



***PensionsEurope's response to EIOPA's
consultation on Sustainability claims and
greenwashing.***

March 2024

General comments

PensionsEurope supports the efforts of the European institutions to eliminate greenwashing. Greenwashing exists in the financial sector. The recent sustainable finance legislative framework helps decisively to reduce unsubstantiated ESG claims.

By nature, pension funds are long-term investors that have as their main objective the delivery of adequate pensions for their members and beneficiaries. This means they should naturally take the long-term view and are required to consider the long-term risks that may affect their portfolios. ESG risks, and climate change risks, in particular, play an increasingly significant role in risk-management.

We would like to emphasize that pension funds are active as buyers on the financial market, providing pension schemes. They do not provide personal financial products. Typically, clients of pension funds are sponsoring companies which – especially considering CSRD – are, contrary to retail customers, well able to conduct a satisfactory ESG due diligence of their suppliers. Simply copying regulations for retail financial services without regard to the specificities of pension funds will lead to poor and inadequate regulation. As not-for-profit organizations with often mandatory participation and without marketing or sales that operate on the demand side of the financial market, pension funds are not involved in 'misselling' ESG claims to obtain an unfair competitive advantage. Please see below our responses to the specific questions of this consultation.

Sustainability claims:

Question 1: *Do you agree with the above understanding of what sustainability claims are and how they can be mis-leading?*

Communication and reporting on sustainability are important topics for pension funds, regulators and participants. It is self-evident that pension funds want to communicate accurately, clearly and in an understandable manner with participants. As such we broadly support the principles set out in this opinion. The principles also broadly mirror the approach of the guidance provided by some National Competent Authorities on sustainability claims.

However, it is important to recognize that these principles can be at odds with each other. Information about the investment process and the sustainability aspects of investments must be very technical to be precise. This will create tension to provide information that is understandable and accessible. How this tension should be managed is highly dependent on the context in which a financial product is provided or sold. How a retail consumer, who is proactively discussing products with an adviser, engages with information on the product, is not comparable with a pension fund participant who is automatically enrolled and has no investment choice. We therefore deplore the fact that EIOPA once again chooses a one-size-fits-all approach. We note that the draft Opinion is mainly focused on retail customers and investment choices. Therefore, we propose to differentiate between third-pillar

products that are actively marketed by their providers and second-pillar pensions that are part of an employment contract / collective agreement and hence cannot be purchased on a free market. The latter have no incentive to name their pension scheme in a way that sounds sustainable and also, the IDD does not apply to them.

We also note that legally speaking, EIOPA's definition of sustainability claim is beyond its legal remit in the case of IORPs. For pension funds, the Opinion is based on the provisions of the SFDR and the articles in IORP II relating to the Pension Benefit Statement. However, EIOPA writes that sustainability claims can occur in "marketing information and website texts, advertising brochures, social media posts, policies, images, strategies, labels, certificates, ratings, targets, non-regulatory labels, and product names". These information points are beyond the scope of the IORP II Directive and therefore out of the scope of EIOPA's competence.

Legal considerations aside, we are concerned that the Opinion could lead to poorer communication on sustainability by pension funds for three reasons. First, because the tension between principles is not recognized, the opinion could lead to legalistic communication that is dominated by compliance considerations, rather than the aim to stimulate engagement of participants. This is because the principle of accuracy is more easily supervised and therefore, in practice, will supersede the principle of accessibility. As pension funds are not-for-profit institutions, they do not use inflated sustainability claims to "mis-sell" products. Participants are mandatorily enrolled and typically have no investment choice. To engage these participants, it is necessary to communicate in an accessible and layered fashion, with comprehensible information in the first layer. Instead, the supervisory approach foreseen by the Opinion may lead pension funds to be very careful about using any simplification. Instead, sustainability communication may take the style of "terms and conditions", which very few participants will read.

