

## AMICE response to EIOPA consultation on Technical Advice on the integration of sustainability risks and factors in the delegated acts under Solvency II and IDD

### Consultation questions and answers

**Q1: What would you estimate as the costs and benefits of the possible changes to the delegated acts under Solvency II outlined in this Consultation?**

A1: Many facets of sustainability are at the core of the relationship between member/policyholders and their mutual/cooperative insurers; it is a principle which is central to the ethos, activities and relationships of those insurance entities represented by AMICE, the Association of Mutual Insurers and Insurance Cooperatives in Europe, and to this end we highly support the European institutions in their aims to ensure that sustainability is recognised as key to the future of Europe.

Aspects of sustainability are already areas of risk management expertise for insurers, providing security in the face of climate risks. Thus, insurers' risk management systems already encompass sustainability risks, calibrated to their risk appetite. This extends from the underwriting function into investments, and many of our members have set very high "sustainability" criteria for their investment activities as well as other aspects of operation. This remains, nevertheless, a function of the risk management direction decided and agreed by each insurer within the comprehensive prudential regulatory system now applying to the vast majority of insurers in Europe, Solvency II.

Solvency II is a principles-based risk-based capital regulatory regime in which re/insurers take full account of all types of risks and have a deep understanding of them. Many of these sources of risk are not specified in the current legislation, reflecting the principles-based structure of the regime and enabling an ongoing ability to accommodate and incorporate all types of risks as they evolve. This includes sustainability risks, and therefore we believe that there are significant aspects of these proposals which are already captured in the regulatory regime. To detail these and make the proposed changes to the delegated acts, particularly in the absence of the outcome of the work on taxonomy, not only leads to sustainability risks being treated in a different way from other risks but also fixes them, with the threat that the legislation may not adapt to future change. It is vital that the approach to sustainability risk is holistic and proportionate, taking into account all aspects of risk, and with respect for the nature, scale and complexity of the insurer. Current activities, as indicated in this consultation, appear to be weighted towards investment risks, and we have a concern that any sharper focus on these types of risks may have the unintended consequence of skewing the risk approach. Solvency II is successful as a regulatory system because of its objective and holistic approach to risk, and this needs to be retained while encouraging approaches and activities which positively contribute to sustainability

goals. These could include industry awareness workshops and training to upskill those with responsibility for risk, which would be a positive benefit emanating from these proposals.

AMICE would like to make it clear that we welcome these proposals and are supportive of developing the regulatory infrastructure in a positive way to properly reflect sustainability risks; we believe that there would be a much better outcome to this consultation if it is delayed until after the taxonomy work has been concluded, and should be focussed on integrating sustainability factors and risks rather than creating a new category of risk.

We have concerns that there is the risk of introducing new requirements which are not fully harmonised with Solvency II, particularly during a period when there is a full review of Solvency II taking place under a separate initiative, and that these may be exacerbated by this consultation taking place before elements such as the taxonomy have been concluded. It is important to note that recital 16 of the Solvency II Directive states that “the main objective of insurance and reinsurance regulation and supervision is the adequate protection of policyholders and beneficiaries... Financial stability and stable markets are other objectives of insurance and reinsurance regulation and supervision which should also be taken into account but should not undermine the main objective.” Thus, integrating sustainability risks into the Solvency II regime must be balanced with this requirement to ensure the adequate protection of policyholders and the protection of fair and stable financial markets.

From a cost perspective, without more knowledge of definitions and the taxonomy, it is impossible to estimate the costs of the possible changes to the delegated acts since there are no criteria against which to make such measures. Insurers would need some degree of concrete information about the taxonomy decisions before they could attempt such an estimate.

From a benefit perspective, the direction and tasks outlined in the consultation paper are already undertaken as part of Solvency II; thus, benefits will not arise specifically from changes to the delegated acts.

**Q2: What would you estimate as the costs and benefits of the possible changes to the delegated acts under IDD outlined in this Consultation?**

A2: Without more knowledge of definitions and the taxonomy, it is difficult to estimate the costs of the possible changes to the delegated acts since there are no criteria against which to make such measures, even taking as many assumptions as possible into account. Insurers would need some degree of concrete information about the taxonomy decisions before they could attempt such an estimate, and the challenge of certain aspects such as matching policyholder perspectives on this would still remain unquantifiable.

When the Commission published earlier this month its delegated acts as regards the integration of ESG considerations in the advisory process, they clarified that insurance firms can already prepare to take ESG considerations and preferences into account (given that the work on taxonomy is not finalised yet) but this would result in companies developing their own ESG criteria; once the EU taxonomy is adopted they would be

required to adapt to the new requirements, which would effectively mean they would be required to undertake the work twice.

