IRSG

INSURANCE AND REINSURANCE STAKEHOLDER GROUP

Advice on EIOPA Draft Guidelines on the integration of the customer's sustainability preferences in the suitability assessment under the Insurance Distribution Directive

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Consultation Paper on EIOPA Draft Guidelines on the integration of the customer's sustainability preferences in the suitability assessment under the Insurance Distribution

Directive

Survey on Consultation Paper regarding EIOPA guidelines on the integration of the customer's sustainability preferences in the suitability assessment under the Insurance Distribution Directive

Q1. Do you have any general comments regarding EIOPA proposed approach?

The IRSG appreciates the opportunity to comment on EIOPA's draft guidelines and EIOPA's recognition of the challenges faced in implementing the new requirements. The IRSG would like to stress that difficulties still exist with the access to data and the incoherent timelines set by the overarching legislation.

The approach taken by EIOPA could be considered less flexible than that taken by ESMA. New provisions that use 'should' rather than 'could' and have not been tested can make the practical implementation more problematic. It is key to keep a pragmatic approach and make sure that the assessment of sustainability preferences is performed through a simple and efficient process. Consistency between the ESMA and EIOPA approaches should be ensured.

The IRSG suggests that the first year of implementation could be seen as phasing-in for all market participants, stakeholders and customers to get used to the sustainable finance framework in retail distribution, giving some room for testing and adapting the processes to finally identify an effective process. For this purpose, advisory processes should be tested with customers to evaluate which type of advice can achieve the best results in informing customers.

There are still a number of significant issues with the level 1 sustainable finance framework that need to be addressed for these guidelines to be effective. EIOPA should collect and assess feedback raised on these issues through the consultation process to provide to the European Commission alongside the guidelines.

Q2. Guideline 1 – Do you agree that insurance undertakings and insurance intermediaries should explain the purpose of the sustainability part of the suitability assessment and its scope as proposed by EIOPA or do you believe that the information requirement should be expanded further, and if yes, how?

The IRSG agrees with the overall approach. However, it is difficult to avoid the use of some technical terms to explain certain new aspects to consumers. Therefore, the IRSG would recommend clarifying what is important is to help consumers understand, rather than "to avoid technical language". Some IRSG members believe that there is no need to expand the guideline further.

Other members believe that consumers should also be asked for their preferences on whether they are interested in impact investment, investments that do no significant harm or simply in products integrating sustainability risk considerations. Consumers should be able to specify any exclusion they wish to apply (the investments they do not wish to finance). This could include nuclear or gas (which is particularly important in the context of the Complementary Delegated Act including gas and nuclear into the green taxonomy that is currently under discussion), weapons, tobacco, pornography and any controversial or other economic activities that are considered as significantly harmful under the EU taxonomy framework. These members believe that EIOPA should recommend updating the relevant level 1 and 2 texts to this effect as needed.

Q3. Guideline 2 – Do you consider that insurance undertakings and insurance intermediaries should collect information on sustainability preferences as the last element within the collection of information on investment objectives?

Some IRSG members support the two-step process envisaged by EIOPA for the suitability assessment, but believe that more flexibility should be allowed for the collection of information from consumers.

Other members believe that the two-step process should not lead to carving out the sustainability preferences from the assessment of risk appetite. Better integrating the two would enable an analysis of the consumer's preference regarding generating impact as opposed to sustainability risks, which should be considered as part of the risk tolerance assessment. These members believe that EIOPA should recommend updating the implicated level 1 and 2 texts to this effect.

Q4. Guideline 2 – Consistently with the text of article 2(4) of Commission Delegated Regulation 2017/2359, as amended by Commission Delegated Regulation (EU) 2021/1257, EIOPA proposes to collect the information on the minimum proportion for aspects defined in points a) and b) of Article 2(4) of Commission Delegated Regulation 2017/2359 from the customer in terms of percentages or shares. Do you agree with this approach?

Some IRSG members believe that EIOPA should reconsider this approach to allow more flexibility.

