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# 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.



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## 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Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published.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)

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## **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

AIPB Associazione Italiana Private Banking

\*Your first name

Maria Antonella

\*Your surname

Massari

\*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

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\*Your Member State

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- Czechia

- Denmark
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- 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

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## 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?

AIPB (Associazione Italiana Private Banking - the Italian Private Banking Association, or the "Association") welcomes the above-mentioned consultation, which appears to resolve more clearly some uncertain aspects of the governing rules.

In general terms, the answers given by the Association focus on insurance distribution *sensu stricto* and do not analyse impacts on the rules governing product and oversight governance.

As a preliminary remark, we ask you to specify that the guidelines in point will be applicable and will not replace the national legislation implementing the Community rules at issue.

However, we consider it appropriate to draw attention to the fact that product design is, timewise, closely connected to product distribution and, as such, should be taken into account also for the assessment of suitability. This is particularly true with regard to the degree of detail and the granularity of the information collected from the customer: if this were high, it would inevitably reflect on the level of detail to be applied already in the product engineering phase (especially for multi-option products, or "MOPs"). As a consequence, these guidelines may have an indirect impact on product and oversight governance, as well.

We also ask you to confirm the clause on page 8 of the above-mentioned consultation, which states that "not all insurance-based investment products that promote environmental or social characteristics according to the SFDR [Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, "SFDR"] can be provided to customers with sustainability preferences in an advised sale".

Lastly, we ask you to confirm that, under paragraph 35 of the consultation paper, distributors may recommend a sustainable product also in the case where the customer: (i) has not specified a preference with regard to any of the points a), b) or c) of Article 2(4) of Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017, as amended by Commission Delegated Regulation (EU) 2021/1257 of 12 April 2021; and/or (ii) has not determined a minimum proportion as required by the latter provision. In fact, according to this paragraph, "Where a customer answers that they do have sustainability preferences, but despite the questioning of the insurance undertaking or insurance intermediary (see paragraph 13 and 14) was unable to specify a preference with regard to any of the specific aspects as set out in points a) to c) or with regard to a minimum proportion as mentioned in points a) and b) of Article 2(4) of Commission Delegated Regulation 2017/2359, the insurance undertaking or insurance intermediary can still recommend an insurance-based investment product that has sustainability features matching the customer's preferences as best as possible, taking into account the sustainability preferences as expressed by the customer in general terms (see illustration in Figure 4 in Annex I). In that case, the insurance undertakings and insurance intermediaries should record in a suitability statement: a) the description of the sustainability preferences of the customer even if in broad or general terms; b) the fact that even though the customer has sustainability preferences, he/she has not specified a preference with regard to any aspect(s); and if a recommendation of an insurance-based investment product is made based on the customer's sustainability preferences, the reasons underlying that recommendation".

**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?**

We believe that the information requirement should not be expanded further; on the contrary, it should be simplified further.

We do not find it useful for the customer to receive granular information on sustainability preferences from distributors, who would also have difficulties explaining highly technical concepts without using the corresponding language.

An excess of information, moreover using a non-technical language, is likely to result in an information overload for the customer.

We consider it preferable that distributors should provide general explanations to customers, just distinguishing among the three macro categories outlined by the notion of sustainability preferences.

**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?**

In terms of process, we agree with the outlined framework. We ask you to make clear that distributors may also just collect information for one or more of the features as defined in points a), b) or c) of Article 2(4) of Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017, as amended by Commission Delegated Regulation (EU) 2021/1257 of 12 April 2021.

This is because sustainability preferences should remain a *quid pluris*, i.e., an additional, non-essential element complementing the suitability assessment, notwithstanding the fact that the collection of information should be consistent with the distributor's advice model and product catalogue.

Subordinately, we ask you to make clear that distributors may collect information on all the aspects of the notion of sustainability preferences in a progressive manner.

**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?**

No, we consider it preferable that distributors may just request general qualitative information on whether or not there are any specific sustainability preferences, albeit regarding the minimum proportion of investments. We ask you not to require insurance undertakings and insurance intermediaries to collect granular quantitative information on the individual aspects of the regulatory notion under the provisions of the above-mentioned paragraph 35. Alternatively, qualitative information (e.g., little, fair, much) which shall then be put into practice by the distributor may be requested. In fact, even if a customer or prospective customer wants to invest in sustainable products, they do not normally have sufficient knowledge to enable them to make a conscious decision on the detail of their sustainability preferences and the minimum proportion in which an IBIP should be invested. This may result in the customer giving unwitting answers and/or neutrality-oriented answers due to a lack of expertise.

