

# Consultation Paper on Technical Advice on the integration of sustainability risks and factors in the delegated acts under Solvency II and IDD

Fields marked with \* are mandatory.

EIOPA welcomes comments on its draft technical advice regarding possible amendments to the delegated acts under Solvency II and IDD concerning the integration of sustainability risks and factors. The Consultation Paper with the draft technical advice is published in EIOPA's website: <https://eiopa.europa.eu/publications/eiopa-consultations>

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Please send your comments to EIOPA by responding to the questions in this survey by 30 January 2019.

Contributions not provided using the survey or submitted after the deadline, will not be processed.

## Publication of responses

Contributions received will be published on EIOPA's public website unless you request otherwise in the respective field in this survey. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents .

Contributions will be made available at the end of the public consultation period.

## Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. They will only be used to request clarifications if necessary on the information supplied.

EIOPA, as a European Authority, will process any personal data in line with Regulation (EC) No 45/2001 on the protection of the individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data. More information on data protection can be found at <https://eiopa.europa.eu/> under the heading 'Legal notice'.

\* Name of your organisation

Finance Watch

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\*

Response to this survey to be treated as confidential

- ☒ No  
☐ Yes

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Your member state

- ☐ Austria  
☒ Belgium  
☐ Bulgaria  
☐ Croatia  
☐ Cyprus  
☐ Czech Republic  
☐ Denmark  
☐ Estonia  
☐ Finland  
☐ France  
☐ Germany  
☐ Greece  
☐ Hungary  
☐ Ireland  
☐ Italy  
☐ Latvia  
☐ Lithuania  
☐ Luxembourg  
☐ Malta  
☐ Netherlands  
☐ Poland  
☐ Portugal  
☐ Romania  
☐ Slovak Republic  
☐ Slovenia  
☐ Spain  
☐ Sweden  
☐ United Kingdom

### Type of organisation

- ☐ Insurance or reinsurance undertaking or group
- ☐ Insurance mediation firm
- ☐ Industry association
- ☒ Consumers' representative
- ☐ Other

### 1. What would you estimate as the costs and benefits of the possible changes to the delegated acts under Solvency II outlined in this Consultation?

The impact assessment does not appear to take into account potential benefits that could arise from the proposed changes to the Delegated Acts under Solvency II in terms of improved environmental, social or governance impact. Whilst these measures aim to meet the objective set out in the request for technical advice, it is recognised on page 35 that it is connected to the three stated aims from the European Commission 'Action Plan - Financing Sustainability Growth'. The impact assessment should therefore how large the expected positive impact, if any, would be for each proposed policy option towards reaching these objectives. EIOPA could additionally be explicitly tasked with compiling a report to monitor any progress towards achieving these aims five years after the implementation of the proposed amendments.

As far as possible, please link the costs and benefits you identify to the possible changes that would drive these. In relation to that, please provide, where possible, stating the assumptions underlying your calculations:

a) estimates of one-off and ongoing quantitative costs of change, in euros and relative to your turnover as relevant;

b) evidence on potential qualitative costs of change, please consider both the short and longer term;

c) evidence on potential benefits of the possible changes, please consider both the short and longer term.

**2.** What would you estimate as the costs and benefits of the possible changes to the delegated acts under IDD outlined in this Consultation?

The impact assessment does not appear to take into account potential benefits that could arise from the proposed changes to the Delegated Acts under the Insurance Distribution Directive (IDD) in terms of improved environmental, social or governance impact. Whilst these measures aim to meet the objective set out in the request for technical advice, it is recognised on page 35 that it is connected to the three stated aims from the European Commission 'Action Plan - Financing Sustainability Growth'. The impact assessment should therefore how large the expected positive impact, if any, would be for each proposed policy option towards reaching these objectives. EIOPA could additionally be explicitly tasked with compiling a report to monitor any progress towards achieving these aims five years after the implementation of the proposed amendments.

As far as possible, please link the costs and benefits you identify to the possible changes that would drive these. In relation to that, please provide, where possible, stating the assumptions underlying your calculations:

a) estimates of one-off and ongoing quantitative costs of change, in euros and relative to your turnover as relevant;

b) evidence on potential qualitative costs of change, please consider both the short and longer term;

c) evidence on potential benefits of the possible changes, please consider both the short and longer term.

3. Do you agree with the proposed reference on the tasks of the risk management function?

- ☒ Yes
- ☐ No

Please give reasons for your answer:

We are supportive of the inclusion of sustainability risk under point e) of the article 269(1), because the requirement to include the management of sustainability risk under the general risk management function needs to be explicit, given:

- 1) The potential significant financial impacts of climate change on both asset and liabilities side of the insurance undertakings and;
- 2) That currently only a small share of financial institutions disclose financial impacts of climate change on their business. In particular, the latest Financial Stability Board Task Force on Climate-related Financial Disclosures (TCFD) status report shows that very little meaningful information is provided by financial institutions and so there is currently insufficient information on how financial institutions, including insurance undertakings consider climate related financial risks.

