CONSULTATION PAPER

on the Opinion on sustainability claims and greenwashing in the insurance and pensions sectors

EIOPA-BoS-23/450
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European Insurance and
Occupational Pensions Authority

RESPONDING TO THIS CONSULTATION PAPER

EIOPA welcomes comments on the Consultation paper on the Opinion on sustainability claims and greenwashing in the insurance and pensions sectors.

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 via the EU Survey [link], by **12 March 2024 23.59 CET.** Contributions not provided via the EU Survey or after the deadline will not be processed. In case you have any questions please contact EIOPA.greenwashing@eiopa.europa.eu.

Publication of responses

Your responses will be published on the EIOPA website unless: you request that they be treated confidentially, or they are unlawful, or they would infringe the rights of any third party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.

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[1].

Declaration by the contributor

By sending your contribution to EIOPA you consent to publication of all information in your contribution in whole/in part – as indicated in your responses, including to the publication of your name/the name of your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. EIOPA, as a European Authority, will process any personal data in line with Regulation (EU) 2018/1725. More information on how personal data are treated can be found in the privacy statement at the end of this material.

Next steps

EIOPA will consider the feedback received, develop the impact assessment based on the answers to the questions included in this consultation paper, as well revise this Opinion accordingly.

[1] Public Access to Documents

OPINION ON SUSTAINABILITY CLAIMS AND GREENWASHING IN THE INSURANCE AND PENSIONS SECTORS

1. LEGAL BASIS

1.1. The European Insurance and Occupational Pensions Authority (EIOPA) provides this Opinion on the basis Article 29(1)(a) of Regulation (EU) No 1094/2010[2]. This Article mandates EIOPA to play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union.

1.2. EIOPA delivers this Opinion on the basis of:

a) Regulation (EU) 2019/2088[3] (SFDR) which lays out disclosure rules on sustainability-related aspects at both entity and product level.

b) Commission Delegated Regulation (EU) 2022/1288[4] (SFDR DR)

c) Article 17 of Directive (EU) 2016/97[5] (IDD)

d) Commission Delegated Regulation (EU) 2017/2358[6] (POG DR)

e) Commission Delegated Regulation (EU) 2017/2359[7] (Suitability DR)

f) Article 26 of Regulation (EU) 2019/1238[8] (PEPP Regulation)

g) Article 36 and 41 of Directive (EU) 2016/2341[9] (IORP II)

h) Article 6 and 8 of Regulation (EU) 1286/2014[10] (PRIIPs Regulation)

[2] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).
[3] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).
[4] Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports (Text with EEA relevance)
[5] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19).
[6] Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ L 341, 20.12.2017, p. 1).
[7] Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (Text with EEA relevance.)
[8] Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1).
[9] Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) (OJ L 354, 23.12.2016, p. 37).
[10] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

i) Articles 269 and 275a of Commission Delegated Regulation (EU) 2015/35[11] (Solvency II DR)

1.3. This Opinion is addressed to the competent authorities[12], as defined in Article 4(2) of Regulation (EU) No 1094/2010.

1.4. The Board of Supervisors has adopted this Opinion in accordance with Article 2(8) of its Rules of Procedure[13].

[11] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).
[12] Notwithstanding the fact that specific points of this Opinion describe supervisory expectations for insurance and reinsurance undertakings, insurance distributors, PEPP manufacturers and distributors, and IORPs, they are required to comply with the regulatory and supervisory framework applied by their competent authority based on Union or national law.
[13] Decision adopting the Rules of Procedure of EIOPA's Board of Supervisors.

2. CONTEXT AND OBJECTIVE

2.1. European insurance consumers and pensions savers are increasingly interested in allocating their money in a sustainable manner. According to EIOPA's 2023 Eurobarometer survey, 32% of EU consumers[14] have heard about sustainable insurance or pension products (an increase of 7 percentage points since 2022), 13% have already bought such products and 13% would consider buying them. Another 27% of EU consumers while not having heard about sustainable insurance or pension products would be interested in knowing more about them.

2.2. Insurance and pension providers[15], hereinafter 'providers', are increasing their sustainable offerings and are adapting their business models to be more sustainable. While this contributes towards the transition to a more sustainable economy, challenges emerge when providers misleadingly portray themselves and their products/schemes as sustainable by making misleading sustainability claims – i.e., greenwashing.

2.3. In its 2022 Consumer Trends Report[16], EIOPA emphasized the importance of substantiating sustainability claims made by providers. Additionally, some competent authorities have reported instances of potential greenwashing in their markets.

2.4. EIOPA further explored greenwashing in its Progress Report[17] which served as interim deliverable to a Call for Advice sent by the European Commission (EC) in May 2022. This report provides a common understanding, shared by the EBA, EIOPA, and ESMA as European Supervisory Authorities (ESAs) on what greenwashing is[18]. The progress report also highlights how greenwashing can manifest as part of the broader set of conduct risks at all stages of the insurance and pensions lifecycle[19]. Greenwashing has a substantial impact both on insurance consumers and pension savers – as they may be led into buying products that are not aligned with their sustainability preferences; and on providers – as they may incur reputational and financial damage when a greenwashing occurrence becomes publicly known.

