IRSG

INSURANCE AND REINSURANCE STAKEHOLDER GROUP

IRSG input to EIOPA's consultation on the Opinion on sustainability claims and greenwashing in the insurance and pensions sector

IRSG-2024-12

European Insurance and Occupational Pensions Authority

- **<u>Question 1:</u> Do you agree with the above understanding of what sustainability claims are and how they can be misleading?**

Within this opinion, EIOPA chooses the term 'sustainability claim' and gives its own definition. However, within several regulatory proposals, the term 'environmental claim' is favoured to refer to a similar concept. EIOPA must take into account the different regulatory proposals currently being discussed at Parliament's and Council's level to ensure consistency and prevent further confusion.

As it was highlighted by EIOPA's opinion, misleading information and trustworthiness are crucial issues when considering greenwashing and sustainability claims. One way of tackling these issues is to use consistent and unified vocabulary and definitions.

Section 3.4: Any definition of "misleading" sustainability claims should be consistent with formal regulation, namely SFDR, IDD, MiFID II, UCITS, CSRD and Unfair Commercial Practices Directive (and other regulations that are to be defined precisely).

- The statement *"Therefore, the term "misleading" is understood as an umbrella term that covers the following non-exhaustive list of issues: selective disclosure, empty claims, omission or lack of disclosure, vagueness or lack of clarity, inconsistency, lack of meaningful comparisons or thresholds, unsubstantiated, misleading imagery or sounds, irrelevance, outdated information, misleading sustainability-related terminology, falsehoods,."* seems to be very broad and difficult to find safe ground on what does / does not constitute a misleading claim. For example, potential flawed information due to lack of ESG data must be clearly differentiated from cases of intentional non-compliance with existing regulatory requirements which may be considered as greenwashing.
- This statement is all the more broad since sustainability claims/definitions may already be "misleading" in the regulation itself starting with the taxonomy. Many definitions provided in the context of the items belonging to the different dimensions of ESG in the regulations addressing sustainability may already appear "selective", "vague" and "inconsistent".
- Therefore, IRSG would recommend that there should be a Guidance from EIOPA explaining these 4 Principles with good practices and bad practices, similar to the grey listed and blacklisted terms as in Unfair Contract Terms Directive. This will be a useful guide for stakeholders. Examples that are already in this consultation will also be helpful to other stakeholders.

Greenwashing should be limited to sustainability claims that are misleading. They should not be extended to processes or other fields that are linked to sustainability issues. For example, if a

company does not fill precontractual templates for products with ESG features, it should not be considered as greenwashing, but rather as a lack of compliance with SFDR requirements.

EIOPA should also take into account the existing evidence provided by published independent or academic surveys and research, in particular in the area of unit-linked life insurance and insurance-regulated pension products. In particular:

1/ Independent surveys[1] show that a majority of individual investors expect real world impact from finance products which are labelled as "green" or "sustainable", however, the majority of them cannot detect impact-washing without external support. In this study analyzing the biggest 450 article 8 and article 9 (SFDR categories) funds, only 27% of all in scope funds were associated with environmental impact claims. No fund with an environmental impact claim could sufficiently substantiate its claim according to the updated UCPD Guidance indicating a substantial potential legal risk. A high number of misleading environmental impact claims in legal documents (including SFDR disclosures) and commercial marketing materials. Therefore, in order not to mislead the majority of people investing in units claiming any sustainability relationship, EIOPA should require that any sustainability claim be accompanied by a clear statement indicating alongside if the fund or unit has any impact claim in the real world.

2/ Recent research from Yale University and Boston College[2]: This study defines Impact elasticity as the change in environmental impact of a firm due to a change in its cost of capital.

- A reduction in financing costs for firms that are already green leads to small improvements in impact at best.
- In contrast, increasing financing costs for brown firms leads to large negative changes in firm impact. Sustainable investing that directs capital away from brown firms and toward green firms may be counterproductive in that it makes brown firms browner without making green firms greener.
- Also, brown firms face very weak incentives to become greener.
- And due to a mistaken focus on percentage reductions in emissions, the current sustainable investing strategies such as negative and positive screening primarily reward green firms for economically trivial reductions in their already low levels of emissions at best.

3. Research from BETTER FINANCE[3] also shows that at least some sustainability labels could also be de facto counterproductive, for example by excluding only the best oil and gas companies in

[1] MARKET REVIEW OF ENVIRONMENTAL IMPACT CLAIMS OF RETAIL INVESTMENT FUNDS IN EUROPE - 2DII research, August 2023

[2] November 2023 Research paper on counterproductive sustainable investing: the impact elasticity of brown and green firms: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4359282

[3] BETTER FINANCE Paper on Transition Investing published November 2023:

the world in terms of renewable energy transition efforts and investments. For example, the French Public and popular "ISR" label for investment funds (therefore for units in unit-linked insurance) has just decided to de facto exclude the 3 biggest European companies which account for about 5% of the World's oil and gas production … but 60% of World's total oil and gas companies' investments in renewable energy (source: International Energy Agency, 2023).

- **<u>Question 2:</u> Stakeholders views are sought where they believe that other requirements – beyond those already identified by EIOPA in this Opinion – already cover sustainability claims.**

The insurance industry is already regulated in relation to sustainability claims, transparency and the implementation of robust process and controls. In order to prevent occurrences of greenwashing, the interrelation of the draft opinion with the IDD framework and the guidelines provided by EIOPA, especially with the Products Oversight Governance (POG) requirements and the suitability assessment under the IDD, should be clarified. Moreover, the proposed amendments to the Regulatory Technical Standards of the SFDR as the potential review of the SFDR (level 1) should be considered in regard to increased level of standardization of sustainability disclosures and improved transparency towards consumers.

In addition, clear reference should be made to contract law, prospectus liability regime and marketing regulation in addition to the specific Sustainable Finance Regulation in SFDR, MiFID II, IDD, UCITS and CSRD. Also, the EIOPA opinion must be consistent with existing EU rules and EU guidelines. In particular – regarding unit-linked insurance products – the opinion must be consistent with the existing rules on greenwashing and sustainability claims already applying to the units themselves, which are most often investment funds (UCITs or AIFs). For example, those that will be subject to the upcoming ESMA guidelines fund names.

In particular, several regulatory proposals (the Directive on Empowering Consumers in the Green Transition and the Green Claims Directive) have not been examined by EIOPA in this Opinion. These proposals have not yet been finalised and adopted. Nevertheless, they will constitute the backbone of the EU's legislation on greenwashing. EIOPA should take them into consideration to ensure that the finalised guidelines will not become obsolete as soon as these proposals will enter into force.

- **<u>Question 3:</u> Do you agree with Principle 1 and 2 and whether these principles help ensuring that sustainability claims are accurate?**

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https://betterfinance.eu/publication/transition-investing-key-challenges-and-opportunities/

We agree with the overall principles, however, we would like to share some comments regarding the specific underlying proposals.

Regarding Principle 1

Section 3.13: Specific naming conventions for (life)insurance products should not be introduced in this Draft Opinion, but rather in a separate consultation with detailed analysis and different options that also take the specifications of life-products (MOPs, General Account etc.) into account.
In any case, the EIOPA wording and latest ESMA wording should be ultimately aligned to ensure a common understanding and to clarify terms like *"substantial share of sustainable investments"* and "*invest meaningfully in sustainable investments":*

- EIOPA wording: *"For example, providers should use terms "sustainable" and "green" only for products that disclose under Article 9 of SFDR, or that disclose under Article 8 of the SFDR and have a <u>substantial share of sustainable investments</u>, provided that they do not make investments in fossil fuels, except in economic activities classified as sustainable under the EU Taxonomy."*
- ESMA wording: *"ESMA considers it more appropriate that sustainability-related terms in funds' names should be used along the following lines: the fund should (1) apply the 80% minimum proportion of investments used to meet the sustainability characteristics or objectives, (2) apply the Paris-aligned Benchmark (PAB) exclusions, and (3) <u>invest meaningfully in sustainable investments defined in Article 2(17) SFDR</u>, reflecting the expectation investors may have based on the fund's name."*

Regarding Principle 2

Section 3.23: We would suggest changing the wording to "*Providers should review and monitor their strategies, policies, operations and products to ensure that any **material** changes in their sustainability profile are accurately reflected in their sustainability claims.*"' It is important to follow the principle of proportionality to avoid a considerable administrative burden. One example would be the disclosure of a transition plan in a sustainability report including Scope 3 greenhouse gas emissions where data from companies in the value chain is used. A restatement of emission disclosures of a company in the value chain that has only minor impacts on the transition plan of the own company should not lead to an immediate restatement of the sustainability report.

Section 3.25: The disclosure of changes should be subject to the relevance for customer impact. Besides, a prompt communication of a product's sustainability feature changes should take operational considerations into account, such as the update of printed communication.

- **<u>Question 4:</u> Do you agree with Principle 3? In particular do you agree that due diligence and proportionality should be taken into account when determining if a sustainability claim is substantiated with clear reasoning and facts?**

In general, we agree with Principle 3.

Due diligence, on the one hand, is essential to ensure consumers' trust in providers making sustainability claims. Proportionality, on the other hand, is essential to ensure that microenterprises and small and medium sized enterprises (SMEs) are not overburdened and not able to make rigorously substantiated sustainability claims.

As regards quantitative statements, due diligence requirements should reflect proportionality as regards availability of data and data sources. Data availability is still limited and methodology to generate data still evolving. Also, in some areas still estimates are of use (and accepted). Current lack of robust ESG data (or reliable third-party data) - mainly due to the lack of reporting by companies and the lack of transparency by ESG data providers and ESG ratings providers on methodologies and assumptions- may create unintentionally flawed information. However, with CSRD roll-out, we expect more consistent and precise data to foster analytics.

Section 3.41: We fully endorse the importance of substantiating sustainability claims as outlined in principle 3. However, we would like to highlight two points of attention:

- In general, it is crucial to differentiate between sustainability claims that are governed by regulations, such as e.g. CSRD/SFDR, and those that are not. When a sustainability claim is prescribed by applicable regulation, it is essential to leave room for the specific requirements for substantiation and verification therein. For example, in paragraph 3.41, which focuses on substantiating net-zero commitments, alignment with the principles set forth in CSDDD, CSRD, and ESRS (especially ESRS E1) is necessary. While ESRS provide requirements for disclosing information on net-zero targets and transition plans, the CSDDD will require companies to adopt such plans. Consequently, general additional principles for substantiating these plans and committments should actively support existing legal requirements and avoid contradicting them or introduce further requirements without adding value. In general, indefinite terms, such as "*continuous reporting*" (principle 3.41) should be avoided. However, for companies in scope of CSRD and CSDDD, "(*continuous) reporting on the implementation status of their plans*" (principle 3.41.) should be fulfilled with the disclosure of the annual sustainability report in accordance with CSRD and ESRS and compliance with related CSDDD requirements.
- The substantiation of sustainability claims should refrain from siloed approaches by which all the aspects that can be drawn from an item should be assessed together.

Section 3.52: As regards alliances committed to achieving Net Zero emissions by 2050, we support specific requirements substantiating the alliance membership. For example, the UN-convened Net-Zero Asset Owner Alliance (NZAOA) requires members to make the commitment, set intermediate decarbonisation targets (updated every five years), and report on progress annually.

- **Question 5: Do you agree with Principle 4 and the need to ensure that sustainability claims made by providers are understandable and accessible for the targeted stakeholders?**

In general, we agree with Principle 4.

EIOPA must ensure that a balance is struck between providing consumers with the right amount of information to not under- or over-inform them, and not placing undue burden on providers. It will support EIOPA's goal of providing more clarity and transparency to consumers.
In particular, we support the requirement outlined in section 3.56 that *"sustainability claims and their substantiation should be tailored to the target audience".*

To facilitate providers' tasks, this opinion should align with already well-known reporting requirements such as the SFDR rules on how financial operators must present their documentation relating to the sustainability of their insurance products.

Section 3.62: As regards education of retail customers on sustainable finance regulations we support dedicated material issued by EIOPA, building on EIOPA´s Guidance on the integration of sustainability preferences in the suitability assessment under the IDD and the ESA´s factsheet "Investments, loans, insurance or pensions with a sustainable focus: What do you need to know?"

An updated Guidance from EIOPA should explain the 4 Principles with good practices and bad practices, similar to the grey listed and blacklisted terms as in Unfair Contract Terms Directive. This will be a useful guide for stakeholders.

- **Question 6: What do you think would be the costs and benefits of this opinion?**

- **Question 7: Do stakeholders have other comments on this opinion?**

As briefly mentioned in questions 1 and 2, ensuring consistency with other pieces of legislation such as the Sustainable Finance Disclosure Regulation (SFDR), the Product Oversight and Governance (POG), the Unfair Commercial Practices Directive (UCPD) and regulatory proposals such as the Green Claims Directive and the Directive on empowering consumers in the green transition is

essential to develop a coherent and consistent EU-approach on greenwashing. EIOPA must also make sure that the guidelines developed do not overlap with the requirements set out in these pieces of legislation.

Finally, as stated in IRSG's advice on EIOPA's technical advice on greenwashing risks in March 2023, several difficulties should be taken into consideration: the lack of available and/or reliable data on the underlying funds, the fragmented and constantly changing legislation, the unclarity in the regulatory framework that could create diverging interpretations and confusion, the mismatch in timelines and application dates, the complexity of the new definitions and the short timeframe for the implementation of the new rules.

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