March 11, 2024

Ms. Petra Hielkema
Chairperson
European Insurance and Occupational Pensions Authority (EIOPA)
Westhafenplatz 1
60327 Frankfurt am Main
Germany

Re: Consultation Paper on the Opinion on sustainability claims and greenwashing in the insurance and pensions sector

Dear Ms. Hielkema:

The Institute of International Finance (IIF) and its insurance members are pleased to respond to EIOPA's Consultation Paper on the *Opinion on sustainability claims and greenwashing in the insurance and pensions sector* (Consultation Paper). The IIF has been actively engaged in thought leadership and advocacy on financial sector sustainability for several years and we recognize the importance of active dialogue with global standard setters and regulators on these important issues, including specifically on greenwashing, which, as EIOPA notes, can have a substantial impact on both insurance consumers and insurance providers.

We recently responded to a consultation from the International Association of Insurance Supervisors (IAIS), of which EIOPA is an active member, on the IAIS's Draft Application Paper on climate risk market conduct issues in the insurance sector.[1] Many of the points raised in the IIF response, particularly with respect to greenwashing, are pertinent to our response to the Consultation Paper.

We encourage EIOPA to align its definition of greenwashing with the more precise and tailored definition offered by IOSCO. We encourage EIOPA to align its definition of greenwashing to the more precise and tailored definition offered by the International Organization of Securities Commissions (IOSCO), which describes greenwashing as the practice of misrepresenting sustainability-related practices or the sustainability-related features of investment products.[2] EIOPA's proposed definition of greenwashing in Paragraph 2.2 of the Consultation Paper is overbroad and open to different interpretations, which can exacerbate the regulatory fragmentation surrounding sustainability, which EIOPA acknowledges in Paragraph 2.6 of the Consultation Paper.[3] IOSCO's definition of greenwashing, on the other hand, focuses on the potential source of any greenwashing risk in the insurance sector – that is, with respect to an insurance-based investment product (IBIP). If EIOPA believes that a broader scope of application is

[1] https://www.iif.com/portals/0/Files/content/IIF%20Response%20to%20Draft%20AP%20on%20Climate%20Risk%20Market%20Conduct%20Issues.pdf

[2] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD750.pdf

[3] We also note that EIOPA's alignment with IOSCO would be broadly consistent with Paragraph 4.3 of the Consultation Paper, which encourages national competent authorities to collaborate with other authorities, including securities authorities.

appropriate, it should provide clear and detailed evidence of how insurance products more broadly have given rise to, or could potentially give rise to, greenwashing concerns.[4]

We also encourage EIOPA to take into consideration the relevant European Union (EU) legislation that already addresses a broad range of market conduct issues that are not greenwashing. As noted in Paragraph 3.3 of the Consultation Paper, the Insurance Distribution Directive (IDD),[5] EU regulations supplementing the IDD[6], and the EU Regulation on sustainability-related disclosures[7] provide national competent authorities with the basis to address market conduct issues that, while important, do not rise to the level of greenwashing.[8]

We strongly encourage EIOPA to preserve insurers' ability to design and price products based on risk. Insurers have invested considerable resources in actuarial and risk specialists in order to develop, refine and price their offerings based on the risk appetite and profile of the organization, the governmental, legal environment(s), and markets in which the insurer operates, and the insurer's access to granular risk information regarding specific products and markets. A wide range of factors influence insurers' commercial decisions regarding the design and marketing of products and the pricing of those products. Moreover, pricing increases are also substantially affected by macroeconomic drivers such as inflation and interest rates and cannot solely be attributable to sustainability variables.

Insurers need to retain the ability to tailor their product offerings and pricing to account for new information and market signals and to provide market signals to their customers and the broader market and real economy. This tailoring exercise is increasingly complex and necessarily dependent on the lines of business, activities, strategic goals and plans, and risk appetite of a particular insurer. Decisions regarding product offerings and pricing directly impact the financial position and solvency of insurers and should remain business decisions. Supervisors should not interfere in the business decisions of insurers unless necessary to prevent or address verified instances of consumer harm that are caused by unfair, discriminatory, or deceptive practices under the legal and regulatory framework in place in their jurisdiction. As noted in the IAIS's November 2023 paper, *A call to action: the role of insurance supervisors in addressing natural catastrophe protection gaps*[9], restricting price through regulatory actions (if intended to increase insurance affordability, e.g., price ceilings), could lead insurers to exit the market on grounds of reduced profitability, further reducing insurance supply. Such restrictions could also potentially undermine important price signals by obscuring the true cost of the risk and limit product innovation, which is needed to help reduce protection gaps.