2.5. Conscious of the risks and impacts of greenwashing, several competent authorities have started to integrate the monitoring of sustainability claims and the risk of greenwashing in their supervisory activities. Through competent authorities' activities, and its own market monitoring activities, EIOPA noticed an increasing number of potential cases of greenwashing. Examples include difficulties in accessing sustainability-related regulatory disclosure at product level, inconsistencies at entity-level between sustainability-related

[14] In this opinion, "consumers" is understood as a term that can englobe consumers, savers, pension scheme members and beneficiaries. This term is therefore used to refer broadly to people using or benefitting from pensions and insurance services.

[15] 'Insurance and pension providers' captures insurance undertakings, PEPP providers, insurance distributors, and IORPs.

[16] EIOPA's 2022 Consumer Trends Report.

[17] Progress Report on Greenwashing.

[18] "a practice whereby sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants", page 9 of the Progress Report on Greenwashing.

[19] The insurance and pensions lifecycle encompasses all the product-level and entity-level stages relevant to insurance and pensions processes. The entity level stages are entity model and entity management. The product level stages are the manufacturing or design of the product or scheme, the delivery of the product or scheme, and the management of the product or scheme. More is available on greenwashing through the insurance and pensions lifecycle in EIOPA's progress report on greenwashing (link).

commitments made and other disclosures, unsubstantiated use of green terms in product names or product disclosures, use of sustainability-related visuals to promote products without substantiation[20].

2.6. The increasing number of potential greenwashing cases, and the impact of greenwashing on consumers' trust in the insurance and pension sectors, necessitates an effective, efficient, and consistent supervision of providers' sustainability claims to tackle greenwashing. However, competent authorities have reported some challenges in their supervision of greenwashing. First, the regulatory framework is complex, and they are currently in the process of developing the required expertise to assess compliance with its requirements. Secondly, there is no common approach at EU level to assess sustainability claims and greenwashing in the insurance and pensions sectors. Thirdly, legal requirements addressing greenwashing are often high-level, therefore more supervisory guidance to ensure convergence is needed. A survey to competent authorities carried out by EIOPA in January 2023 confirmed these challenges as 15 competent authorities responded that they were waiting for further guidance on the supervision of greenwashing from EIOPA.

2.7. In December 2022, the ESAs carried out a Joint Call for Evidence on Greenwashing to stakeholders. Respondents rated the marketing stage of the insurance and pensions lifecycle – which includes advertising and other non-standardized regulatory disclosures, as having the highest risk of greenwashing.

2.8. Against that background, it is important to develop a common approach to supervise all sustainability claims and greenwashing in the insurance and pensions sector to ensure consistent outcomes across the EU. To this end, this Opinion sets out a framework designed to assist competent authorities in their monitoring of insurance and pension providers and that they adhere to common principles when making sustainability claims about themselves or their products or schemes. While each principle targets different aspects, the principles can overlap due to their complementary nature.

2.9. This Opinion concerns all entities and products under EIOPA's remit, except for points of the Opinion referring to specific regulatory requirements or to EIOPA's guidance on the integration of sustainability preferences in the suitability assessment[21], which apply only to the entities and/or products in scope of those regulatory requirements and EIOPA's guidance.

2.10. This Opinion is without prejudice to and does not impede the application of the relevant EU and national regulatory frameworks applied by the competent authorities, in particular the Unfair Commercial Practices Directive[22].

[20] More information on the indicated greenwashing examples is provided in the EIOPA's Progress Report on Greenwashing.

[21] EIOPA guidance on the integration of sustainability preferences in the suitability assessment.

[22] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 22).

3. SUSTAINABILITY CLAIMS

3.1. Sustainability claims are any claims related to the sustainability profile of an entity or a product. Typical sustainability claims, conveyed through text or other mediums such as visuals, portray that products or entities benefit sustainability factors, or that they take sustainability aspects into account. These claims can be made by providers across all stages of the insurance and pensions lifecycle (i.e., business model, entity management, product or scheme manufacturing, product or scheme delivery, and product or scheme management).

3.2. Sustainability claims encompass a broad range of statements, communications or actions related to sustainability, including any regulatory disclosures (e.g., SFDR, Taxonomy Regulation) and sustainability requirements (e.g., considering sustainability-related objectives of the target market in the manufacturing of an insurance-based investment product (IBIP)). In addition, they include other forms of disclosures such as marketing information and website texts, advertising brochures, social media posts, policies, images, strategies, labels, certificates, ratings, targets, non-regulatory labels, and product names.

