Joint Insurance Europe and CRO Forum response to EIOPA's consultation on the Opinion on sustainability claims and greenwashing in the insurance and pensions sectors

Our reference:	GEN-LIA-24-070	Date:	11-03-2024
Referring to:	EIOPA's consultation on the Opinion on sustainability claims and greenwashing in the insurance and pensions sectors		
Contact person:	Claire Musch	E-mail:	Musch@insuranceeurope.eu
Pages:	6	Transparency Register ID no.:	33213703459-54

Introduction

European insurers welcome the European Insurance and Occupational Pensions Authority's (EIOPA) draft Opinion and its aim to set out a framework designed to assist competent authorities in their monitoring of insurance and pension providers. As highlighted in the Opinion, unsubstantiated sustainability-related claims have an adverse impact on both consumers and providers. It is, however, crucial that EIOPA, with this Opinion, takes into account and is consistent with the current legislative framework on sustainability (Directive on Empowering Consumers in the Green Transition, Sustainable Finance Disclosure Regulation [SFDR], Taxonomy…) and the European Commission's (EC) proposal for a Green Claims Directive.

Insurance Europe has the following specific comments on the proposed Opinion:

Q1. ***Do you agree with the above understanding of what sustainability claims are and how they can be misleading?***

There is a strong need for supervisory convergence and legal certainty in understanding what sustainability claims are and how they can be misleading. Insurers are now confronted with different approaches amongst Member States and at regulatory levels. Insurers have also detected some gaps in the legislation (lack of clarity around certain definitions and concepts, and fragmentation of the implementation). Supervision requirements must therefore be applied in a uniform way in all Member States to promote clear and non-misleading communication on the fund's names and their utilisation in each Member State.

Providing a common understanding of sustainability claims is essential to help competent authorities tackle greenwashing practices, and to ensure both consumers' protection and legal certainty for insurance providers. To this extent, Insurance Europe welcomes EIOPA's Opinion on the matter. However, we are of the view that EIOPA should consider several points when defining its supervision principles.

Insurance Europe aisbl
Rue du Champ de Mars 23, B-1050 Brussels
Tel: +32 2 894 30 00
E-mail : info@insuranceeurope.eu
www.insuranceeurope.eu

© Insurance Europe. Confidential, internal document.
Not for distribution, all rights reserved.

First, and to ensure consistency with the Green Claims Directive and the Unfair Commercial Practices Directive (UCPD), the terminology and approach of the opinion should be in line with the UCPD as amended by the Directive Empowering Consumers in the Green Transition. As far environmental claims are concerned, the opinion should follow the same definition as the UCPD. We are also of the view that there is a lack of clarity on the interplay between the Green Claims Directive and the Green Transition Directive that could lead to substantial implementation risks regarding the lack of coordination between these two texts and EIOPA's Opinion.

Secondly, at this stage, the supervision principles on sustainability claims should be limited to insurance-based investment products (excluding funeral contracts and life insurance contracts which are not intended to be investment products even if they have a surrender value – these contracts to be specifically taken out of scope), at least until standards or general guidelines are developed for other types of insurance products. EIOPA could clarify the scope of its Opinion and the types of insurance products that are impacted. As for today, those IBIPs are the only type of insurance products for which the EU has established a framework to clarify what can be qualified as sustainable, through the Taxonomy regulation of the SFDR for instance, as other insurance products do not yet have such recognised definitions or common concepts to qualify them as sustainable. Thus, the extension of the scope of this opinion to all insurance products seems premature for now, in the absence of existing regulation. Definition of common standards on sustainability characteristics should be a pre-requisite for any consideration on greenwashing principles on products other than IBIPs – excluding non-life products and life insurance contracts which are not intended to be investment products, as described above.

Moreover, the qualification of misleading claims should only be considered in the context of a commercial relationship that may lead to distorted economic behaviours of consumers. As such, a sustainability claim should only be qualified as misleading if it has been used as a selling point or as a means to gain a competitive advantage – in this respect, the notion of intentionality must be taken into account when considering greenwashing principles. Indeed, the European legislative framework must not discourage stakeholders to openly discuss their wider sustainability priorities and certain activities that could fall under the scope of sustainability claims. Stakeholders should not have to restrain from engaging in thought leadership, which can help facilitate positive market development, out of concern over potential regulatory scrutiny under certain rules. This will ensure further consistency with the current proposed definition of environmental claims in the Green Claims Directive and the UCPD.