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[4] See, e.g., Paragraph 3.5 of the Consultation Paper, which implies that non-life insurance entities and products may give rise to greenwashing issues.

[5] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19).

[6] Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products

[7] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

[8] We note that the comments in this paragraph relate to EIOPA's Question 2 in the Consultation Paper.

[9] https://www.iaisweb.org/uploads/2023/11/IAIS-Report-A-call-to-action-the-role-of-insurance-supervisors-in-addressing-natural-catastrophe-protection-gaps.pdf

Comments Related to Principle 1

EIOPA and the national competent authorities should recognize the broad range of issues that inform an insurer's underwriting, investment and risk management decisions. We agree with EIOPA's proposed Principle 1, which states that sustainability claims made by a provider should be accurate, precise, and consistent with the provider's overall profile and business model, or the profile of its products. However, Paragraph 3.10 of the Consultation Paper elaborates on this Principle by stating that providers should ensure that their sustainability claims are mirrored in their decision-making, culture and internal processes. We believe that this statement has the potential to overlook, and to elevate sustainability over, the broad range of actuarial, risk, legal, market and strategic considerations that also inform an insurer's underwriting, investment, risk management and remuneration decisions. Sustainability issues should certainly inform these decisions, but these issues need to be balanced with other important considerations.

With respect to Paragraph 3.13 of the Consultation Paper, which addresses a provider's use of the terms 'sustainable' and 'green,' we encourage EIOPA to coordinate with the European Securities and Markets Authority (ESMA), which is also addressing these issues. ESMA recently announced that it plans to issue in Q2 2024 Guidelines on ESG and sustainability-related terms in fund names, subject to the timing of the publication of the AIMFD and UCITS Directives revised texts.[10] ESMA also has focused recently on greenwashing claims with respect to impact claims based on the United Nations Sustainable Development Goals.[11] Both of these initiatives could be relevant to EIOPA's consideration of greenwashing issues.

Comments Related to Principle 2

We are in broad agreement with EIOPA's proposed Principle 2; however, we have some observations with respect to product oversight and governance. Specifically, Paragraph 3.26 states that manufacturers and distributors should continuously monitor and periodically review products to ensure that they remain consistent with the suitability objectives of the target market.

It is important to note and take into account that the ability of an insurer or distributor to continuously monitor products at a granular level may be constrained by the current state of the art in performance measurement processes and controls and limited by the availability of credible and reliable data and metrics. As well, assessing a potentially diverse target market's sustainability objectives can be complicated by conflicts between the goals of strong financial performance and sustainability.

Comments Related to Principle 3

We fully support the need for an insurer to substantiate its sustainability claims with clear reasoning and facts. We also agree fully that due diligence and proportionality should be taken into account when determining if a sustainability claim is substantiated with clear reasoning and facts (see Question 4).

However, the fact that many insurers rely on external parties for sustainability ratings and other data in support of their sustainability claims is not well reflected in the narrative supporting this principle. Insurers that rely on external third parties may not have access to the data or information that would be needed

[10] https://www.esma.europa.eu/press-news/esma-news/esma-proposes-changes-and-updates-timeline-its-guidelines-funds-names

[11] https://www.esma.europa.eu/sites/default/files/2024-02/ESMA50-524821-3098_TRV_article_-_Impact_investing_-_Do_SDG_funds_fulfil_their_promises.pdf

to explain what the ESG rating measures and why it is a relevant measure of their profile or of their product's profile, because much of this data and information is closely guarded proprietary information of the insurer's third-party vendor. EIOPA should acknowledge the need for some insurers to rely on third party data, information and representations when making sustainability claims.

We appreciate the opportunity to respond to the Consultation Paper and we welcome the opportunity for further dialogue on these issues. Please address any questions or comments on this response to Mary Frances Monroe (mmonroe@iif.com) or Melanie Idler (midler@iif.com).

Respectfully submitted,

Mary Frances Monroe
Director, Insurance Regulation and Policy