Nevertheless, it would appear that extra costs, particularly in product oversight and governance, could be substantial, and it is important to maintain a core focus on proportionality and the value that any new requirements will provide to the policyholder. Furthermore, access to relevant expertise and data should be available and affordable for all sizes of insurer.

**Q3: Do you agree with the proposed reference on the tasks of the risk management function?**

A3: It is clear that the role of the risk management function already includes these tasks, as implied in current legislation. The effective integration in the tasks carried out by the risk management function as well as in the risk management policy of the sustainability risks, in the same way as any other risk that emerges due to changes in the external environment in which the company operates, is in line with what is already required by the Solvency II regime. There is no need for clarification of these particular tasks; such identification may also lead to the misinterpretation that they are deemed to be “more important” risks than others where in fact all risks should be dealt with by the risk management function objectively and critically. Insurers already deal with a multiplicity of different risks which are not specified in legislation, and awareness is a much more important tool than detailed regulation. However, this is not to say that the risk management function and policy should not be updated to include these types of risks, though the definition and business limits of such should be determined by the individual entity.

**Q4: 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?**

A4: We believe that the current Solvency II requirements are already appropriately structured to ensure the effectiveness and adequacy of sustainability risk integration, therefore no further amendments are needed. It should be noted that in the absence of other aspects of the sustainability proposals it is impossible to assess whether any amendments would be suitable. The Solvency II regime is already clear and thorough for the treatment and management by the organisation of all aspects of risk and risk integration.

**Q5: Do you agree with the proposed new article for the integration of sustainability risks into the prudent person principle?**

A5: This proposal presents extensive challenges for a range of factors, including the absence of taxonomy in responding to this question. EIOPA’s guidelines on system of governance already clarify the approach to be taken under the prudent person principle, automatically capturing sustainability risks alongside all others. Thus, we believe the

proposed new article is surplus to requirements and potentially may have the antithetical effect of what is being intended here.

It is already in insurers' and, by extension, policyholders' interests to integrate sustainability risks into the prudent person principle, and these are already automatically captured. Thus, there is no value in adding the proposal: "Within the prudent person principle, insurance and reinsurance undertakings shall take into account sustainability risks when assessing the security, quality, liquidity, and profitability of the portfolio as a whole."

The proposed new article may also result in a significant increase in administrative burdens, in an environment in which policyholders are likely to have differing views on sustainability risk and factors – views which are likely to develop and shift over time.

As regards the second proposed addition, although we agree with the underlying principle that insurance and reinsurance undertakings should take into account the potential long-term impact of investment decision on sustainability factors, we are being asked to comment in advance of other parts of the sustainability package being available for greater clarification. If this comment is to remain in the proposals for the amendments to the delegates acts, it is vital that the phrase "where relevant" should be retained.

**Q6: Do you agree with the proposed amendment of the article for the actuarial function?**

A6: Article 272 of the Solvency II delegated act provides clarity on the responsibilities required of the actuarial function. There are many specific aspects of the actuarial function which are not detailed in this article but are indirectly embodied in the function; there is no reason to separately specify sustainability as per the proposal, particularly since this could unnaturally elevate the consideration of sustainability risk and issues to the detriment of a balanced approach in the organisation. However, should sustainability risks be specified in this context, it must be clarified that they are not deemed to be in some way more important in their own right than other risks in the organisation.

**Q7: Do you agree with the proposed reference to sustainability risks under the investment as well as the underwriting and reserving risk management policy?**

A7: We reiterate our position that these risks are already automatically taken into account as required by Solvency II, in this case within the investment policy alongside the underwriting and reserving risk management policy. Such risks must be considered and managed at company level in an integrated and consistent manner.

**Q8: Do you agree that other risk management policies may include reference to sustainability risks?**

A8: Such policies are the responsibility of the organisation, which is required to take sustainability risk into account when developing them. We would like to reiterate that any potential new legislative initiative in this area, especially in the absence of a definitive taxonomy, should be principles-based, with decisions on the kind of approach to be taken to include reference to sustainability risks to be the remit of the regulated entities.

