



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

Fields marked with \* are mandatory.

## 1 Responding to the Consultation Paper

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EIOPA welcomes comments on the Consultation Paper regarding its draft Guidelines on the integration of sustainability in the advice process under Directive 2016/97.

Comments are most helpful if they:

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

Please send your comments to EIOPA by **13 May 2022**, responding to the questions in the survey.

Contributions not provided using the survey or submitted after the deadline will not be processed and therefore considered as they were not submitted.

### Publication of responses

Your responses will be published on the EIOPA website unless: you request to treat them confidential, 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.

### 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Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published.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. [www.eiopa.europa.eu/privacy-statement\\_en](http://www.eiopa.europa.eu/privacy-statement_en)

## **2 Remarks on completing this survey**

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### **Choice of internet browsers**

Please use preferably Firefox or Chrome for best speed of the online survey whilst ensuring use of the latest version of the browser.

### **Saving a draft survey**

After you start filling in responses to the survey there is a facility to save your answers.

HOWEVER, PLEASE NOTE THAT THE USE OF THE ONLINE SAVING FUNCTIONALITY IS AT THE USER'S OWN RISK.

As a result, it is strongly recommended to complete the online survey in one go (i.e. all at once).

Should you still proceed with saving your answers, the online tool will immediately generate and provide you with a new link from which you will be able to access your saved answers.

It is also recommended that you select the "Send this Link as Email" icon to send a copy of the weblink to your email - please take care of typing in your email address correctly. This procedure does not, however, guarantee that your answers will be successfully saved.

### **Uploading document(s)**

In the last section of the survey, you can also share additional material by clicking on "Select file to upload". Several documents (e.g. Word, Excel, Pdf) can be uploaded. However, note that each document / file is limited to 1MB or less in size.

### **Printing the completed survey**

You will have the possibility to print a pdf version of the final responses to the survey after submitting it by clicking on "Download PDF".

You will automatically receive an email with the pdf file. Do not forget to check your junk / spam mailbox.

### **Limit of characters for the answer of each question**

There is a limit of 5,000 characters for the answer of each question, including spaces and line breaks. If

your answer exceeds the limit, you can upload your answer as additional material (see "Uploading document(s)" mentioned above).

### 3 About you

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\* Name of your organisation

Finance Watch

\* Your first name

Paul

\* Your surname

Fox

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

Transparency register number

37943526882-24

\* E-mail (this won't be published)

paul.fox@finance-watch.org

\* Your Member State

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia

- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
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- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- Other

\* Publication privacy settings

- Anonymous** - Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- Public** - Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the personal data protection provisions

## 4 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

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

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. Chief amongst these concerns should be properly establishing minimum criteria for sustainable investments and products with ESG criteria under SFDR.

Please also refer to our response to the ESMA consultation on guidelines on certain aspects of the MiFID II suitability requirements for more detail on issues also raised in this response (<https://www.finance-watch.org/publication/response-to-the-esma-consultation-on-guidelines-for-mifid-ii-suitability-requirements/>).

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?

Customers 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. Customer 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), weapons, tobacco, pornography and any controversial or other economic activities that are considered as significantly harmful under the EU taxonomy framework.

The shortcomings and limits of the current definition of sustainability preferences should also be addressed by introducing minimum criteria for Article 8 and 9 products and tackling other ambiguities arising from the SFDR, such as the lack of thresholds for PAIs. Until this is done the customer will need to have their expectations managed as to what is currently considered sustainable and have the limits of the definitions for assessing sustainability preferences clearly explained. This should include giving context of the kinds of equivalent products on the market.

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?



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 customer's preference regarding generating impact as opposed to sustainability risks, which should be considered as part of the risk tolerance assessment.

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?

In the response to question 2 a number of relevant points have been raised on the need to further refine the approach. Additional guidance is also needed over how to prioritise overlapping and simultaneous preferences. 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.

Q5. Guideline 2 – EIOPA proposes that insurance undertakings and insurance intermediaries should collect information on whether the customer chooses 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?

As it is not possible at this point in time to properly screen taxonomy-alignment of government bonds, EIOPA could focus on KPI scenario 1. This should be adapted with the percentage of government bonds specified in the chart and accompanied with an explanation that it is not possible to assess the sustainability alignment of government bonds for the moment, so investment in them cannot be considered sustainable. The European Commission and Member States of the EU should 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?

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 customer is being advised on. The overall focus should help to manage the expectations and increase the understanding of customer 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 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.

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 approach aims to tackle an important issue, which is that customers 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 customer does not simply have to go through the same explanations a second time. The customer could be asked an 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.

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?

Please refer to the responses to questions 4, 6 and 7 that suggest adjusting the guidelines, but also call for additional specific guidance and Q&As on ascertaining customer sustainability preferences.

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

Yes, however, this should be a mandatory not an optional requirement. 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 customer sustainability preferences.

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?

The guidance is useful, but compliance with the use of disclosed minimum share of sustainable investments and environmentally sustainable investments 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.

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?



Yes.

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?

The effective response and recommendation where a firm cannot match the sustainability preferences of a customer 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 that could match the sustainability preferences of the customer. The advisor should also make it very clear that the firm cannot meet these preferences in these cases. If a customer 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?

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.

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?

Additional guidance needed to ensure that there is a minimum requirement of professional training in terms of hours, then verification via a competence test to ensure that training has raised the knowledge and competence of the advisor. A continuous training requirement should also be included, to ensure that advisors remain up to date with the latest requirements in this developing field and regulatory environment. The current wording of appropriate training does not provide sufficient clarity on this.

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.





## Contact

[Contact Form](#)