Furthermore, Insurance Europe is of the opinion that greenwashing should be limited to misleading claims, as it is the case with the Green Claims Directive, and not be extended to processes or training or other fields that are linked to sustainability issues: those should be considered separately. It is also crucial to differentiate between sustainability claims that are governed by regulations, such as the SFDR or the Insurance Distribution Directive (IDD), and those that are not. When a sustainability claim is prescribed by applicable regulation, it is essential to leave room for the specific requirements for substantiation and verification therein. Likewise, if a company does not fill precontractual templates for products with ESG features, it should not be qualified as greenwashing but rather as a lack of compliance with SFDR requirements, and should be handled as such.

Insurance Europe also calls on EIOPA to take into account a criterion of proportionality when defining supervision principles, as remedial actions should be considered depending on the gravity of the misleading claim: an accurate but imprecise statement should not be scrutinised in the same way as a deliberately false one.

Lastly, some insurers that are dependent on funds managers do not have the possibility to rename their products to fulfil requirements regarding sustainability claims and greenwashing. Those insurers should not be held liable when some aspects of the marketing of a product fall outside of their control. That is why it is especially important for this Opinion to clarify its scope and develop guidelines for misleading and voluntary sustainability claims only.

insurance europe

cro forum

Q2. ***Stakeholders views are sought where they believe that other requirements – beyond those already identified by EIOPA in this Opinion – already cover sustainability claims.***

As Insurance Europe understands, the Green Claims Directive and the Directive on empowering consumers in the green transition are not taken into account by EIOPA because the Green Claims Directive has not yet been finalised and formally adopted and the Directive on empowering consumers in the green transition, which has been adopted on 20 February 2024, had not yet been finalised at the time of publication of EIOPA's opinion.

However, these two important regulatory proposals will constitute a crucial part of the future European legislative framework on greenwashing and must not be ignored by EIOPA. Indeed, this Opinion, which is meant to provide guidelines to national competent authorities and insurance companies on how to prevent and tackle greenwashing, pursues a similar goal. It must therefore be ensured that the opinion does not become obsolete a few months after its publication because overlapping regulatory proposals will enter into force. EIOPA could even consider refraining from issuing its documents before the work on the Green Claims Directive is completed.

Further legislation on green claims which insurers have to comply with and which EIOPA would have to take into account includes the SFDR, IDD, Markets in Financial Instruments Directive (MiFID) II, Undertakings for the Collective Investment in Transferable Securities (UCITS), and Corporate Sustainability Reporting Directive (CSRD).

Moreover, some countries have already initiated work on monitoring greenwashing practices. EIOPA should have in sight those national initiatives when setting a framework on sustainability claims, in order to avoid any inconsistencies and potential overabundance of supervisory principles on greenwashing.

Finally, there is a need for a coordinated approach between EIOPA and ESMA on this subject, and especially regarding:

- the naming of products, as some insurers are dependent on fund managers and do not have the possibility to rename their products to fulfil requirements regarding sustainability claims and greenwashing;
- the fact that insurance-based investment products (IBIPs) can provide both an insurance and an investment component. Guidelines developed by EIOPA and the European Securities and Markets Authority (ESMA) will thus respectively have an impact on insurance companies and on life insurers. As such, consistency on greenwashing principles must be ensured, particularly regarding MOPs.

Q3. ***Do you agree with Principle 1 and 2 and whether these principles help ensuring that sustainability claims are accurate?***

Insurance Europe strongly sides with EIOPA's Principles 1 and 2 which states that sustainability claims should be accurate, precise, fairly represent the sustainability profile of the product or the entity, and be kept up to date. These characteristics are paramount to avoid misinterpretations and to ensure consumers' protection. However, the insurance industry believes that potential accusations of greenwashing should focus on the sole misleading claim and not be extended to processes or other fields that are linked to sustainability issues: those should be considered separately. As such, we are of the opinion that the Product Oversight and Governance (POG) and the suitability assessment, which are specific processes subject to the IDD regulation, should not follow the same supervision principles suggested by EIOPA, as they should not be confused with sustainability allegations in the context of a commercial relationship. In this respect, the elaborations on the POG processes should consider that sustainability strategies and claims come in a variety of forms and levels of ambition. For example, a manufacturer who merely advertises the fact that an insurance-based investment product commits to a certain minimum proportion of sustainable or taxonomy compliant investments does not necessarily need to conduct market research to understand the sustainability preferences of the target market. In this case, the target market is determined – in terms of this sustainability feature – by the commitment of the product. Care should be taken to avoid redundant bureaucracy.

