

Comments

of the German Insurance Association (GDV)

on the proposal for a Commission Delegated Regulation amending Delegated Regulation (EU) 2017/2358 and Delegated Regulation (EU) 2017/2359 as regards the integration of sustainability factors and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products

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We welcome the aim to integrate sustainability considerations into the processes of insurance undertakings and intermediaries, where this expedient. There are, however, some points in the Commission's proposal which should be revised.

- **Recitals**

The EU-Commission's draft to amend the rules on the suitability assessment in Delegated Regulation (EU) 2017/2359) with regard to sustainability considerations dated January 2019 contained useful clarifications in its recitals which are, however, not included in the current draft. This concerns Recital 6 of the aforementioned draft which suggested that in order to avoid mis-selling the sustainability preferences should be addressed after the customer's other investment objectives, as well as Recital 8 of that draft which provided clarification with regard to existing customers. We agree with the explanatory memorandum of the current draft (p. 3) that both Recitals are necessary with regard to legal certainty and should, therefore, be included in the final delegated act.

- **Article 1 (2) of the proposal (Article 5 (1) of Delegated Regulation (EU) 2017/2358)**

The obligation to take into account sustainability factors in the POG processes of all products should be reconsidered. 'Sustainability factors' is a legal term used in the SFDR to describe the impacts of an investment on sustainability issues. In Articles 4 and 7 SFDR, the legislator stipulated that financial market participants who offer investment products may voluntarily identify and consider the principle adverse impacts of their investment decisions on sustainability factors. Only for large financial market participants (more than 500 employees – Article 4 (3) and (4) SFDR) did he introduce a requirement to this effect. It would not be appropriate to introduce burdensome obligations of this nature for all insurance companies – including smaller undertakings and insurers which are not subject to the SFDR – by way of a delegated act. We note that the technical advice published by EIOPA proposed to add a reference to 'the ESG profile of the product (where relevant)' to Article 5 (1) of the Delegated Regulation (EIOPA-BoS-19/172). We agree that this would be a sensible approach to integrate sustainability considerations into the product approval process where this is relevant for the respective target market.

- **Article 2 (1) of the proposal (Article 2 (4) of Delegated Regulation (EU) 2017/2359)**

The definition of sustainability preferences should refer to the existing categories of sustainable products in Article 8 and 9 SFDR without adding the further qualifications proposed as sub-points (i) and (ii) of Article 2 (4). The legislator has devised Article 8 and 9 SFDR in order to take account of the variety of sustainable products available on the market (Recital 21). Introducing a third (i) and fourth (ii) category of sustainable products in the context of IDD would, in our view, raise further legal uncertainties and inconsistencies without apparent benefit to the customer. For instance it would mean that a product may be advertised as promoting sustainable characteristics yet does not address sustainability preferences. It would, furthermore, mean that until 30 December 2022 the customer's desire for a product which excludes certain investments from its portfolio (e. g. fossil fuels, child labour etc.) would not constitute a sustainability preference within the meaning of the Delegated Regulation.

- **Article 3 of the proposal**

We welcome the implementation period of 12 months starting with the entry into force of the Act. Insurers and intermediaries need sufficient time to implement the rules once they are finalized.

Berlin, 6. July 2020