On the contrary, in order to implement the proposed regulatory provision, a tool ought to be put in place to monitor compliance with an investable minimum (e.g., 10% in sustainable products) when the tools available to distributors are calibrated on compliance with maximum, not minimum thresholds. So, the functioning of many of the IT tools used by distributors would need to be modified.

Moreover, it would be hardly manageable for distributors to guarantee observance of a fixed proportion in investment objectives at all times. If an upstream constraint is envisaged and a percentage is defined, the recommendation of an individual product may be adversely affected by the need to comply with the defined fixed threshold, and consequently the decision to recommend or not to recommend would be driven primarily by the requirement to comply with this threshold, and not by the will to make an investment which suits the customer's needs as best as possible.

If, on the contrary and subordinately, this Authority should decide to maintain the proposed approach, we ask you to clarify how compliance with the thresholds determined by the customer can be reconciled with compliance with the other regulatory thresholds provided for (e.g., in terms of diversification and spreading of investments); more specifically, the percentage at issue should in any case be taken into account after all the other thresholds provided for by the legislation.

**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?**

**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?**

In line with answer 4, we consider it preferable that the guidelines should leave distributors free to decide which approach to use in the collection of information on the minimum proportion as well as on the specific nature of sustainable products, allowing them to recommend IBIPs also in the case where the customer has expressed sustainability preferences but has not specified a minimum proportion; this seems to us to be in line with the above-mentioned paragraph 35.

A distributor-guided approach that is based on sustainability preferences as expressed by the customer in general terms and recommends a product may result in the customer giving answers without being fully aware of their relevance. It would furthermore be difficult to maintain the neutral and unbiased approach required of distributors.

We consider it preferable that distributors may take a more general approach, through qualitative and not quantitative questions, leaving it to them to assess the suitability of the IBIP for the customer's profile.

**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?**

No, we believe that a second explanation aimed at collecting information should be an option, not a requirement.

We also ask you to confirm that, if there are no products which also match the customer's sustainability preferences, the distributor may proceed with the recommendation anyway, even if sustainability preferences have not been adapted (it being understood that this circumstance should be explicitly explained to the customer), in line with paragraph 35.

This is because the customer may not be able to give conscious information at the level of detail required by the legislation; in addition, it would be difficult for distributors to maintain a neutral and unbiased approach in the collection of information.

Consistently with the statements made in answers 4 and 6, we consider it preferable that distributors may also just rely on general information provided by the customer in order to then determine - when conducting the suitability assessment - whether the IBIP matches the customer's profile, in line with what is outlined in paragraph 35.

**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?**



We find it useful to further simplify information collection requirements by entrusting the distributor with assessing the suitability of the IBIP for the customer's profile.

This is because excessive regulation is likely to limit distributors' operations without resulting in any relevant benefits for customers.

We consider a general and qualitative approach to the collection of information to be preferable, in order to simplify this process and not to burden the customer with the need to compensate for any information asymmetries.

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

AIPB agrees with the approach whereby distributors should identify the customer's individual sustainability preferences at the next predetermined regular update of the existing suitability assessment of the aggregate portfolio.

AIPB agrees with the approach whereby sustainability preferences shall be collected and monitored in the course of the relationship; however, it does not consider paragraph 22 of guideline 3 to be applicable in practice, hence it suggests that this paragraph should be removed. This is because all indicators will be monitored and the customer will be contacted if there is a change in his/her overall situation.

**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?**

We ask you to make clear that an IBIP may be considered to be in line with the customer's sustainability preferences if it matches even only one of the features as set out in the relevant definition.

**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?**

We note that, for MOPs, the implementation of the guideline connected with the principal adverse impacts would not be feasible, at this stage, for many insurance undertakings and insurance intermediaries.

**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?**

We take due note of the fact that, differently from the provisions of supporting guideline 81 as set out in ESMA's Consultation Paper – Guidelines on certain aspects of the MiFID II suitability requirements of 27 January 2022 (ESMA35-43-2998), adaptation of sustainability preferences is not exceptional in nature and may be used as a general remedy; we agree with this approach.

This will allow distributors to maintain a sufficient range of IBIPs to enable them to better match the product with the customer's profile.

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?

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?

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 (/eusurvey/runner/contactform/EIOPA-guidelines-sustainability-IDD)

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