

**EFAMA's REPLY TO EIOPA's CONSULTATION PAPER ON TECHNICAL ADVICE
ON THE INTEGRATION OF SUSTAINABILITY RISKS AND FACTORS IN THE
DELEGATED ACTS UNDER SOLVENCY II AND IDD**

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

EFAMA is the voice of the European investment management industry. Through its 28 member associations, 62 corporate members and 25 associate members EFAMA represents more than EUR 25 trillion in assets under management of which EUR 15.6 trillion managed by 60,174 investment funds at end 2017.

Given that EFAMA members aren't insurance undertakings, we cannot estimate the costs and benefits of the possible changes to the delegated acts under Solvency II outlined in this Consultation.

It is however important to highlight that as insurance companies are within the biggest group of institutional clients of investment funds and asset management companies, it is necessary that any changes to the regulatory framework applying to the insurance sector is consistent with any similar changes currently under discussion for asset management companies.

In this respect, ensuring a consistent approach between the current EIOPA consultation and ESMA's ongoing consultation process on integrating sustainability risks and factors in the UCITS Directive, AIFMD and MiFID II is paramount, as the subject treated in each of these consultations is the same, i.e. "sustainability risks and factors" in respect to the investment decision and distribution process. The fact that each of the consultation papers refers to different industry sectors cannot justify any differentiated definition and treatment of such risks as they are all part of the same investment decision and distribution process.

We note that the deadline for EIOPA and ESMA to deliver their technical advice to the European Commission is the same, i.e. end of April 2019. We therefore call for a consistent advice to be provided that would allow consistent level 2 measures to be applied across the investment services supply chain.

In addition, we welcome EIOPA's clarification that for the purpose of this consultation paper and advice, the choice is to refer predominantly to sustainability risks rather than to sustainable investment, as this is indeed the mandate given by the European Commission to EIOPA. In this context, it is important to draw a clear distinction between risks to the performance of an investment from ESG considerations, which is the one lined to the definition of sustainability risk, on the one hand and risks to environment and society from investments on the other, which is a concept linked to sustainable investment.

From a risk management perspective, 'sustainability risk' has to be financially material to the investment. This is the single most important consideration. In other words, 'sustainability risks' should mean the financial impact arising from environmental, social and governance considerations on the investment. This has to be clearly distinguished from the process of integrating ESG factors in the investment decision-making process.

In this respect, we have some key reservations as to how integration risks are included in particular provisions of the Solvency II Delegated Regulation (mainly the prudent person principle, see our response to question 5 below), as we consider the proposed provision would be misleading and mixing the notion of sustainable risks with that of sustainable investments, which refers only to a particular subset of investments.

Finally, we welcome the intention of EIOPA to remain consistent in the way the requirements for sustainability risks are expressed when compared with other risks in the Solvency II Delegated Regulation, as well as the effort to ensure discretion for the insurance company to take the beneficiaries interests into account by regularly including the term "where relevant" into its proposed texts.

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

Please see our response to Question 1

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

EFAMA agrees with the general reference to sustainability risks in terms of identifying and assessing such risks. Moreover, we agree with EIOPA's statement that the current Solvency II provisions regarding the responsibilities and tasks of the administrative, management and supervisory body and the key functions do not represent an obstacle for the integration of sustainability risks into the company's investment decision process. Therefore, already now, all types of risks, including sustainability risks, should be taken into account. We also agree with EIOPA that given the absence of specific organisational requirements for particular risk areas, a further explicit reference to sustainability risks in respect to other elements of the governance system, such as fitness requirements and the content of remuneration policy, would not be coherent. Finally, we consider as pragmatic EIOPA's approach to suggest guidelines in respect to these elements and where necessary, so as to ensure common understanding while at the same time allow for more flexibility.

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

No

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

We can agree in general with the integration of sustainability risks in the prudent person principle, but we consider that the way this is articulated in the new article 275 bis is linked more to the concept of sustainable investment rather than the concept of sustainability risks.

As explained in our response to Question 1, it is necessary to draw a clear distinction between risks to the performance of an investment from ESG considerations, that should be the definition of sustainability risk and risks to environment and society from investments, which is a concept linked to sustainable investments. It is also important to stress that the mandate to EIOPA is to integrate sustainability risks and factors to Solvency II and not the notion of sustainable investment. However, requiring insurance and reinsurance undertakings to take into account the potential long-term impact of investment decisions on sustainability factors and, where relevant, reflect the ESG preferences of policyholders and beneficiaries, falls more in the scope of assessing the sustainability impact of an investment and not in the scope of assessing the risks to the performance of the investment and hence to the financial interests of the policyholders. In fact, taking a decision on the basis of the long-term impact of investment decisions on sustainability factors could be to the detriment of the interests of the policyholders. Moreover, it should be kept in mind that pursuing and assessing additional data related to the potential impact of investment decisions on external sustainability factors would increase costs for policyholders.

We also note that EIOPA's justification for this additional requirement for insurance companies to assess the potential long-term impact of their investments on sustainable factors is based on the existing engagement strategies applied by such companies to steer the activities of the assets they are holding. However, the principle of stewardship refers to the possibility to influence the business of the investee, which as much as we support, is different from the material factors that are to be taken into consideration when assessing the materiality of a risk on the investment of the company. Moreover, a reference is made to IORP II in relation to the prudent person rule, for which we would like to underline that the relevant provision allows Member States to take into account the potential long-term impact of investment decisions on ESG factors, but doesn't require them to do so. Therefore, the IORP II reference to long-term impact assessment captures impact investing and gives the possibility to investors to make decisions on how their investment is used, but doesn't require them to go towards impact investment neither does it refer to the risk management and assessment process, that is linked only to material risks.

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

No Comment

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

Yes

No

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

Yes

No

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

Yes

No

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

No comment

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

No comment

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

No comment

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

No comment

14. What current market standards or "labels" are you going to take into account or already taking into account for the consideration of ESG factors? Do you see any issues when relying on current market standards or "labels"? Please describe

No comment

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

Yes

No

For the ESG preferences of the customers to be considered it is important to clarify who the risk bearer is. In the case this is the insurance company it is appropriate that the ESG preferences are set by the company itself. However in the fewer cases that the customer bears the risk, such as the case of unit-linked business, it is appropriate to take into account the ESG preferences of the customer.

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

No comment

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

No comment

Brussels, 30 January 2019

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