In the response to question 2 a number of relevant points have been raised by some members on the need to further refine the approach. These members believe that additional guidance is also needed over how to prioritise overlapping and simultaneous preferences, including though amending the implicated level 1 and 2 texts. They believe that this could be complemented with a new Q&A with much more detailed guidance on assessing sustainability preferences. The Q&A could include a template questionnaire and suggested outcomes and implications from likely responses. This could include specific questions related to exclusion preferences for nuclear, gas in particular, given the recent work on the Complementary Delegated Acts for the EU Taxonomy (see our response to question 2). It should also cover overlapping and simultaneous preferences comprehensively. These members believe that EIOPA should recommend updating the implicated level 1 and 2 texts to this effect as needed.

Q5. Guideline 2 – EIOPA proposes that insurance undertakings and insurance intermediaries should collect information on whether the customer choses the Taxonomy alignment based on all investment of the insurance-based investment product or only based on those assets that are not government bonds, due to the existing limitations to screen taxonomy-alignment of government bonds. Do you agree with this approach?

The IRSG thinks that the process should be kept simple to avoid confusing or discouraging consumers. Consumers should not be overwhelmed with too many details when it is not necessary.

As it is not possible at this point in time to properly screen taxonomy-alignment of government bonds EIOPA should call on the European Commission and Member States of the EU to ensure that the proper assessment of government bonds can be done as quickly as possible and then ensure the guidelines are updated accordingly.

Q6. Guideline 2 – When the customer does not determine a specific “minimum proportion” for aspects a) and b), EIOPA proposes that insurance undertakings and insurance intermediaries could guide the customer by providing standardised minimum proportions to help the customer in determining a minimum proportion. Do you believe that the guidelines should specify how granular should be such standardised minimum proportions?

Some members of the IRSG do not believe that there is a need to specify in the guideline how granular the minimum proportions should be. Insurers and insurance intermediaries are better placed to set the standardised proportions to reflect the reality of the product offering. Where, despite the explanations and questions put to the customers, their objectives with regard to sustainability remain abstract, then these still reflect his sustainability preferences as the basis for the suitability assessment. The Delegated Act does not require customers to provide detailed specifications on sustainability if they do not want to. We support the pragmatic approach on this point proposed in point 35.

Other members believe that to avoid that the suitability test becomes a complicated tick-the-box exercise, the first step of the information collection on sustainability preferences should be to explain what these preferences are and give examples and context of sustainability in the product category(s) that the consumer is being advised on. The overall focus should help to manage the expectations and increase the understanding of consumer over how far products and portfolios are actually likely to have an impact in line with their sustainability preferences. Standardising minimum proportions could have merit if it applies as a logic across financial products, but should also include context on what is available more generally on the market.

As mentioned in the responses to questions 2 and 4 some members believe that additional guidance and a Q&A could help ensure that this is properly achieved, alongside the introduction of minimum criteria for Article 8 and 9 products. These members believe that EIOPA should recommend updating the implicated level 1 and 2 texts to this effect as needed.

Q7. Guideline 2 – Do you agree with the suggested approach where customers answer that they do have sustainability preferences, but do not state a preference with regard to any of the specific aspects mentioned under a) to c) or with regard to a minimum proportion with regard to points a) and b) of Article 2 (4) of Commission Delegated Regulation 2017/2359, as amended? If yes, do you believe that the supporting guideline should be more prescriptive with regard to the procedures insurance undertakings and insurance intermediaries should adopt in the case where a customer does not determine specific sustainability preferences?

The IRSG thinks that the proposed approach is difficult to implement and it would make the process long and burdensome for consumers. The IRSG does not believe that the guideline should be overly prescriptive.

The approach aims to tackle an important issue, which is that consumers may have high expectations for sustainable products, but not be able to easily understand or express these expectations as sustainability preferences in the format set out in the Delegated Regulation. Point 13 should be adapted to ensure that the consumer does not simply have to go through the same explanations a second time. Some members believe that the consumer could be asked additional follow up questions to ascertain and also manage their expectations. These questions could be specified in the additional guidance and Q&A suggested in the response to question 4.