**Q9: 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?**

A9: The ORSA is prepared by the regulated entity to reflect its risk and solvency profile, decision-making and analysis. It is designed to reflect each organisation as a separate entity, and therefore the effect of sustainability risks will be incorporated into the ORSA where appropriate. This requirement is both elevating the risk profile of sustainability and dictating the ORSA improperly. This is a proposal which highlights the process issues: the ORSA is aligned with Pillar 1 issues and therefore those need to be addressed in the context of Pillar 1 before it is clear whether these proposals are appropriate and sufficient. Finalising the publishing of the taxonomy and other elements of the sustainability agenda would assist in being able to prepare and quantify sustainability for the ORSA.

Since the assessment of overall solvency needs (ORSA) represents the undertaking's own view of its risk profile, and the capital and other means needed to address all the risks to which the company is or could be exposed, the undertaking should decide for itself how to perform this assessment given the nature, scale and complexity of the risks inherent in its business. On this point, we do not agree with the wording proposed by EIOPA under Article 262, but instead of referring to "the effects of sustainability risks, including climate change", we would welcome a reference to the risks due, more generally speaking, to the change of the external environment for social, political, technological and environmental factors.

**Q10: Do you agree that conflicts of interest may also arise with regard to the ESG objectives of customers of insurance undertakings and insurance intermediaries. Please give reasons for your answer.**

A10:

We support EIOPA's view that "the integration of sustainability risks within the IDD requirements is better done through a high-level principle-based approach". The current applicable regime already provides for a set of criteria for establishing the existence of different types of conflicts of interest. Customers' interests can consist of financial objectives, as well as non-financial objectives, including ESG preferences that need to be considered by insurance undertakings. Therefore, there is no need to introduce new specific measures to take into account the ESG objectives in the

identification of potential conflicts of interest; they must be taken into account according to the same processes as the other criteria.

EIOPA rightly points out on page 42 of its draft technical advice that the reference to ESG considerations in Article 3 of the IDD Delegated Regulation could overemphasise and unbalance the legal drafting. Therefore, AMICE would favour the addition of such reference in a recital of the Delegated Regulation only. This will provide sufficient guidance to insurance undertakings without putting any additional constraints and unnecessary burden.

Given that not all customers have ESG preferences, insurers should not be expected to include such considerations in their conflicts of interest policy all the time, but only where relevant. Therefore, it is important to clarify this in the proposed recital by adding the wording “where relevant”.

In order to properly identify and manage conflicts of interest that arise with regard to the ESG objectives of customers (where relevant), private actors should have a better understanding of what ESG objectives and factors represent. In this context, a defined taxonomy is an important resource and essential prerequisite to achieve this objective.

**Q11: 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?**

A11: No. The current applicable regime already provides for a set of criteria for establishing the existence of different types of conflicts of interest. There is no need to introduce new specific measures to take into account the ESG objectives in the identification of potential conflicts of interest - they must be taken into account according to the same processes as the other criteria.

**Q12: 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?**

A12: Conflicts of interest may occur in cases where remuneration policies are set in order to achieve sustainable investment targets (where employees have a financial gain) to propose a specific product. This could potentially not be suitable to the customer and meet his/her demands and needs.

**Q13: 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?**

A13: We do not foresee extra requirements in this area. The existing measures foreseen under the IDD should be the same as for conflicts of interest which may arise in relation to any other objectives of the customer.

**Q14: 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 of “labels”? Please describe.**

A14: There are already a number of different standards adopted by various entities, and we are aware of a number of entities we represent that are signatories to the UN Principles for Responsible Investments. It will be a positive step to encourage converging standards for better reporting and insight.

**Q15: 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?**

A15: AMICE proposes that a more effective way of embracing the proposed amendments would be using the device of a clarifying recital rather than the additions to the articles as proposed in this paper. Since the existing POG rules are designed to meet the needs of their specific target markets, if customers have a specific requirement with regards to ESG preferences, these will be covered in the current framework, rendering additional specifications through the proposed amendments to the delegated acts tautological. If the proposed changes were to be adopted nevertheless, it is important that any textual amendments include the wording “where relevant” to ensure that ESG-related issues are not given an inappropriate weighting compared to other factors in the target market assessment.

**Q16: 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?**

A16: ESG objectives, like any other features, should be considered in the description of the target market only if the product is designed for customers with these preferences. The use of the phrase “where relevant” should therefore be retained.

**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?**

A17: It is clear in the IDD and its delegated acts that the requirements as they currently stand mean that product testing during the approval process should include ESG factors if that is part of the requirement of the target market. In instances where this is required – and these circumstances may change over time – AMICE does agree that the testing should include ESG factors since this is already the case, and therefore any proposals to amend the delegated regulations should be reviewed in this light.

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