3.3. The use of sustainability-related terms in the product name is likely to impact consumers' investment decisions, as the name of a product is an important marketing tool that targets and reaches consumers. Relevant EU legislation provides sufficient basis for competent authorities to address the cases of inappropriate use of product names. Article 13 of SFDR provides that financial market participants and financial advisers shall ensure that their marketing communications do not contradict the information disclosed pursuant to the SFDR. Article 17(1) of the IDD provides that insurance distributors shall always act honestly, fairly and professionally in accordance with the best interests of their customers. Further, Article 17(2) of the IDD states that all information related to the subject of the IDD, including marketing communications, addressed by the insurance distributor to customers or potential customers shall be fair, clear and not misleading. According to Article 36 of IORP II, IORPs shall provide clear and not misleading information to prospective members, members and beneficiaries to support their decision-making.

3.4. There are several ways in which a sustainability claim can be misleading and, thus, conducive to greenwashing. 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. Figure 1 in Annex 1 maps the issues tackled by each of the four principles specified in this Opinion.

3.5. The EU sustainable finance regulatory framework related to sustainability claims is still maturing, considering the evolving nature of the topic. This framework does not apply to all entities and products under EIOPA's remit; for example, no specific requirements exist for the disclosure of sustainability features of non-life insurance products, although these entities and products may make sustainability claims. Notwithstanding that, misleading sustainability claims in the insurance and pensions sectors can also be addressed on the basis of general

fairness principles such as the need to be fair, clear and not misleading in Article 17 of the IDD, and the need to be clear and not misleading in Article 36 of IORP II, as well as other similar requirements in the relevant EU legislation.

3.6. Based on the general fairness requirements and specific sustainability-related requirements, this Opinion provides guidance to competent authorities on how to identify misleading sustainability claims and monitor greenwashing throughout the insurance and pensions lifecycle[23].

Question 1: Do you agree with the above understanding of what sustainability claims are and how they can be mis-leading?

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

ACCURATE SUSTAINABILITY CLAIMS

3.7. Principle 1: Sustainability claims made by a provider should be accurate, precise, and consistent with the provider's overall profile and business model, or the profile of its product(s)

3.8. Providers should make sustainability claims that are accurate, precise, and that fairly represent the sustainability profile of the product or the entity. They should avoid overstatements or unjustified emphasis on certain aspects which could create a misperception regarding the product's or entity's actual contribution to sustainability. For a sustainability claim to be accurate, the picture portrayed should be complete and not omit relevant information. For example, greenwashing could occur when a product's advertisement highlights only its minor positive environmental impacts, omitting its more significant negative effects. Furthermore, sustainability claims should be precise, clearly outlining the specific sustainability aspects upon which the claim is based, avoiding ambiguity.

3.9. If providers, as part of their strategy, have made specific sustainability-related commitments, they should ensure that these accurately reflect their overall investment strategies including their engagement with investee companies – and underwriting strategies for insurance providers. For example, a provider that has a substantial part of its portfolio invested in fossil fuels and claims that it is a leader in renewable energy investments could be conducive to greenwashing.

3.10. In the entity management, providers should ensure that their sustainability claims are mirrored in their decision-making, culture, and internal processes. If a provider portrays itself as deeply conscious of sustainability aspects, this should be reflected in its risk management

[23] The insurance and pensions lifecycle encompasses all the product-level and entity-level stages relevant to insurance and pensions processes. The entity level stages are entity model and entity management. The product level stages are the manufacturing or design of the product or scheme, the delivery of the product or scheme, and the management of the product or scheme. More is available on greenwashing through the insurance and pensions lifecycle in EIOPA's progress report on greenwashing (link).

and internal audit strategies, investment and underwriting guidelines, overall corporate culture, remuneration policies and, where relevant, policies related to other aspects.

3.11. When manufacturing products, the manufacturers' sustainability claims should be aligned with the products' features. For example, if an insurance or pension product is marketed as contributing to climate change mitigation, its features should reflect this contribution to climate change.

3.12. In line with the need to not be misleading (Article 17(2) of the IDD and Article 36(2) of IORP II), when naming a product, providers should be as specific and precise as possible. For example, a product with a focus on renewable energy should refer to that in its name, rather than use a general sustainability term such as "ESG". The use of any sustainability-related terms in the name of a product should adequately and proportionally reflect its main sustainable objective(s) or feature(s). Where relevant it should also be substantiated in the product's investment strategy.

3.13. References to sustainability in an IBIP name, or underlying investment options offered within an IBIP, should be used only when substantiated by evidence of the products' sustainability profile, including its sustainable investment objective or the characteristics promoted by the product and/or investment strategy of the IBIP. 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 substantial share of sustainable investments, provided that they do not make investments in fossil fuels, except in economic activities classified as sustainable under the EU Taxonomy. In the context of multi-option products (MOPs) this means that the name of the product should correspond in a material way to the MOP's underlying investment options.