On the other hand, the Delegated Act requires distributors to enquire about the sustainability preferences of the customers and this process should not be used as a tool to persuade them that they have a preference, when they do not (see in this respect article 9.6 of the Delegated Act which confirms there is no need for a client to be pushed into setting a preference). A balance should be found to ensure that no undue pressure is put on intermediaries to seek special reasoning for preferences (or adaptation of preferences).

Q8. Guideline 2 – Do you consider that further guidance is needed to clarify how insurance undertakings and insurance intermediaries should collect information on the customer's sustainability preferences?

The proposed Guideline 2 should not be unnecessarily granular, which could pose problems with its implementation. Some IRSG members do not believe that further guidance is needed.

Please refer to the responses of some members to questions 4, 6 and 7 that suggest adjusting the guidelines, but also call for additional specific guidance and Q&As on ascertaining consumer sustainability preferences. These members believe that EIOPA should recommend updating the implicated level 1 and 2 texts to this effect as needed.

Q9. Guideline 3 – Do you agree with the approach with regard to the periodic assessment?

Overall, the IRSG agrees with the approach and appreciates the specification that insurance intermediaries and insurers are not required to conduct the periodic assessment at the date of the application of the new requirements, but only at the next regular update of the existing suitability assessment, when a periodic assessment of suitability is provided.

Some members believe that this should be a mandatory not an optional requirement and that the guidelines should also be updated to ensure that the situation where a change in the product occurs that means it is no longer in line with unchanged consumer sustainability preferences. These members believe that EIOPA should recommend updating the implicated level 1 and 2 texts to this effect as needed.

Q10. Guideline 4 – EIOPA provides guidance on how to use the SFDR disclosures under Solvency II Directive to assess whether an insurance-based investment product matches the sustainability preferences of the customer in order to make a personal recommendation. Do you agree with the approach?

Some IRSG members would recommend to re-consider paragraph 24, with a view to remove overly prescriptive requirements that go beyond the scope of the guidelines.

Other members believe that the guidance is useful, but compliance with the ongoing retention of the amounts of sustainable investments and environmentally sustainable investments as indicated in the pre-contractual disclosures under Article 185 of the Solvency II Directive should be monitored to ensure that minimum proportions of sustainable investments remain in line with the commitments made.

In case only formal data from prospectus or website publication can be used (paragraphs 23, 25, 27 and 29), this will in practice lead to the situation that beginning of August only very limited information will be available to match products with customer preferences regarding sustainability.

The industry solution that had been agreed with Asset Managers (AM) to bridge the situation in good faith (assuming that AM would share such data in the EET they are planning to issue in the next prospectus update, marked with an “I” = indicative): if “I” cannot be used, regulators should understand that it will result in little products available for matching with customer sustainability preferences.

The first year should be seen as phasing-in for all market participants, stakeholders and customers to get used to the sustainable finance framework in retail distribution, giving some room for testing and adapting the processes to finally identify an effective process. For this purpose, advisory processes should be tested with customers to evaluate which type of advice can achieve the best results in informing customers.

Q11. Guideline 4 – For multi-option products, EIOPA provides guidance on how to assess whether an insurance-based investment product matches the sustainability preferences of the customer in order to make a personal recommendation. Do you agree with the approach?

Some IRSG members would suggest ensuring consistency with the ESMA's approach using "could" instead of "should" here to allow more flexibility for the different types of MOPs.

They believe that advice on sustainability preferences should be limited to the investment options and not aggregated among the options selected. Any proportions given to the customer might change with the value and allocation of the respective options and it is therefore impractical for insurers to guarantee this. Furthermore, they observe that the value of the requested information may not be obvious to the customers.

Other members agree with the approach taken by EIOPA.

Q12. Guideline 5 – Do you agree with the approach outlined with regard to the situation where the customer makes use of the possibility to adapt the sustainability preferences?

Some IRSG members believe that there is no need of further guidance.

They believe that for the initial phase of implementation of the new requirements, as long as full SFDR KID information is not available, a simplified assessment of the customers' sustainability preferences should be allowed, especially if the customer has high or no such expectations.