Moreover, transitioning towards a sustainable economy is a long-term commitment: green initiatives should not be curbed on the pretext that insurers are not yet exemplary in their whole activities. Claims related to green initiatives and products should be encouraged and should not be qualified as misleading if they comply with the greenwashing principles set in this opinion. They should be considered on their own, and not put in contradiction with other non-sustainable activities of the entity: a sustainable investment product remains one even if the insurance provider also insures motor vehicles for instance.

In view of the diversity of the insurance market and of sustainability-related strategies and claims, we believe that it is important that the principles are not too prescriptive.. The EIOPA opinion should concentrate on abstract principles which can then be applied to the individual case by the respective national competent authorities. The setting of precise and binding thresholds would overstep the limits of interpretation of existing regulation and would require an explicit decision or mandate by the legislator.

As regards under 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"*, the words "*timely*" and "*promptly*" should be replaced by "*periodically*". An annual reporting would make more sense for consumers and insurers alike, as it is already the case for other reporting requirements such as the one under the SFDR. This will rationalise the way and the amount of information received by consumers. Moreover, when only minor changes are made to a claim, communicating promptly might incur disproportionate costs. We would suggest introducing an updating requirement solely for substantial changes. That would help to ensure that the proportionality principle is applicable to Principle 2. Also, in order to be able to properly fulfil reporting requirements, insurers need available, reliable, and consistent data. This will avoid legal uncertainty and ensure that consumers are not over-informed.

Insurance Europe would also like to stress the fact that a misleading claim should only be considered in the context of a commercial relationship – it should be qualified as misleading only if it has been used as a selling point or as a means to gain a competitive advantage. To this extent, the example of bad practice given by EIOPA regarding the departure of an insurer from a net-zero alliance (3.30) should take into account a proportionality criterion: if joining such an alliance was not used as a marketing tool in the first place, the insurance provider should not be accused of greenwashing if it has not issued a public statement when leaving the alliance to explain its departure.

Also, difficulties could arise from this Opinion regarding the role of distributors – especially providing advice – and professional requirements according to the IDD (for instance, point 3.17). Indeed, a distributor is not in a position to modify the advertising communications or claims made by manufacturers in case of greenwashing. Besides, green claims and greenwashing are a separate matter from training issues.

Q4. *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?*

Insurance Europe agrees with principle 3 which states that sustainability claims should be substantiated with clear reasoning and facts. The proportionality criteria are especially important to not place undue burden on small and medium sized enterprises (SMEs) and to ensure that retail consumers are not overwhelmed by the amount of information they receive.

Nevertheless, due diligence and proportionality are difficult principles to implement properly in practice because of the current state of the legislation on greenwashing and the existing gaps. Furthermore, the rules are very ambitious and do not necessarily match methodologies and rules that have not yet been developed and clarified enough to enable insurers to create robust plans and interim targets. It is crucial to differentiate, in this opinion, between sustainability claims that are governed by regulations, such as the SFDR, and those that are not. When a sustainability claim is prescribed by applicable regulation, it is essential to leave room for the specific requirements for substantiation and verification therein. Greenwashing should only concern voluntary claims.

Lastly, the limited availability of sustainability-related data is, in practice, one of the major obstacles to offering products with robust environmental objectives. It is therefore important that supervisors – when determining if there has been a case of greenwashing – carefully assess the source of data used, its quality, who bears the responsibility for producing it, and if the insurer could rely on sounder alternatives without excessive operational burden. As such, it should be noted that for MOPs, insurers depend on the data provided by asset managers to obtain the sustainability features of an underlying asset. To this extent, insurers should not bear responsibility for misleading claims made at unit-linked level.

