

# ESG and Sustainable Finance

for insurance  
companies and other  
institutional investors

**Webinar, 22 November 2022**

Udo Pickartz

Daniel Lühmann

# ESG - so können wir Sie unterstützen

- ESG Investmentfonds (z.B. Gründung von Impact Investmentfonds)
- ESG: Beurteilung der Förderungswürdigkeit

- Regulatorische Implementierung des Europäischen ESG-Rahmenplanes
  - Analyse und Anpassung interner Prozesse und Richtlinien
  - Analyse und Anpassung von Produktdokumentationen
  - Anpassung von Datensammelungsprozessen in Abstimmung mit Simmons Wavelength

- Datenschutz
- Antikorruption & Bestechung
- Produkthaftung
- Steuertransparenz
- Compliance / (Prozessrisiken)
- Treasury



- Sustainable Finance Produkte
- Green Bonds
- Green Loans

- Compliance im Arbeitsrecht
- Gleichstellung von Frauen und Männern
- Menschenrechte

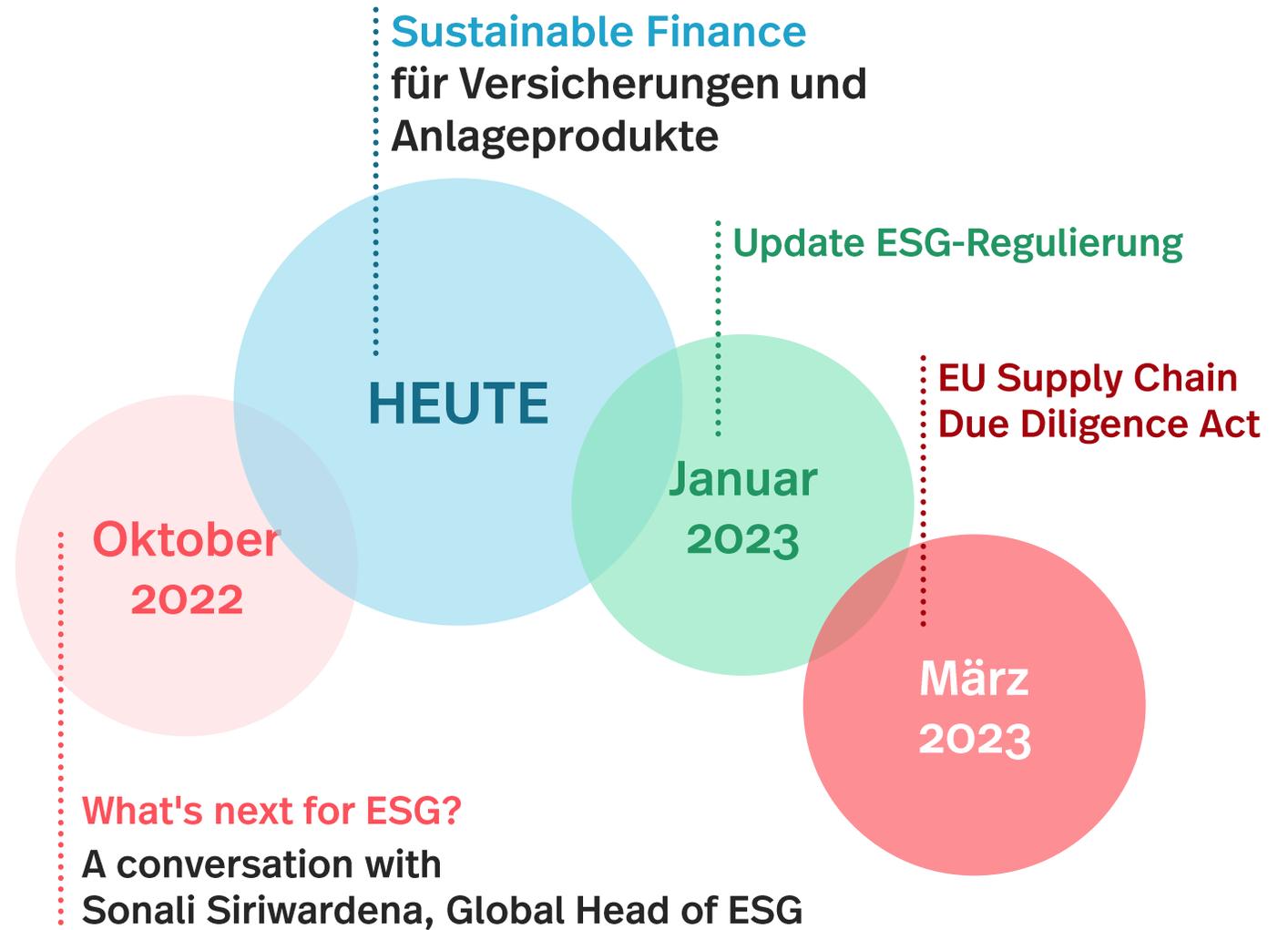
- Mergers & Acquisitions
- Horizontale Berücksichtigung ESG relevanter Fragestellungen