Other members believe that the effective response and recommendation where a firm cannot match the sustainability preferences of a consumer should not be to simply adapt the preferences. It undermines the assessment of these preferences in the first place and risks creating a check-the-box exercise, rather than meaningful advice based on expert assessment. The first response should be to provide advice as to whether there are other alternatives on the market (but not listing them as part of the suitability statement) that could match the sustainability preferences of the consumer. The advisor should also make it very clear that the firm cannot meet these preferences in these cases. If a consumer independently decides to adapt their sustainability preferences, then the advisor should explain the consequences and impact of doing this. Further guidance and a Q&A as outlined in the response to question 4 should be used to deal with this issue.

Q13. Guideline 6 – Do you agree with the guidance regarding to the arrangements necessary to ensure compliance with the record-keeping requirements or do you believe that further guidance on this aspect should be needed?

Some IRSG members do not believe that further guidance would be helpful.

They believe that the intermediary should not be burdened with an obligation to document with a clear explanation of the reasons for adaptation: any private choice and preference of the customer should be acceptable and the intermediary should not be brought into a situation to challenge the reasoning of the customer.

Other IRSG members believe that the requirement to document the decision of the consumer is important, but would only be effective if there is context available for national competent authorities (NCAs). To this end suitability assessment and sustainability preferences should be recorded and analysed, including any decisions to adapt preferences. This should include an appropriate level of detail, to detect potential issues around shepherding consumers to certain products and cases where adapting preferences has become the standard procedure.

They believe that NCAs should conduct mystery shopping exercises to experience the advice being provided where there is an identified significant occurrence of consumers adapting their sustainability preferences. Based on this exercise NCAs should then assess whether to intervene and to address issues detected.

Q14. Guideline 7 – Do you agree with the guidance regarding to the qualification of employees of an insurance undertaking or insurance intermediary employees or do you believe that further guidance on this aspect should be needed?

The IRSG believes that professional training and development are very important aspects and the IDD framework already includes qualification requirements. Paragraph 38 seems to include all employees of the insurance undertaking or insurance intermediary. It should be clarified that the focus is on the employees who are carrying out insurance distribution activities in relation to IBIPs. The IRSG also thinks that the European Commission and EIOPA could play a role in raising EU citizens' financial and insurance literacy, including on sustainable finance aspects.

It is crucial that the employees in the financial industry are competent and updated on how sustainability affect investment, society and customers. However, the IDD and the additional sustainability guidelines put pressure on financial employees and should be addressed by making sure that continuous training and development must be ensured for the employees for them to possess an appropriate level of knowledge and competence in relation to the products offered. Furthermore, employees should be given adequate time and resources to be able to provide all relevant information to customers about the products that they provide. As sustainability considerations are a rather new part of the suitability assessment, it is crucial that education on sustainability and accountability is part of different training and competence programs within the financial institution. This should be part of companies' yearly education plans.

The results of three studies conducted by NFU (Nordic Financial Unions) (Performance Measurement Systems (2016) & Coping with Compliance (2018 and 2021)) showed that finance employees are under high pressure at work. Pressure on employees has increased (and further challenged by the pandemic) and they are faced with extensive regulatory requirements and high sales targets in their everyday work. Add risk of downsizing and layoffs to the equation and you find a situation where fewer employees are expected to manage higher regulatory requirements as well as their performance targets in a pressured working environment. Having that in mind, it is important that employees are given the time needed to gain the competence needed to fulfil the aim of the rules and further challenges that sustainability guidelines pose.

Q15. What level of resources would be required to implement and comply with the guidelines (organisational, IT costs, training costs, employee costs, etc., differentiated between one off and ongoing costs)? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

Insurers and insurance intermediaries need to integrate further questions into their questionnaires, adapt IT systems and databases, processes and documentation. The distribution process might become longer and more burdensome, thus discouraging potential customers. In addition, there are still challenges linked to data availability and incoherent timelines in the overarching legislation.

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