**4. Would you propose any other amendment to the organisational requirements in the Solvency II Delegated Regulation to ensure the effectiveness and adequacy of sustainability risk integration?**

For sake of legal clarity, the Regulation should also include an explicit definition of sustainability risk. This is needed in order to clarify that for the purpose of Solvency II, the sustainability risks refer to the environmental, social and governance (ESG) factors which are deemed to be financially material. This is important for ensuring that all actors covered have the same understanding of the sustainability risk, given also the ongoing Commission legislative proposal on the “Disclosure of sustainability investment and sustainability risk”, where in the European Parliament position the concept of sustainability risk is not limited only to the possibility that financial performance of a financial product might be impacted by ESG factors, but also that the financial product might have negative environmental or social impacts.

**5. Do you agree with the proposed new article for the integration of sustainability risks into the prudent person principle?**

- ☒ Yes  
☐ No

Please give reasons for your answer:

We are fully supportive of the article 275 bis (1) to integrate sustainability risk into the person prudent principle in order to make explicit, the already implicit, requirement that the consideration of sustainability risk is in the best interest of policy holders and beneficiaries. The explicit requirement is needed given the climate change financial impacts on the investment portfolios might be significant. Point 2 of article 275(bis) should be complemented by Identify and reflect, given that the ESG preferences should be assessed in a proactive way by the insurance undertakings in order to promote the capital shift.

**6. Do you agree with the proposed amendment of the article for the actuarial function?**

- ☒ Yes

☐ No

Please give reasons for your answer:

We agree, however given that in case of climate change the standard statistical models might not be always appropriate so we believe that complementary methodologies should be considered, such as scenarios analysis based on climate scenarios (to add reference and to discuss).

7. Do you agree with the proposed reference to sustainability risks under the investment as well as the underwriting and reserving risk management policy?

☒ Yes

☐ No

Please give reasons for your answer:

Finance Watch is supportive of the proposed reference to sustainability risks under the investment as well as the underwriting and reserving risk management policy.

However, we believe that the requirements to integrate sustainability risks and notably climate related risks should be further detailed in the delegated act (or EIOPA guidance).

For example, given that the analysis of climate related financial risks requires the use of scenario analysis, EIOPA should list the scenarios on the basis of which the materiality of climate related risk shall be assessed against. For example, it would be important to specify whether the insurance companies shall base their analysis on 1.5, 2 degree or 2< degree scenarios, given that the choice of the scenario strictly impacts the assessment of the materiality of climate related risk. Moreover, EIOPA should provide guidance on how the probability of each scenario shall be assessed when analysing the materiality of the climate related risks and what is the time frame that shall be taken into account.

Currently, there is an imperfect information on investors' portfolios exposure to climate related risks and as documented in the latest TCFD status report, the available information disclosed is marginal and not decision-useful. So, with regard to the investment portfolios EIOPA should specify what type of indicators shall be used to describe the level of exposure of portfolios to physical and/or transition risk. It is important to have concise and comparable indicators.

8. Do you agree that other risk management policies may include reference to sustainability risks?

☒ Yes

☐ No

Please give reasons for your answer:

As outlined in paragraphs 76, 77, 70 and 80 a coherent and comprehensive approach is needed to address sustainability risks.

**9.** Do you agree with the proposed requirement to include consideration of the effect of sustainability risks in the overall solvency needs assessment of the undertakings' ORSA?

- ☒ Yes  
☐ No

Please give reasons for your answer:

We agree to include the effect of sustainability risks in the overall solvency needs assessment. As described in the response 7, following elements are critical in the assessment of material risks (referred to on page 4 of [https://eiopa.europa.eu/guidelinesii/eiopa\\_guidelines\\_on\\_orsa\\_en.pdf](https://eiopa.europa.eu/guidelinesii/eiopa_guidelines_on_orsa_en.pdf)):

- 1) The choice of the climate scenario
- 2) The time frame of the analysis
- 3) The (assumed/estimated) probability of occurring of each climate scenario.

It is therefore important the general requirement to consider sustainability risk in the overall solvency needs is further detailed, in order to be sure that a consistent assessment framework is applied to all insurance and re-insurance undertakings.

Moreover, as a general requirement, the insurance undertakings should be requested to disclose their overall exposure to:

- 1) Carbon intensive sectors, which are particularly sensitive to transition risks and;
- 2) Sectors and geographical areas which are particularly sensitive to physical risks (notably in >2-degree scenario).

**10.** Do you agree that conflicts of interest may also arise with regard to the ESG objectives of customers of insurance undertakings and insurance intermediaries.

- ☒ Yes  
☐ No

Please give reasons for your answer:



Remuneration is a key source of conflict of interest, both in general and in the specific case on ESG objectives. Allowing commissions to be earned for the sale of products creates a financial incentive and therefore likely bias. This means that the best interest of the customer and ESG objectives may not be properly taken into account if they do not align with the best financial incentive for the insurance distributor. Clarification on paragraph 94 would also be important to understand how EIOPA views the potential for conflicts of interest arising from the overall activities of an insurance distributor. The question that could be raised here is; if an insurance distributor claims to offer a product that meets certain ESG objectives of a customer, do they also distribute other products that do not? In the case that they do, to what extent are the effects of these other products, which may be contrary to the ESG objectives, mitigated by the products in line with these objectives? In short the question arises over the impact a product has in the context of other products distributed or provided by the same distributor or provider.