- Onshore/Offshore Wind and PV
- Project Development
- M&A
- Financing

# Unsere Veranstaltungen 2022/23

## Veranstaltung verpasst? On Demand verfügbar

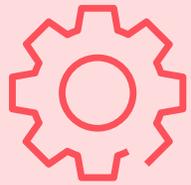
- **ESG & Diversity:** Kann man Äpfel und Birnen miteinander vergleichen?
- **ESG für Versicherungen:** Underwriting, Ausschlüsse, D&O
- Beyond Greenwashing – die wachsende Bedeutung von **ESG bei M&A-Transaktionen**
- **Monitorships:** Wenn Behörden einen Aufpasser verordnen
- Gerechtigkeit in der **Lieferkette**
- u.v.m.



# Agenda

- EU Sustainable Finance Initiative
- Why insurance
- Framework for investors
- ESG Regulatory Framework
- Insurance versus fund Distribution
- Revised EU Regulations
  - a) (EU) 2017/565 versus (EU) 2017/2358
  - b) (EU) 2021/1257
- Suitability Tests
- Risks and Outlook

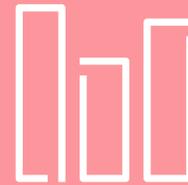
# EU Sustainable Finance Initiative



**Tools and standards**  
**EU taxonomy** for sustainable activities  
European green bond standard



EU is examining how to make sustainability considerations an integral part of its financial policy in order to **support the European green deal**



**International Forum for dialogue**, aims to increase the amount of private capital being invested in sustainable investments.



**Corporate disclosure** of ESG information; labels for benchmarks (climate, ESG) and Sustainability-related disclosure in the financial services sector

# Why insurance?

- 1 Insurance is an important factor for the security of people and entities and helps secure investments in future technology.
- 2 European insurers employ many people in their organisations and can as such make a difference.
- 3 Many investors do not buy individual assets or shares but prefer managed portfolios like in a life insurance policy.
- 4 Insurance Distribution rules have been changed due to ESG requirements.
- 5 Insurers are important institutional investors, both in respect of their own assets but also on behalf of insureds.

# Relevance for Institutional Investors

02.08.2022 | Vertrieb



## ESG-Präferenzen: So stufen die Asset Manager ihre Fonds ein

Ab sofort müssen Finanzberater ihre Kunden fragen, ob und wenn ja wie sie Nachhaltigkeitsaspekte bei der Geldanlage berücksichtigt wissen wollen. Doch gibt es überhaupt genügend Produkte, um diese Wünsche zu erfüllen? FONDS professionell ONLINE zeigt die Ergebnisse einer ersten Morningstar-Erhebung.



# European ESG regulatory framework

## Overview

### Level 1

|                          |   |       |       |          |     |             |
|--------------------------|---|-------|-------|----------|-----|-------------|
| Taxonomy Regulation (TR) | Sustainability Financial Disclosure Regulation (SFDR) | AIFMD | UCITS | MiFID II | IDD | Solvency II |
|--------------------------|---|-------|-------|----------|-----|-------------|

### Level 2

|                          |  |   |  |  |   |   |
|--------------------------|--|---|--|--|---|---|
| Del. Reg. (EU) 2021/2139 | Del. Reg. (EU) 2022/1288<br>It shall apply from 1 January 2023 | Del. Reg. (EU) 231/2013 amended by Del. Reg. (EU) 2021/1255 | Del. Dir. 2010/43/EU amended by Del. Dir. (EU) 2021/1270 (→ KAVerOV) | Del. Reg. 2017/565 amended by Del. Reg. (EU) 2021/1253 | Del. Reg. 2017/2358 amended by Del. Reg. (EU) 2021/1257 | Del. Reg. 2015/35 amended by Del. Reg. (EU) 2021/1256 |
| Del. Reg. (EU) 2021/2178 |  |   |  | Del. Dir. 2017/593 amended by Del. Dir. (EU) 2021/1269 | Del. Reg. 2017/2359 amended by Del. Reg. (EU) 2021/1257 |   |

