CONCEPTS</th><th>Type of practice</th></tr>
<tr><td rowspan="3">PRESENTATION OF INFORMATION</td><td>Information regarding sustainability aspects (e.g. terms and definitions) is provided using a technical language that cannot be easily understood and substantially replicates the applicable legal requirements, while also including several detailed references to the relevant legal basis (e.g. Regulation (EU) 2020/852 on the Taxonomy), Regulation (EU) 2019/2088 on sustainability-related disclosures and Delegated Regulation (EU) 2017/565).</td><td>-</td></tr>
<tr><td>The explanations are provided within documents which include much broader contents, typically in the context of pre-contractual information regarding the service of investment advice or portfolio management (also by means of links to website information), thus being difficult to be identified.</td><td>-</td></tr>
<tr><td>The explanations are provided in a simple and clear language and are usually included in a preliminary section of the questionnaire (or the section relating to the acquisition of sustainability preferences) that is easy to consult.</td><td>+</td></tr>
<tr><td rowspan="4">CONTENTS</td><td>There is no explanation of the different elements of the definition of sustainability preferences, referred to in points (a), (b) and (c) of Article 2(7) of Delegated Regulation (EU) 2017/565, or this explanation is not exhaustive.</td><td>-</td></tr>
<tr><td>An explanation is provided on the distinction between products with sustainability features and products without such features.</td><td>+</td></tr>
<tr><td>There are introductory clarifications regarding the additional controls in place to evaluate the information provided by the client regarding his or her sustainability preferences.</td><td>+</td></tr>
<tr><td>The client is provided with an explanation of the purposes of the questions dedicated to sustainability preferences, in a simple language, together with elements useful to enable answering the questionnaire in a more informed manner.</td><td>+</td></tr>
<tr><th colspan="2">ACQUISITION OF CLIENTS' SUSTAINABILITY PREFERENCES</th><th>Type of practice</th></tr>
<tr><td rowspan="3">CLARITY OF THE QUESTIONNAIRE</td><td>The set up of the questionnaire (including the associated response options) dedicated to the collection of the client's sustainability preferences, is based on the use of a technical language that replicates the applicable legal requirements, sometimes including references to the relevant legal basis, which the client may not be aware of (Regulation (EU) 2020/852 on the Taxonomy Regulation), Regulation (EU) 2019/2088 on sustainability-related disclosures or Delegated Regulation (EU) 2017/565).</td><td>-</td></tr>
<tr><td>It is explicitly possible to respond in a ‘neutral’ manner (such as, "I do not have a preference" or "no"), e.g. with reference to the request of stating an interest in ESG investments, or with regard to any specific preferences for the single ESG pillars and/or for environmentally sustainable investments, sustainable investments and investments that consider PAIs (pursuant to Article 2(7)(a), (b) and (c) of Delegated Regulation (EU) 2017/565).</td><td>+</td></tr>
<tr><td>In the set-up of the responses, qualitative ranges (e.g. ‘low’, ‘medium’ and ‘high’) are used, without providing the client with a clear explanation of the corresponding percentages (not even through other documents available to the same client, separate from the questionnaire). These ranges may be used to communicate a preference, for example, regarding the following:
- the portion of the portfolio to be allocated to ESG investments, and/or
- the ‘minimum proportion’ in environmentally sustainable and/or sustainable investments (pursuant to Article 2(7)(a) and (b) of Delegated Regulation (EU) 2017/565).</td><td>-</td></tr>
</table>