3.14. During the delivery process, distributors should maintain accuracy and consistency of sustainability claims, ensuring that any sustainability claim made matches the sustainability considerations of the consumers. For example, when a consumer with sustainability considerations is looking for household flood insurance, a distributor highlights a flood insurance policy that offers premium discounts for eco-friendly property adaptations (i.e., home designs that reduce the risk of flood damage).

3.15. When distributing a product, broad claims about a product's environmental or social benefits should be avoided in favor of more specific claims that respond to key questions like – what the product intends to do in relation to sustainability aspects, and how and by when it intends to do this.

3.16. Product disclosures or promotional materials, including advertisements, should clearly and fairly represent the sustainability features of the product and should not overemphasize the sustainability aspects versus other aspects of the product.

3.17. Distributors should be knowledgeable about the product's sustainability features to accurately represent these to consumers and adequately assess the product's suitability against the consumers' sustainability preferences.

Product Oversight and Governance (POG)

3.18. Manufacturers and distributors of products falling under the POG DR should consider sustainability-related aspects in their POG arrangements. As part of the product approval process, manufacturers should design and market insurance products that are compatible and consistent with the sustainability-related objectives of the target market, as set out in Article 4(3)(a)(i) of the POG DR. For example, the manufacturer's processes and procedures to define the target market should include sustainability-related criteria. In the context of the product approval process to which Article 5(1) of the POG DR refers, the consideration of the sustainability factors in the product approval phase means that insurance manufacturers should ensure that the integration of sustainability factors in the product is, firstly, consistent with the sustainability-related objectives of the target market, and, secondly, they should also consider sustainability factors more broadly. That does not mean that the product should have additional sustainability-related features, nonetheless, insurance manufacturers should assess whether the product has such features. In particular, for IBIPs, insurance manufacturers should consider whether the product makes sustainable investments as defined in Article 2(17) of the SFDR, whether it makes taxonomy-aligned investments and whether it considers principal adverse impacts on sustainability factors[24].

3.19. Manufacturers should also test products in relation to sustainability considerations as part of their product testing, thus ensuring that products remain aligned over their whole lifetime with the sustainability-related objectives of the identified target market (Article 6(1) POG DR). Manufacturers should also ensure that the staff designing the products has sustainability-related knowledge consistent with the sustainability-related features of the products they design and the target market's sustainability-related objectives (Article 6(1) POG DR).

3.20. When choosing the distribution channel for products with sustainability features, manufacturers should ensure that the distributors' profile (e.g., distributors' sustainability-related knowledge and/or target market) is consistent with the products' sustainability features and the target market's sustainability-related objectives (Article 8 POG DR). Manufacturers should provide to the chosen distributors all relevant sustainability information relating to the product (Article 8(3) POG DR). This exchange of information should allow distributors to precisely assess the sustainability-related features of the product vis-à-vis the sustainability preferences of consumers and provide consumers with the relevant sustainability-related information.

Suitability Assessment under the IDD

3.21. As part of the suitability assessment of an IBIP, pursuant to the Suitability DR, insurance distributors making a recommendation on IBIPs should consider the sustainability preferences expressed by the consumer. To do that, insurance distributors offering advice on a product should collect detailed information on consumers' sustainability preferences when collecting information on investment objectives (Article 9 Suitability DR). Throughout the process, insurance distributors should adopt a neutral and unbiased approach in order not to influence the consumers' answers around sustainability preferences.

[24] Q&A 2479.

3.22. Principle 2: Sustainability claims should be kept up to date, and any changes should be disclosed in a timely manner and with a clear rationale

3.23. Providers should review and monitor their strategies, policies, operations and products to ensure that any changes in their sustainability profile are accurately reflected in their sustainability claims.

3.24. Where necessary, for example in the case of a significant shift in sustainability policies or objectives, providers should revise their claims to align with their actual sustainability practices. Where a sustainability claim is revised, adequate rationale should be provided and should be promptly communicated, or greenwashing could occur. For example, if providers have claimed to be sustainable because they joined certain associations and/or have made sustainability commitments, they should ensure such claims remain up to date, i.e., if they leave such associations and/or plan to reach the commitments through different means they should clearly communicate it. For providers under SFDR, they should ensure that their entity-level and product-level SFDR disclosures are kept up to date, and that where such disclosure is amended, a clear explanation should be published on the provider's website (Article 12 of the SFDR).

3.25. In the management and review of their products, providers should ensure that their sustainability claims remain accurate with the product's sustainability features and consumers' sustainability preferences throughout the life of the contract. If a product's sustainability features change over time, these changes should be promptly and transparently communicated to consumers or scheme members. For example, if a product initially discloses a high share of sustainable investments, but later discloses a low share of sustainable investments, the provider should clearly communicate this change to the consumer and offer remedial options, where appropriate, to avoid potential greenwashing.