### Level 3

|  |  |
|--|--|
| ESMA Suitability GL<br>(Guidelines published 09/22)          | EIOPA Suitability GL<br>(Guidelines published 07/22) |
| ESMA Product Governance GL<br>(Consultation published 07/22) |  |

Key

|  |  |
|--|--|
| <span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> New        | <span style="background-color: #D3D3D3; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> No amendments  |
| <span style="background-color: #FFD700; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Amendments | <span style="border: 2px dashed black; display: inline-block; width: 15px; height: 10px;"></span> Final version has not yet been published |

# What are sustainability preferences?

Commission Delegated Regulation (EU) 2017/565 and (EU) 2017/2359

Art. 2 para. 7 Delegated Regulation (EU) 2017/565

'**sustainability preferences**' means a client's or potential client's choice as to whether and, if so, to what extent, one or more of the following **financial instruments** shall be integrated into his or her investment:

- (a) a **financial instrument** for which the client or potential client determines that a minimum proportion shall be invested in **environmentally sustainable investments** as defined in Article 2, point (1), of TR;
- (b) a **financial instrument** for which the client or potential client determines that a minimum proportion shall be invested in **sustainable investments** as defined in Article 2, point (17), of SFDR;
- (c) a **financial instrument** that considers **principal adverse impacts on sustainability factors** where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client.

Art. 2 para. 4 Delegated Regulation (EU) 2017/2359

'**sustainability preferences**' means a customer's or potential customer's choice as to whether and, if so, to what extent, one or more of the following **financial products** should be integrated into his or her investment:

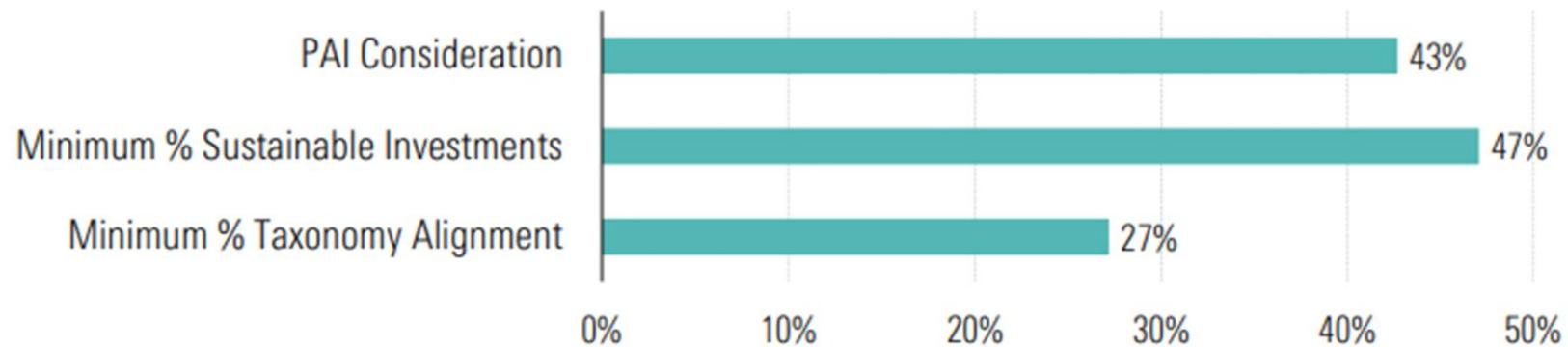
- (a) an **insurance-based investment product** for which the customer or potential customer determines that a minimum proportion shall be invested in **environmentally sustainable investments** as defined in Article 2, point (1), of TR;
- (b) an **insurance-based investment product** for which the customer or potential customer determines that a minimum proportion shall be invested in **sustainable investments** as defined in Article 2, point (17), of SFDR;
- (c) an **insurance-based investment product** that considers **principal adverse impacts on sustainability factors** where qualitative or quantitative elements demonstrating that consideration are determined by the customer or potential customer.

# What is the potential investment universe?

Morningstar: SFDR Article 8 and Article 9 Funds: Q2 2022 in Review

Exhibit 31 shows the coverage of these three fields for the 4,853 Article 8 and Article 9 funds included in this report.

**Exhibit 31** Coverage of Key EET Datapoints for the Surveyed Article 8 and Article 9 Funds



Source: Morningstar Direct. Data as of 18 July 2022. Based on 4,853 reported as Article 8 and Article 9 products.

# When to collect information on sustainability preferences?

Commission Delegated Regulation (EU) 2017/565 and (EU) 2017/2359

## Art. 54 para. 2 lit. a Delegated Regulation (EU) 2017/565

Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:

(a)

it meets the investment objectives of the client in question, including the client's risk tolerance and **any sustainability preferences**;

## Art. 9 para. 2 lit. a Delegated Regulation (EU) 2017/2359

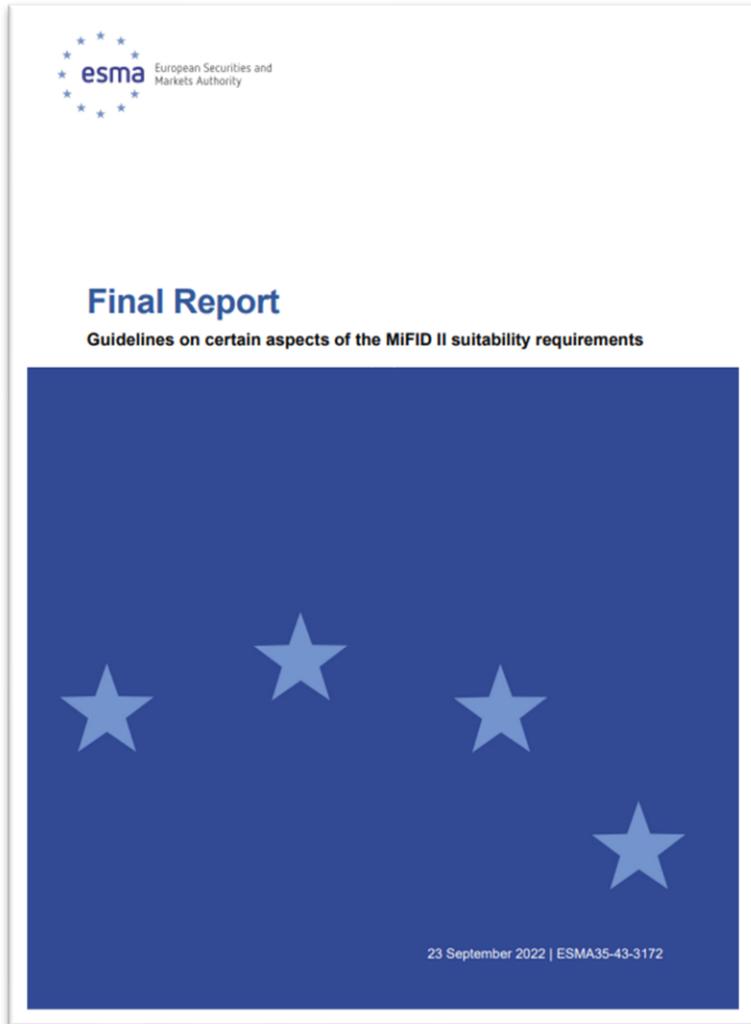
Without prejudice to the fact that, in accordance with Article 20(1) of Directive (EU) 2016/97, any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:

(a)

it meets the investment objectives of the customer or potential customer in question, including that person's risk tolerance and **any sustainability preferences**;

# How to collect information on sustainability preferences?

## Adaptation of the suitability test to ESMA guidelines



On **23 September 2022**, ESMA published its updated Guidelines on certain aspects of the MiFID II suitability requirements.

The guidelines especially pick up on the consideration of client's sustainability preferences within the suitability assessment. The key takeaways are:

- Firms will need to help clients understand the concept of sustainability preferences and **explain the difference between products with and without sustainability features** in a clear manner and avoiding technical language
- Firms will need to **collect information** from clients on their preferences in relation to the different types of sustainable investment products and to what extent they want to invest in these products
- Once the firm has identified a range of suitable products for client, in accordance with the criteria of knowledge and experience, financial situation and other investment objectives, the firm shall **identify the product(s) that fulfil the client's sustainability preferences**
- Firms will need to give staff appropriate training on sustainability topics and **keep appropriate records of the sustainability preferences of the client** (if any) and of any updates of these preferences

# How to collect information on sustainability preferences?

## Adaptation of the suitability test to ESMA guidelines

- In a change to the draft guidelines contained in the consultation paper published on 27 January 2022, the updated “Guidelines on certain aspects of the MiFID II suitability requirements” will only apply as from six months from the date that the translations are published on ESMA’s website.
- Many of the requirements remain unchanged since consultation. However, ESMA made changes to draft guidelines.

# Adaptation of the suitability test to ESMA guidelines / similar to EIOPA guidelines

1 Abfrage eines Mindestanteils an (ökologisch) nachhaltigen Investitionen

Unternehmen können Kunden bei der Ermittlung des Mindestanteils an nachhaltigen bzw. ökologisch nachhaltigen Investitionen behilflich sein, indem sie den jeweiligen Mindestanteil durch standardisierte Mindestanteilswerte wie "mindestens 20 %, mindestens 25 %, mindestens 30 % usw." abfragen.