Q5. ***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?***

The insurance industry believes Principle 4 regarding the accessibility, visibility and understandability of sustainability claims is essential. In this regard, it is important that the different pieces of legislation that require the disclosure of sustainability information be rationalised in order to both prevent over-informing consumers and avoid undue burden on businesses. Nevertheless, the regulator must remain careful as accessibility should not become a source of legal risk. Indeed, while insurers agree that the clarity and simplification of information is essential for clients, they are however subject to legal obligations regarding the use of a vocabulary specific to insurance in contractual and commercial documentation, which may be unusual to many policyholders. This complexity should be considered as EIOPA's guidelines must not put providers in a legally ambiguous situation.

On that note, this opinion should set up clear guidelines, aligned with existing pieces of legislation and the aforementioned regulatory proposals, for the presentation of the communication of explicit environmental claims, leveraging on the SFDR rules on how financial operators must present their documentation relating to the sustainability of their insurance products. This will also ensure that producers do not overload consumers with information, thus supporting the Directive's objective of providing more clarity and transparency to consumers.

Fulfilling mandatory standardised documents such as the Package Retail Investment and Insurance Products (PRIIPs) key information documents (KID) and the SFDR templates represents a significant part of providers' administrative work. While adapting their communication to a less-knowledgeable public is important to avoid confusion and ensure consumers' trust, EIOPA should provide as much help as possible to providers in adapting the provisions to suit the needs of the templates' target audience. It is especially challenging, for small market players, to provide both very complex scenario analysis, quantitative sustainability preferences, etc. and non-technical and easy to understand language. On this note, it will be particularly difficult for providers to ensure that the simplified language they use does not contradict the information required by the aforementioned regulations. Article 13 SFDR forbids any communication in contradiction with the SFDR information. Therefore, the regulatory requirements should prevail and EIOPA's guidelines should not put providers in a legally ambiguous situation.

On another matter, insurers would like to question one example of bad practice given by EIOPA: "*3.65. The links to the SFDR disclosures online do not work*". In our opinion, this situation should only lead to greenwashing if the links dysfunction is proved to be intentional.

Q6. ***What do you think would be the costs and benefits of this opinion?***

Ensuring that this Opinion is consistent with others of the previously mentioned pieces of legislation is key to limit the implementing costs. Having inconsistencies between requirements would mean that they would have to be implemented twice, hence doubling these costs.

The insurance industry would welcome a complete costs and benefits analysis for each proposal, taking into account that some costs are not linear, but heavy one-offs, especially for small market players.

insurance europe

cro forum

Q7. *Do stakeholders have other comments on this opinion?*

- General comments on consistency with other pieces of legislation and regulatory proposals

Insurance Europe supports EIOPA's objective to pave the way for a common approach at EU-level on greenwashing for the insurance and pensions sectors. Nevertheless, such an approach must be consistent with other pieces of legislation and regulatory proposals such as the Sustainable Finance Disclosure Regulation (SFDR), and the Green Claims Directive. EIOPA should also ensure that the guidelines do not duplicate or overlap with aforementioned pieces of legislation and regulatory proposals.

Moreover, Insurance Europe calls for an alignment of this Opinion with both European and global special drawing rights (SDRs) to ensure global consistency and interoperability. Without sufficient global consistency, investors cannot compare and make informed choices, resulting in sub-par capital allocation decisions that fail to align with the climate transition.

Ensuring consistency will also help to develop a clear and straightforward understanding of greenwashing, what practices constitute greenwashing and avoid confusion, which would defeat the purpose of the Opinion. Specifically, it is important that concepts common to pieces of legislation and this Opinion are understood and interpreted in the same way. It is essential that EIOPA uses the same criteria to define greenwashing and sustainability claims as those used in the Green Claims Directive and the UCPD (as amended by the Directive on empowering consumers in the green transition).

- Availability of sustainability-related data

The establishment of a robust and ambitious framework is relevant to tackle greenwashing, in order to ensure consumers' protection, and provide legal certainty for insurers regarding their sustainability claims. However, we would like to stress the fact that understanding sustainability topics is a work in progress for stakeholders. Sustainability-related information and data are still maturing to be as accurate as possible.

The limited availability of sustainability-related data is, in practice, one of the major obstacles to offering products with environmental objectives. It is, therefore, important that this opinion makes clear that all potential sources of information and data may be used for the purpose of substantiating green claims.