Secondly, the very broad definition of "sustainability claims" will also hamper pension funds in making information accessible. We fully agree that product names and written statements related to sustainability should be identified as a sustainability claim. Moreover, we believe that visual information plays an important role in signposting participants and improving the accessibility of information. However, if it is assumed that visual information can carry implicit claims, it becomes almost impossible to use them. As a result, the information would become unappealing, leading participants to view their pension product as something technical and boring. This would also increase the likelihood of participants coming to the website of a pension fund to find information about the general characteristics of their pension. We also hold that the opinion should exclusively be concerned with sustainability claims regarding the core business of entities. Regarding IORPs, for instance, this means that EIOPA should focus solely on sustainability claims related to the investment policy/pension schemes of the institutions. If an IORP e.g. states on its website that it has reduced waste by digitalizing its processes, it must not be accused of greenwashing if it has not made any statements about the sustainability of its investments.

Thirdly we fear that EIOPA's proposed understanding of "sustainability claim" has the potential to cause IORPs from refraining to make any references (in whichever form) to sustainability to avoid being accused of greenwashing. We feel that not every individual statement, image etc. should be subject to supervisory scrutiny, but rather the overall external impression of an entity/product should be taken into account. Hence, we propose the following definition of "sustainability claim": A sustainability claim is defined as a targeted combination of "environmental, social and/or ethical claims", giving the overall impression that a product or the activities of a distinct entity result in a specific and quantifiable sustainability benefit.

Lastly, it should be clarified that entities cannot be made responsible for statements by external actors, e.g. the content of articles on the website of third parties containing a link to the website of the entity in question.

Question 2: *Stakeholders' views are sought where they believe that other requirements – beyond those already identified by EIOPA in this Opinion – already cover sustainability claims.*

In some member states like the Netherlands, pension law already requires all communication by pension funds to be correct, clear and balanced.

However, depending on the national implementation of the CSRD, which is still pending in many Member States, IORPs may be subjected to new requirements regarding sustainability claims. In any way, we would like to emphasize that accurate sustainability claims that are based on legal requirements, such as e. g. SFDR, might under no circumstances be qualified as greenwashing.

On a more general note, we would like to stress that IORPs have a social role and in most cases are not active in a market where they try to attract customers to buy their “products”. Rather, they implement the pension promise that their sponsoring undertakings give to their employees. Hence, IORPs generally are not motivated to engage in greenwashing at all. As a result, we see the danger that to avoid being accused of greenwashing, IORPs will increasingly refrain from referring to anything related to sustainability at all. Hence, implementing unfitting regulations may lead to green bleaching.

Accurate sustainability claims:

Question 3: *Do you agree with Principle 1 and 2 and whether these principles help ensuring that sustainability claims are accurate?*

As mentioned, we broadly agree with the principles, but rather have an issue with the tension between the principles and the scope of “sustainability claims”. More specifically concerning Principle 1, accuracy and precision require quantifiability, which, however, due to EIOPA's very broad understanding of “sustainability claim”, is not given. While we support the intention of Principle 1, to avoid setting targets that cannot be met, we propose formulating Principle 1 in the following, more practical way: “Sustainability claims made by a provider should fairly represent the sustainability profile of the entity or the product”. Regarding Principle 2, we would like to point out that tracking that claims are up to date will require substantial effort. This in particular applies to illiquid investments, as data is often not available or available only with considerable delay.

Furthermore, we would like to make the following points:

- We oppose the fact that the Opinion states that sustainability should be reflected in “risk management, and internal audit strategies, investment and underwriting guidelines, overall corporate culture, remuneration policies and, where relevant, policies related to other aspects.” Neither EIOPA nor national supervisors have the competency to supervise all the aspects of the governance and management of a pension fund based on Articles 36 and 41 IORP II, which only relate to the PBS. We do not question the role of ESG in risk management, but there are separate articles in IORP II for these topics, and indeed also EIOPA Opinions.
- Good practice 3.35 seems to ignore the principle of diversification. We do not think it is currently possible to design a pension product that only invests in companies with a high share of Taxonomy-alignment (let us assume at least 50%). Currently, only a few percentage points

of any equity or corporate debt index are Taxonomy-aligned. Even assuming that the example only concerns the part of the portfolio in these two asset classes – and does not apply to government bonds - this would be an extremely risky product and undoubtedly not meet the prudential requirements. We urge EIOPA only to incorporate examples of products that meet the most basic prudential requirements.