POG

3.26. Manufacturers and distributors should continuously monitor and periodically review products to ensure that they remain consistent with the sustainability objectives of the target market, and that products are being correctly distributed (Article 7(1) of the POG DR). The product monitoring and review should take place on a proportional level vis-à-vis the product's features, including any sustainability features.

3.27. In their product monitoring, manufacturers should identify significant events that might impact the profile of the product (Article 7(2) of the POG DR) – including sustainability-related aspects of the product – and thus impact the consistency of previously made sustainability claims. For example, an insurance product previously considered sustainable, is no longer considered sustainable due to new scientific evidence. Where such event is identified, manufacturers should carry out product reviews (i.e., "trigger-based reviews").

3.28. Additionally, manufacturers that identify circumstances, including extrinsic ones, related to the sustainability profile of a product that may adversely affect consumers or that may affect the sustainability preferences of the target market, should take appropriate measures including reviewing the product and/or determining if the circumstances have led to

consumer detriment (Article 7(3) of the POG DR). This includes evidence that the type of investment may not lead to the pursued sustainability objective.

3.29. Moreover, where distributors see that an insurance product is not or is no longer in line with the sustainability-related objectives of the identified target market, distributors should inform manufacturers accordingly and amend their distribution strategy (Article 7(3) of the POG DR).

Accuracy of sustainability claims (principles 1 and 2): good and bad practices

Bad practices:

3.30. An insurance provider joined an alliance that pledged to transition its underwriting portfolio to Net Zero emissions by 2050. After joining the alliance, this provider uses it to portray itself via various marketing channels such as advertisements and non-regulatory disclosure as a "green" provider. However, a few years after joining the provider decides to leave the alliance. After its departure, the provider did not issue a public statement on its website highlighting its departure from the alliance and the reasons for this departure. It also does not indicate whether its sustainability ambitions have changed, nor if it will continue to pursue on an individual basis the net zero commitments it has previously made. Instead, the website of this provider still has articles related to its membership in the alliance.

3.31. For a given life insurance with investment options, an insurance provider identifies a target-market with specific climate-related sustainability objectives but fails to conduct appropriate qualitative testing and scenario analysis to verify if the investment options selected for the product align with those sustainability objectives.

3.32. An insurance provider has a multi-option product that is named "Climate protection". However, most of the investment options proposed by the insurance provider's MOP do not focus on investments aimed at protecting the climate.

3.33. The SFDR disclosure of a unit-linked product makes only generic reference to indicators to evaluate the environmental and social characteristics and good governance principles of the investee companies without actually disclosing them.

3.34. An insurance product discloses under article 9 SFDR, however it discloses a sustainable investment objective with 0% commitment.

Good practices:

3.35. As part of a pension scheme a pension provider offers a climate change mitigation focused investment option. This option only invests in companies with a high share of Taxonomy-aligned activities that contribute to climate change mitigation.

3.36. In relation to investment options of multi-option products, an insurance provider systematically conducts scheduled reviews of external data, sourced from rating agencies and asset managers, to ensure that the investment options continue to align with the specified sustainability objectives of the target market.

3.37. An insurance provider makes a sustainability-related commitment and advertises it after making this commitment. It regularly reports publicly on how it is progressing towards the commitment and clearly and accurately communicates changes – if any – to its approach and strategy.

3.38. An insurance provider offers an IBIP that is named "Paris-aligned investment". This product's aim is to achieve alignment with the Paris agreement goal of limiting global warming to 1.5 degree Celsius. This aim is further detailed in the product's regulatory and non-regulatory disclosures.

Question 3: Do you agree with Principle 1 and 2 and whether these principles help ensuring that sustainability claims are accurate?

SUBSTANTIATED SUSTAINABILITY CLAIMS

3.39. Principle 3: Sustainability claims should be substantiated with clear reasoning and facts

3.40. Providers should only make sustainability claims that they are able to adequately substantiate or for which they have done sufficient due diligence – taking into account proportionality – to ascertain that the information based on which they made the claim is accurate. Sustainability claims should be adequately explained and backed by clear rationale and verifiable and up-to-date facts. In line with Principle 2, any change to the sustainability profile of a product or entity should be adequately substantiated.

3.41. Where sustainability claims relate to longer-term sustainability objectives, for example Net Zero commitments, providers should substantiate such claims with credible plans, interim targets and continuous reporting on the implementation status of their plans. These plans and targets should be integrated into the provider's strategy documents, rather than exist as standalone documents. If this is not possible, the provider's website should clearly explain how these documents relate to one another.

3.42. Where providers use an ESG rating to make claims about their sustainability profile or the sustainability profile of a product, they should explain what that ESG rating measures and why it is a relevant measure of their profile or of their product's profile.