**11.** Do you agree that conflicts of interest with the ESG objectives of customers may arise, particularly in regards to the investment strategy for the customers' assets and the shareholder rights in companies in which the customers' assets with ESG preferences are invested?

- ☒ Yes  
☐ No

Please give reasons for your answer:

We agree and for the purpose of article 3(1) of the IDD Delegated Regulation 2017/2359, we believe that insurance intermediaries and insurance undertaking shall proactively assess the customer ESG objectives. The current proposed wording: "where relevant", is not providing legal clarity on how the relevancy of ESG objectives shall be assessed. It should be clear, the ESG objectives of the customer should be investigated in a proactive way by insurance intermediaries and insurance undertakings and not only be considered if explicitly requested by the clients.

**12.** What other situations do you envisage might give rise to conflicts of interest between the interest of customers in attaining their ESG objectives and an interest of another party?

There will be products where it will not be possible to reflect clients ESG preferences. This is notably the case when the insurance product provides that the undertakings will share a part of general portfolio return with policy holders (ref to page 17 of the consultation document). In those situations, it will be essential to ensure the maximum level of transparency with the customers who shall be aware of the insurance undertaking portfolio investment strategy to be able to assess the portfolio strategies of different insurance undertakings and so chose the one that reflects the best its ESG considerations. Finally, the customer might decide to opt for an insurance-based investment product that relies on specific funds and Undertakings for the Collective Investment in Transferable Securities.

**13.** What measures, if any, should be taken to address conflicts of interest arising specifically between the customer's interest in attaining his ESG objectives and the interest of another party?

In order to help mitigate conflicts of interest certain conditions could be applied to the remuneration of insurers and insurance distributors. These conditions could firstly include a ban on commissions, which create a financial incentive for certain products to be promoted regardless of whether or not they are in the best interest of a customer. A second area of focus could be on fee structures within products being sold. For example, the fees linked to an insurance product could be spread over the life of the product, but weighted towards end of the product holding period. The full payment of the fees could then be assessed through the product holding period, with evidence provided to the customer of how their ESG objectives have been met. The customer could be given a possibility to question this evidence and either pay a reduced fee or be given an option to exit the product without withdrawal penalty fees, if they consider that the evidence does not sufficiently prove that their objectives have been met.

**14.** What current market standards or "labels" are you going 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.

Currently only in some countries there are some standards for the financial products (like the French Label on the Energy transition and LuxFlag in Luxembourg) and there no common definitions around sustainable and responsible investments, which are based on different methodologies, rely on arbitrary scoring and are difficult compare. As far as we do not have EU standards for ESG financial products and a certification process, it will not be possible to improve the customer trust in sustainable products. As highlighted in the Commission Action Plan on Sustainable Finance, the lack of harmonized standard is one important obstacle in the development of market for sustainable financial products.

**15.** Do you agree with the proposed amendments, in particular whether the ESG preferences of the customers should be considered in the assessment of the target market?

- ☒ Yes  
☐ No

Please give reasons for your answer:

This should be a key element of creating products that are compatible with the needs, characteristics and objectives of the customer.

The proposed amendments to the Product Oversight and Governance Delegated Act should not, however, include the “where relevant” caveat. This risks creating legal uncertainty and therefore rendering the amendments ineffective, creating regulatory arbitrage arising from differing interpretations and implementation of the provisions. Ideally ESG factors would always be taken into account in the product approval process, not only for products that are supposed to have an ESG profile, as outlined in paragraph 100. Even in the case that these factors are not taken into account a minimum requirement to explain that they were not and why would already constitute a positive improvement.

**16.** Do you agree that the identification of the target market should specify whether an insurance product is compatible being distributed to customers with ESG objectives or not?

- ☒ Yes  
☐ No

Please give reasons for your answer:

This would help to ensure that there is clarity over products being marketed as taking into account ESG preferences. Additionally, the justification for not including a requirement to state that products do not pursue ESG objectives in paragraph 103 is flawed. Whilst no taxonomy for the classification of ESG investment exists and other uncertainties around how ESG preferences can be met exist, it seems prudent to ensure that this is made clear to customers. This could help to address issues around green-washing and the creation of misconceptions amongst insurance customers.

**17.** Do you agree that the testing of the insurance product during the approval process as well as the monitoring and reviewing of the insurance product during its lifetime should comprise the ESG factors?

- ☒ Yes  
☐ No

Please give reasons for your answer:

This would be an important part of creating products that can meet different ESG preferences. It would also be important for national competent authorities to have an overview of how these ESG factors are comprised in order to be then able to assess where or not they match with the target market and actual customer preferences in the end.

In this regard an evaluation mechanism could also be introduced to check the extent to which these measures have had an impact towards achieving the Commission aims under the 'Action Plan - Financing Sustainability Growth' as part of an EIOPA evaluation (see responses to questions 1 and 2).

## Contact

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