CLARITY OF THE QUESTIONNAIRE	The question aimed at investigating the client's interest in sustainable investments incorporates elements that concern the return on such investments (e.g. qualifying them as less profitable or exclusively long term), which can 'condition/direct' the client's choice[36].	**-**
GRANULARITY OF THE QUESTIONNAIRE	There are questions aimed at acquiring information about the client's interest in environmentally sustainable investments or sustainable investments and/or those that consider PAIs (i.e. the different components of the concept of sustainability preferences pursuant to Article 2(7)(a), (b) and (c) of Delegated Regulation (EU) 2017/565).	**+**
	The client's interest both in environmentally sustainable and sustainable investments (pursuant to Article 2(7)(a), (b) and (c) of Delegated Regulation (EU) 2017/565) is collected through one single question, therefore not allowing the possibility of acquiring the client's preferences in more details.	**-**
	There are questions aimed at acquiring information on the client's preferences in terms of 'minimum proportion' of sustainable/environmentally sustainable investments (pursuant to Article 2(7)(a) and (b) of Delegated Regulation (EU) 2017/565).	**+**
	The 'minimum proportion' percentages to choose from in the questionnaire to indicate the client's preference when investing in sustainable/environmentally sustainable investments (pursuant to Article 2(7)(a) and (b) of Delegated Regulation (EU) 2017/565) are very low (in some cases even less than 5%).	**-**
	The client's preferences with respect to financial products that consider PAIs are collected using the groupings of mandatory indicators provided for by Delegated Regulation (EU) 2022/1288 supplementing the SFDR (greenhouse gas emissions, biodiversity, water, waste, social and employee matters).	**+**
	The client's preferences with respect to financial products that consider PAIs are collected in a generic manner, without specifying any type of possible adverse impacts which may be of potential interest to the client. By way of example, reference is made to approaches that include: – just a request to indicate an interest in investments which generally consider PAIs, to be provided on the basis of a 'yes/no' answer or through a qualitative scale (e.g. low, medium, high); – one single request to indicate the portion of the portfolio that the client would like to allocate to investments which generally consider PAIs.	**-**
MAPPING OF PRODUCTS' SUSTAINABILITY FEATURES		**Type of practice**
SOME ASPECTS OF THE MECHANISMS IN USE	For the mapping of funds' ESG features, there are no specific consistency checks between the overall information acquired by third-party providers (typically regarding sustainability rating/scoring) and those of manufactures who categorise products pursuant to Article 8 or Article 9 of the SFDR, nor specific criteria are adopted to coordinate such inputs.	**-**
	For the mapping of funds' ESG features, there is also a qualitative/quantitative questionnaire regarding Mancos (for example, based on questions related to the ESG policies adopted, the results with respect to the management of certain environmental and social indicators, the existence of personnel dedicated to ESG investments, etc.).	**+**
	The ESG mapping model is subject to periodic checks/reviews to ensure that it remains effective and fit-for-purpose over time.	**+**

[36] In this regard, the ESMA Guidelines on suitability requirements specify that "*throughout the process* [of acquiring sustainability preferences], *firms should adopt a neutral and unbiased approach as to not influence clients' answers*" (see paragraph 26).

‘MATCHING’ BETWEEN SUSTAINABILITY PREFERENCES AND PRODUCTS’ ESG FEATURES		Type of practice
ABSENCE OF DETAILED SUSTAINABILITY PREFERENCES	The approach adopted for the assessment of sustainability preferences where the client shows an interest for ESG without providing the more detailed information required, is not very robust. For example: - the control is limited to verifying a minimum percentage of ESG investments at portfolio level, that is extremely low (even less than 5%); - the suitability test (with regard to sustainability preferences) is always passed; - the client is attributed a ‘neutral’ sustainability profile[37].	**-**
GROUP OF CLIENTS	In the case of group of clients, if the intermediary's model is based on the collection of information from each client in the group and the sustainability preferences differ significantly among them, the assessment is conducted taking into account the preferences of the client who has communicated the ‘lowest’ level of interest in ESG products[38].	**-**
SUITABILITY REPORT (OR STATEMENT ON SUITABILITY)		**Type of practice**
CLARITY AND FAIRNESS	The information provided is highly generic and fails to specify, in any way, the reasons that led to the client's decision of ‘adapting’ his/her sustainability preferences.	**-**
	The information is provided in a simple way, including the use of table formats, sometimes accompanied by a glossary to explain the terminology used.	**+**

[37] According to the ESMA Guidelines on suitability (see par. 85), the possibility of treating a client as ‘neutral’ with respect to sustainability preferences (thus having the possibility of being recommended products both with and without sustainability-related features) applies to cases where that client has stated that he or she does do not have any sustainability preferences. Differently, in the absence of detailed sustainability preferences (including with regard to the aspects referred to in letters (a), (b) and (c) of Article 2(7) of Delegated Regulation (EU) 2017/565), paragraph 28 of the same Guidelines applies, in accordance to which the intermediary should adopt specific procedures and “*inform the client about the sustainability features of the investment product(s) recommended or on which the firm will invest on behalf of the client* ”.

[38] In the absence of specific guidance in the sustainability legal framework on how to assess sustainability preferences in the case of group of clients, the general principles on this topic included in the ESMA Guidelines on suitability (see paragraph 70) call for a ‘prudent’ approach by suggesting that the ‘most conservative’ objective is taken into account. In extending the same approach to sustainability preferences, the most conservative profile would seem to be that of the client with the highest sustainability ambitions, i.e. with the most ‘ambitious’ sustainability preferences.