Substantiated sustainability claims:

***Question 4:** 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?*

Proportionality needs to be taken into account when due diligence measures are required. We would also like to point out that for the different types of entities for which EIOPA is responsible, proportionality has a different meaning. Hence, we hold that regarding this opinion, for IORPs, proportionality should be defined as in the IORP-II Directive.

We agree that commitments should be substantiated. However, we do believe that the degree of substantiation can be developed over time. In the case of climate change, it is clear that decent metrics and tools are available to investors, including for specific target-setting. Setting a target for 2050 and failing to substantiate how to get there over time can be seen as problematic. In the case of biodiversity, however, these tools and metrics are very much in its infancy. Long-dated targets are useful in signaling to companies, asset managers and data providers that asset owners are keen to develop their policy in this area, even when it may be difficult to set concrete near-term targets immediately. In this case, strict supervision could stifle initiative. A balanced, case-by-case approach is needed.

We recommend that the Opinion clarifies what is meant with the expectation that due diligence is performed on sustainability information. Generally, it is normal to conduct due diligence on external parties such as data providers. However, the provision of sustainability data is going to become based on company reporting under the CSRD and automated via the ESAP. A pension fund cannot perform due diligence on all information points, which are already audited. This would be a hugely duplicative exercise. Moreover, we do not think that providers should be required to explain the methodology of any ESG rating they disclose. A link to the website of the corresponding rating agency should be sufficient.

Accessible sustainability claims:

***Question 5:** 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?*

We agree with the principle and believe that, for pension funds with mandatorily enrolled participants that do not compete for business, this principle should prevail over the principle of accuracy. This should certainly be the case in the top layer(s) of website information, which ultimately will be the place that participants will go to in case they proactively want to learn more about the sustainability aspects of their pension funds. The Opinion can be improved by explicitly stating that accuracy can be expensed in order to achieve accessibility in the first layer, as long as it is easy to find the underlying more specific information.

Furthermore, we would like to point out the fact that the stakeholders involved differ between insurance undertakings providing retail products and IORPs, who organize the pension schemes of their sponsoring undertakings and/or social partners.

Other:

Question 6: *What do you think would be the costs and benefits of this opinion?*

For some countries, we see little benefit in this opinion, as the national supervisor already published its guidance.

As explained above, IORPs inherently are not motivated to engage in greenwashing activities. This opinion should not lead to IORPs refraining from making statements about sustainability to avoid being accused of greenwashing as in SFDR.

Furthermore, we believe that the opinion should not in any way end up to be a step towards the imposition of fines for greenwashing. Any new legislation at the EU or national level introducing penalties in cases of non-compliance should under no circumstances be introduced. For IORPs, any costs associated with sanctions will ultimately lead to lower pensions being paid out, thereby undermining the social purpose of IORPs.

However, we believe that the Opinion of EIOPA presents some advantages compared to some national guidance (such as in the Netherlands) for two reasons:

- The draft Opinion mentions making use of layering more explicitly. Allowing such an approach, and not striving for complete preciseness in the top layer, avoids the situation where the pension fund website will start to look like “terms and conditions”.
- In some cases, national competent authorities use many examples that rely on assumptions about how participants interpret information.

We also appreciate the approach of providing good and bad practices. This is helpful, as long as the examples are chosen well.

Question 7: Do stakeholders have other comments on this opinion?

We welcome that this draft opinion leaves leeway to NCAs regarding the implementation of its provisions. Given the differences between insurance undertakings and IORPs (involvement of social partners, no marketing activities, the importance of social and labor law) as well as the heterogeneity among IORPs in the EU, this leeway is necessary.

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes.

PensionsEurope has **24 member associations** in 18 EU Member States and 3 other European countries¹.

PensionsEurope member organisations cover different types of workplace pensions for approximately over **90 million people**. Through its Member Associations PensionsEurope represents approximately **€ 5 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **18 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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¹ EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland.