

## Preliminary assessment and comparison between the EC's draft and final amendments to the DAs under Solvency

Referring to: Draft Delegated Regulation amending Delegated Regulation (EU) 2015/35 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings

The following table compares the [EC's draft amendments](#) and the [EC's final amendments](#) as regard the integration of sustainability risks in the governance of insurance and reinsurance undertakings in the delegated acts under Solvency II. Underlined font marks main changes.

<b><u>Final amendments</u></b>	<b><u>Draft amendments</u></b>	<b><u>Comment</u></b>
<b>Article 1, point 55c - new</b>	<b>Article 1, point 55c - new</b>	<b>Mixed</b>
'sustainability risk' means an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential negative impact on the value of the investment or on the value of the liability;	'sustainability risk' means: (a) as regards investments, sustainability risk as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council; (b) as regards liabilities, an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential <u>material</u> negative impact on the value of the liability;	<i>This is closely aligned with the definition of the SFDR (Article 2, point 22) and applies the same definition of material negative impact to liabilities. Unfortunately, the reference to materiality has been removed.</i>
<b>Article 1, point 55d – new</b>	<b>Article 1, point 55d – new</b>	<b>No change / Positive</b>
'sustainability factors' means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088 of the European Parliament and of the Council;	'sustainability factor' means sustainability factor as defined in Article 2, point (24), of Regulation (EU) 2019/2088;	<i>This brings consistency with the SFDR.</i>

<b>Article 1, point 55e - new</b>	<b>Article 1, point 55e - new</b>	<b>Negative</b>
<p>'sustainability preferences' means a customer's or potential customer's choice as to whether <u>and, if so, to what extent, one or more</u> of the following financial instruments should be integrated into his or her investment:</p> <p><u>(a) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council**;</u></p> <p><u>(b) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in</u> sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088;</p> <p><u>(c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the customer or potential customer;</u></p>	<p>'sustainability preferences' means a customer's or potential customer's choice as to whether either of the following financial instruments should be integrated into his or her investment strategy:</p> <p>(a) a financial instrument that has as its objective sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088;</p> <p>(b) a financial instrument that promotes environmental or social characteristics as referred to in Article 8 of Regulation (EU) 2019/2088 and that either:</p> <p>(i) pursues, among others, sustainable investments as defined in Article 2, point (17), of that Regulation; or</p> <p>(ii) as of 30 December 2022, considers principal adverse impacts on sustainability factors, as referred to in Article 7(1), point (a), of that Regulation;</p>	<p><i>This definition is improved with respect to that in the draft amendments and appears to be an effort by the EC to achieve legislative coherence across EU legislation (especially the sustainability-related investments as defined in SFDR and TR). However, the definition still appears inconsistent with those under the SFDR as it is not clear if some Article 8 products under the SFDR are excluded from the definition of ESG preferences.</i></p> <p><i>Specifically, the requirement linked to the consideration of adverse impacts might indirectly narrow down the eligibility of Article 8 products under the definition of sustainability preferences (the definition seems to exclude sustainable products under the SFDR that do not have sustainable investments as an objective or do not require exclusion of underlying assets with significant adverse impacts).</i></p> <p><i>In addition, the wording "qualitative or quantitative elements demonstrating that consideration are determined by the customer or potential customer", could also be operationally problematic.</i></p>
<p><b>Article 260, paragraph 1, point (a), point (i) - replacement</b></p>	<p><b>Article 260, paragraph 1, point (a), point (i) - replacement</b></p>	<p><b>No change / Positive</b></p>
<p>actions to be taken by the insurance or reinsurance undertaking to assess and manage the risk of loss or of adverse change in the values of insurance and reinsurance liabilities, resulting from inadequate pricing and provisioning assumptions due to internal or external factors, including sustainability risks</p>	<p>actions to be taken by the insurance or reinsurance undertaking to assess and manage the risk of loss or of adverse change in the values of insurance and reinsurance liabilities, resulting from inadequate pricing and provisioning assumptions due to internal or external factors, including sustainability risks</p>	<p><i>These amendments on underwriting and reserving mirror EIOPA's proposals. This amendment is not considered problematic and is in line with Insurance Europe position that supports consideration of sustainability aspects as part of all business processes.</i></p>

<b>Article 260, in paragraph 1, point (c), point (vi) - new</b>	<b>Article 260, in paragraph 1, point (c), point (vi) - new</b>	<b>No change/ Positive</b>
actions to be taken by the insurance or reinsurance undertaking to ensure that sustainability risks relating to the investment portfolio are properly identified, assessed and managed.	actions to be taken by the insurance or reinsurance undertaking to ensure that sustainability risks relating to the investment portfolio are properly identified, assessed and managed.	<i>This amendment is not considered problematic and is in line with Insurance Europe position that including proposed explicit references in the risk management function might help integrate sustainability risks consistently and more efficiently.</i>
<b>Article 260, paragraph 1a - new</b>	<b>Article 260, paragraph 1a - new</b>	<b>No change / Positive</b>
The insurance and reinsurance undertakings shall integrate in their policies referred to in points (a) and (c) of paragraph 1, and where relevant, policies on the other areas referred to in paragraph 1, sustainability risks.	The insurance and reinsurance undertakings shall integrate in their policies referred to in points (a) and (c) of paragraph 1, and where relevant, policies on the other areas referred to in paragraph 1, sustainability risks.	<i>This amendment with respect to the risk management function is not considered problematic. The fact that the EC maintained the wording "where relevant" is positive.</i>
<b>Article 269, paragraph 1, point (e) - replacement</b>	<b>Article 269, paragraph 1, point (e) - replacement</b>	<b>No change / Positive</b>
identifying and assessing emerging risks <b>and sustainability risks</b> .	identifying and assessing emerging risks <b>and sustainability risks</b> .	<i>General amendment on risk management</i>
<b>Article 269, paragraph 1a - new</b>	<b>Article 269, paragraph 1a - new</b>	<b>No change / Positive</b>
Emerging risks and sustainability risks as referred to in paragraph 1, point (e), and identified by the risk management function shall form part of the risks referred to in Article 262(1), point (a).	Emerging risks and sustainability risks as referred to in paragraph 1, point (e), and identified by the risk management function shall form part of the risks referred to in Article 262(1), point (a).	<i>The industry position was supportive of consideration of the effect of sustainability risks in the ORSA via Article 262, provided they are financially material.</i>
<b>Article 272(6), point (b) – replacement</b>	<b>Article 272(6), point (b) – replacement</b>	<b>No change / Positive</b>
the effect of inflation, legal risk, <b>sustainability risks</b> , change in the composition of the undertaking's portfolio, and of systems which adjust the premiums policy-holders pay upwards or downwards depending on their claims history (bonus-malus systems) or similar systems, implemented in specific homogeneous risk groups;	the effect of inflation, legal risk, <b>sustainability risks</b> , change in the composition of the undertaking's portfolio, and of systems which adjust the premiums policy-holders pay upwards or downwards depending on their claims history (bonus-malus systems) or similar systems, implemented in specific homogeneous risk groups;	<i>General amendment on the actuarial function, which is aligned with EIOPA's advice.</i>

<p><b>Article 275, paragraph 4 – new</b></p> <p>The remuneration policy shall include information on how it takes into account the integration of sustainability risks in the risk management system.</p>	<p><b>Article 275, paragraph 4 – new</b></p> <p>The remuneration policy shall include information on how it takes into account the integration of sustainability risks in the risk management system.</p>	<p><b>No change / Positive</b></p> <p><i>Proposed wording was maintained despite the proposed amendment overlaps with other existing requirements.</i></p>
<p><b>Article 275a - new (Chapter IX of Title I, Section 6 Investments)</b></p> <p>Integration of sustainability risks in the prudent person principle</p> <p>1. When identifying, measuring, monitoring, managing, controlling, reporting and assessing risks arising from investments, as referred to in the first sub-paragraph of Article 132(2) of Directive 2009/138/EC, insurance and reinsurance undertakings shall take into account sustainability risks.</p> <p>2. For the purpose of paragraph 1, insurance and reinsurance undertakings shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors and, where relevant, that strategy and those decisions of an insurance undertaking shall reflect the sustainability preferences of its customers taken into account in the product approval process referred to in Article 4 of Commission Delegated Regulation (EU) 2017/2358.</p>	<p><b>Article 275a - new (Chapter IX of Title I, Section 6 Investments)</b></p> <p>Integration of sustainability risks in the prudent person principle</p> <p>1. When identifying, measuring, monitoring, managing, controlling, reporting and assessing risks arising from investments, as referred to in the first sub-paragraph of Article 132(2) of Directive 2009/138/EC, insurance and reinsurance undertakings shall take into account sustainability risks.</p> <p>2. For the purpose of paragraph 1, insurance and reinsurance undertakings shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors and, where relevant, that strategy and those decisions shall reflect the sustainability preferences of its customers taken into account in the product approval process as referred to in Article 4 of Commission Delegated Regulation (EU) 2017/2358.</p>	<p><b>No change / Mixed</b></p> <p><i>Insurance Europe position is understanding of the rationale for including sustainable risk in the prudent person principle, but called for some improvements, which were not made (eg clarification that impact on sustainability factors does not mean investment limitations; deletion of the reference to sustainability preferences)</i></p>
<p><b>Entry into force and application</b></p> <p>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [PO – Please insert 12 months after publication].</p>	<p><b>Entry into force and application</b></p> <p>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [PO – Please insert 12 months after publication].</p>	<p><b>No change / Positive</b></p> <p><i>The implementation period of 12 months will facilitate insurers' implementation.</i></p>