POG

3.43. When designing products with sustainability features, manufacturers under POG should substantiate the designs by conducting product testing vis-à-vis the target market's sustainability objectives. Manufacturers should first carry out market research to understand what the sustainability preferences of different target markets are, provided that such research has not been done by other entities (e.g., the fund manager for a given fund that is offered as an investment option in an insurance product). Based on this they should carry out qualitative and quantitative testing, including via scenario analyses, to determine if the

products' sustainability features are aligned with the target market's sustainability preferences (Article 6(1) of the POG DR).

3.44. In the delivery of products falling under the POG DR, distributors should substantiate their product recommendations based on the sustainability information provided by the manufacturers of the products and by taking into account any sustainability-related objectives of the consumers (Article 10 of the POG DR).

Substantiation of sustainability claims (principle 3): good and bad practices

Bad practices:

3.45. An insurance provider portrays an investment option or a product as sustainable but provides vague sustainability-related information lacking any SFDR references. The insurance provider ambiguously claims that more than 50% of the product's assets are invested in companies that "consider" certain ESG (Environmental, Social, and Governance) aspects in their strategy.

3.46. An insurance provider calls a non-life insurance product sustainable because it says that its claims management process is very sustainable, however it does not explain how this process benefits sustainability factors.

3.47. An insurance provider engages in misleading practices by making ambiguous and overly positive sustainability claims. It claims "a vast choice of responsible and sustainable investments opportunities" and "the possibility to direct your investments towards the real economy and sustainable initiatives," without providing concrete details about such sustainability-related investment options. It also makes general and ambiguous claims on its website about "the absolute urgency of responsible and sustainable investing," even though its product offerings do not have proven sustainability features.

3.48. A pension provider committed to transitioning its investment portfolio towards net zero; however, it does not specify how it plans on reaching this commitment.

3.49. In the financial product disclosures under Solvency II, as required by the SFDR, the answer to the question "Which environmental or social characteristics are promoted by this product?" is "This product promotes environmental and social aspects in accordance with Article 8, this product makes sustainable investments, which do not cause significant harm to the environment and society" but there is no detailed information about which aspects are promoted and what is the objective of the sustainable investments.

3.50. An insurance or pension provider explains that the rationale for not considering Principal Adverse Impacts is that it employs fewer than 500 employees without stating clear reasons for why they do not do so.

3.51. An insurance provider under SFDR does not provide adequate information on how their remuneration policy is consistent with the providers' integration of sustainability risks.

Good practices:

3.52. An insurance provider joined an alliance committed to achieving Net Zero emissions by 2050 in its underwriting portfolio. Upon joining, the insurance provider transparently outlined its long-term sustainability goals and established a roadmap with science-based intermediary targets. Internally, this provider puts in place rigorous monitoring mechanisms to track progress. To ensure external accountability, this provider frequently publishes progress reports detailing achievements toward these intermediary goals. The provider also actively collaborates with alliance members to share best practices and to stay updated on sustainability trends.

3.53. A pension provider offers a pension product named "Funding the transition and your retirement". This scheme has a decarbonization target, as its goal is to decrease the greenhouse gas emissions that result from the activities the product will invest in. Moreover, the product's disclosure highlights how it intends to achieve this goal: i) by investing in assets (e.g., companies, projects or sovereigns) that are expected to lower the GHG emissions of their activities and by ii) engaging with investee companies to influence their business decisions to lower GHG emissions.

Question 4: 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?

ACCESSIBLE SUSTAINABILITY CLAIMS

3.54. Principle 4: Sustainability claims and their substantiation should be accessible by the targeted stakeholders[25]

3.55. Visibility, accessibility and understandability of sustainability claims and their substantiation are essential for stakeholders' understanding and decision-making.

3.56. Sustainability claims and their substantiation should be tailored to the target audience. A balanced approach should be taken that favours pertinent information while providing additional context where necessary. If the claim is directed at consumers, scheme members or the broader public, complexity and jargon should be limited where possible. Easy to understand language and clear explanations should be used without compromising the key elements substantiating the claims. Where more complex terms need to be used, for example in disclosures required by specific sustainability-related requirements, providers should accompany them with clear and easily understandable explanations, where possible in the disclosure and/or during the advice process.

3.57. Throughout the insurance and pension lifecycle stages – encompassing entity-level sustainability strategies and policies, product manufacturing, delivery, and management – it

[25] The term "stakeholder" can englobe various actors such as consumers, insurance and pension providers, supervisory authorities, the general public, or other interested third parties.

is important that sustainability claims are coherent with the comprehension level of the stakeholders involved. This entails conveying sustainability information in a manner that is both accurate and understandable, fostering a clear understanding and facilitating informed decision-making. Relevant sustainability information should not be shrouded by less pertinent information, as this could make it challenging for consumers to find and focus on the essential sustainability information.

3.58. Online platforms, like providers' websites or price comparison websites, are common references for consumers seeking information. Sustainability information on such platforms should be easily accessible and should not require consumers to click an unreasonable number of times to get to the wanted set of sustainability information. Website layouts should promote a consumer-friendly experience, enabling consumers to easily locate and understand the sustainability information, including by providing initial basic information whilst allowing access to more information through layered disclosures. For providers under SFDR, their entity and product level SFDR disclosures should be published in a prominent easily accessible area of the website (Article 10 of the SFDR, Article 2 of the SFDR DR).

3.59. The structure of the sustainability documentation – particularly for non-regulatory disclosure and where possible for mandatory disclosures – should be easy to browse through and allow easy navigation. Particularly elements such as imagery and length should be considered. Initiatives to render the documentation clearer, such as the use of pop-up boxes or informative boxes with useful sustainability-related insights is encouraged as it can significantly improve consumers' experience and understanding.

3.60. Manufacturers of products falling under POG should test, including via consumer testing if relevant, whether the documents substantiating the sustainability claims made about the product allow the target market to understand the sustainability level of the product (Article of the 6 POG DR).

3.61. In addition, mandatory disclosure should be provided to consumers at the appropriate time, i.e., as required by the relevant EU legislation, to allow these disclosures to serve the intended purpose and help consumers' decision-making also with respect to sustainability aspects.

3.62. When doing the suitability assessment, distributors should ensure that customers have a good understanding of the notion of "sustainability preferences" and of the integration of certain sustainability aspects in their investments. Moreover, distributors should be able to explain to consumers the different sustainability features of the IBIPs they are advising on with clear, succinct and comprehensible language. More guidance is available in EIOPA's guidance on the integration of sustainability preferences in the suitability assessment.

Accessibility of sustainability claims (principle 4): good and bad practices

Bad practices:

3.63. An insurance provider uses various ESG labels as marketing arguments to portray itself and its products (and investment options) as sustainable and green, without explaining what these ESG labels are. It also claims to be offering a majority of "ESG" labelled investment options

without providing a detailed list of these investment options along with their sustainability disclosures.

3.64. *An insurance provider presents its SFDR information on its website in an inaccessible manner for consumers and the general public. The SFDR-related content requires navigating through a disproportionate number of webpages and is not incorporated into the webpages that outline the main features of each product and there are no links to the SFDR disclosures in the sustainability section of the website. Consequently, consumers interested in the SFDR disclosure for a specific product have to engage in a separate search.*

3.65. *The links to the SFDR disclosures on-line do not work, for instance when cross-referencing to UCITS SFDR disclosures.*

Good practices:

3.66. *An insurance provider claims to promote sustainability and on its website it provides clear, simple and accurate information about how it does so. In particular, this insurance provider provides information on the sustainability objectives it pursues in a clear and layered manner. This allows consumers to access the information without being overwhelmed. In providing this information it includes links to report and/or data repository where consumers or any other interested stakeholder can easily check how this provider is progressing towards its sustainability objectives.*

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?

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?

4. SUPERVISION OF SUSTAINABILITY CLAIMS

4.1. To tackle greenwashing, competent authorities should monitor their market with regard to misleading sustainability claims. To this end, competent authorities should within the framework of their supervisory activities:

a) monitor that providers adhere to the four principles specified in this Opinion;

b) evaluate sustainability claims throughout all stages of the insurance and pension lifecycle, including the entity's business model and business management, product manufacturing, product delivery and product review and management;

c) monitor compliance with the current and forthcoming relevant regulatory requirements, including, but not limited to, SFDR requirements, Taxonomy Regulation requirements, POG sustainability-related requirements, IDD sustainability-related requirements in the context of suitability assessment, IORP II sustainability-related

requirements, Solvency II sustainability-related requirements and general fairness requirements in the IDD.

d) implement enhanced supervisory scrutiny for insurance and pension products containing sustainability-related terms in their name.

4.2. Where, in the framework of the supervisory activities it emerges that a provider made misleading sustainability claims, competent authorities should take further supervisory actions, such as requesting appropriate remedial actions by the provider, in line with the applicable Union or national law.

4.3. Where appropriate and relevant, competent authorities should collaborate with other authorities (e.g., securities authorities where these are separate authorities from the competent authorities, national consumer protection agencies) to ensure adequate monitoring of greenwashing.

5. MONITORING BY EIOPA

5.1. Within 24 months after the publication of this Opinion, EIOPA will look into the regulatory or supervisory actions taken by competent authorities as a follow-up on this Opinion.

5.2. This Opinion will be published on EIOPA's website.

Done at Frankfurt am Main, on DayMonthYear.

[signed]

For the Board of Supervisors

[name]

Chairperson

ANNEX 1 - PRINCIPLES TACKLING THE MISLEADING QUALITIES

Figure 1 shows that each principle specified under this Opinion tackles multiple misleading qualities related to sustainability aspects.

Figure 1 - Principles tackling the misleading qualities related to sustainability aspects

	Principle 1	Principle 2	Principle 3	Principle 4
Selective disclosure	x		x	x
Empty claims	x		x	x
Omission or lack of disclosure	x	x	x	x
Vagueness or lack of clarity	x		x	x
Inconsistency	x	x	x	
Lack of meaningful comparisons, thresholds	x		x	
Unsubstantiated (no proof)	x		x	
Misleading imagery or sounds	x		x	
Irrelevance	x		x	x
Outdated information	x	x	x	x
Misleading sustainability-related terminology	x			x
Falsehoods	x		x	

Source: EIOPA's elaboration

ANNEX 2 – SUMMARY OF QUESTIONS TO STAKEHOLDERS

Sustainability claims:

1. Do you agree with the above understanding of what sustainability claims are and how they can be mis-leading?
2. Stakeholders' views are sought where they believe that other requirements – beyond those already identified by EIOPA in this draft Opinion – already cover sustainability claims.

Accurate sustainability claims:

3. Do you agree with Principle 1 and 2 and whether these principles help ensuring that sustainability claims are accurate?

Substantiated sustainability claims:

4. 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?

Accessible sustainability claims:

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?

Other:

6. What do you think would be the costs and benefits of this opinion?
7. Do stakeholders have other comments on this draft Opinion?

Privacy statement related to public online consultations and surveys

Introduction

1. EIOPA, as a European Authority, is committed to protect individuals with regard to the processing of their personal data in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (further referred as "the Regulation").

Purpose of the processing of personal data

2. Personal data is collected and processed in order to manage online public consultations EIOPA launches, and to conduct online surveys, including via online platform EUSurvey[26], and to facilitate further communication with participating stakeholders (e.g., when clarifications are needed on the information supplied or for the purposes of follow-up discussions that the participating stakeholders may agree to in the context of the consultations or surveys).

3. The legal basis for this processing operation comprises of:

    - Regulation (EU) 1094/2010, and notably Articles 8, 10, 15, 16, 16a and 29 thereof
    - EIOPA's Public Statement on Public Consultations
    - EIOPA's Handbook on Public Consultations

4. In accordance with Article 5(1)(a) of the Regulation processing is lawful as it is necessary for the performance of a task carried out in the public interest.

5. Personal data collected are processed according to the conditions set out in the above-mentioned Regulation.

6. Data will not be used for any purposes other than the performance of the activities specified above.

Controller of the personal data processing

7. The controller responsible for processing your data is EIOPA's Executive Director.

[26] See dedicated EUSurvey privacy statement.

8. Address and email address of the controller:

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt am Main

Germany

fausto.parente@eiopa.europa.eu

Personal data collected

9. The personal data processed might include:
   - Personal details (e.g., name, email address, phone number)
   - Employment details

To whom are your data disclosed?

10. The personal data collected are disclosed to designated EIOPA staff members.

11. Personal data are transmitted in accordance with the relevant provisions of Regulation.

How long are your data kept?

12. Personal data collected are retained by EIOPA until the finalisation of the project the public consultation or the survey relate to. Personal data collected via EUSurvey are deleted from EUSUrvey after the response period has ended.

13. Files will not be kept beyond the periods specified above unless the personal data is rendered anonymous.

Transfer of personal data to a third country or international organisation

14. No personal data will be transferred to a third country or international organisation.

Profiling

15. No profiling is performed in the context of this processing operation.

How can you have access to your data, verify their accuracy, rectify them or object to their processing?

16. In general, you have the right to access their data, obtain from the controller a copy of your personal data in order to check the accuracy of the data held, and/or to obtain rectification or update of these data (facts) if necessary.

17. You may also ask for erasure of your data if the processing thereof is unlawful, or to have your data blocked for a period enabling the data controller to verify the accuracy, including the completeness, of the data.

18. You may object to or obtain the restriction of the processing of your personal data.

19. Where processing is based solely on your consent, you have the right to withdraw your consent to the processing of your personal data at any time.

20. For the protection of the data subjects' privacy and security, every reasonable step shall be taken to ensure that their identity is verified before granting access, or rectification, or deletion.

21. In case of rejecting of access to their personal data, data subjects can file a complaint with the EDPS.

Whom can you contact if you have questions or complaints with regard to data protection?

22. Should you wish to obtain access to or receive a copy of your personal data, their rectification, or deletion or to object, please contact:
    - the Data Protection Officer at EIOPA by email (DPO@eiopa.europa.eu) or by letter:

      EIOPA Data Protection Officer (Confidential)

      Westhafen Tower, Westhafenplatz 1

      60327 Frankfurt am Main

      Germany

23. All questions or complaints concerning the processing of your personal data can be addressed to EIOPA's Data Protection Officer (DPO@eiopa.europa.eu).

24. Alternatively, you can also have recourse at any time to the European Data Protection Supervisor (www.edps.europa.eu).