2 Abfrage der wichtigsten nachteiligen Auswirkungen auf Nachhaltigkeitsfaktoren (PAI)

Unternehmen können Informationen über die Berücksichtigung von PAI entweder auf quantitativer oder auf qualitativer Ebene erheben. Unternehmen können Kunden auch fragen, ob es Wirtschaftstätigkeiten gibt, die sie aufgrund einschlägiger PAI von ihren Investitionen ausschließen möchten.

3 Kunden ohne Nachhaltigkeitspräferenzen

Für den Fall, dass ein Kunde keine Nachhaltigkeitspräferenzen hat, müssen Unternehmen den Kunden die Nachhaltigkeitsmerkmale ihrer Produkte nicht erläutern.

4 Umgang mit Bestandskunden

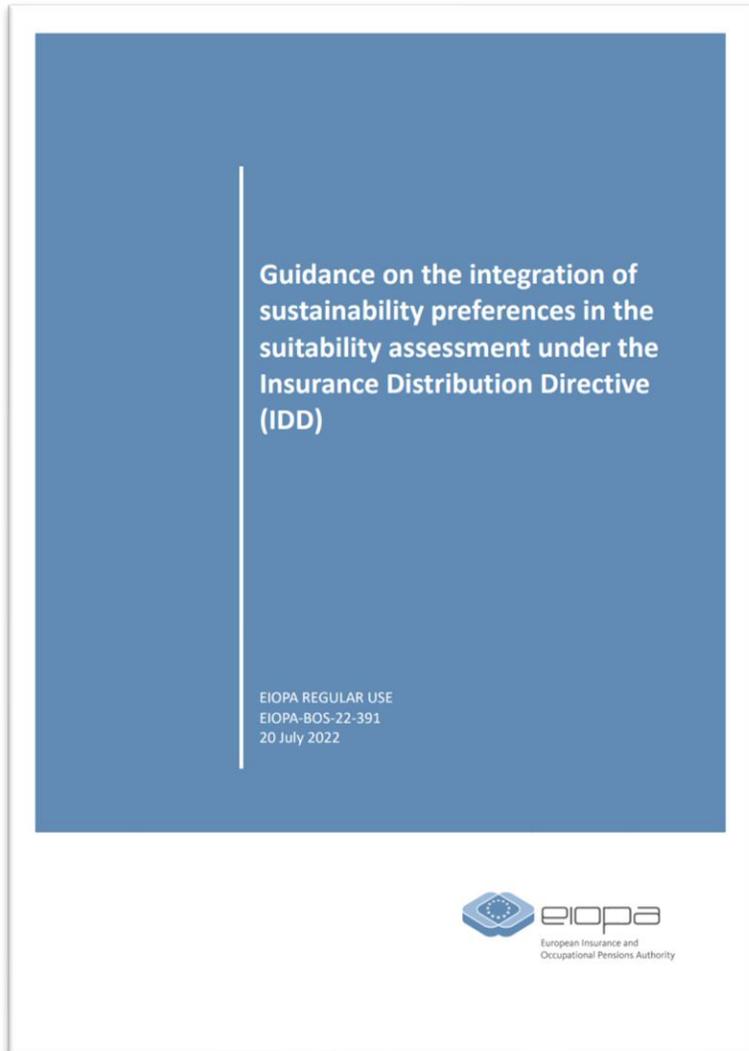
Nachhaltigkeitspräferenzen müssen für Bestandskunden durch die Unternehmen spätestens bei der nächsten regelmäßigen Aktualisierung der Kundeninformationen aktualisiert werden; nicht unbedingt beim ersten Treffen mit dem Kunden oder der ersten Anlageberatung nach dem 2. August 2022. Solange keine Informationen zu Nachhaltigkeitspräferenzen vorliegen, gelten Bestandskunden als „nachhaltigkeitsneutral“.

5 Anpassung von Nachhaltigkeitspräferenzen

Für den Fall, dass ein Unternehmen einem Kunden nach der Abfrage aller Merkmale der Nachhaltigkeitspräferenzen kein geeignetes Produkt anbieten kann, ist es möglich, dass der Kunde seine Nachhaltigkeitspräferenzen anpasst. Erst nachdem der Kunde die Absicht geäußert hat, seine Präferenzen anzupassen, kann das Unternehmen dem Kunden Informationen über sein Angebot an Produkten mit Nachhaltigkeitsmerkmalen offenlegen.

# How to collect information on sustainability preferences?

## Adaptation of the suitability test to EIOPA guidelines

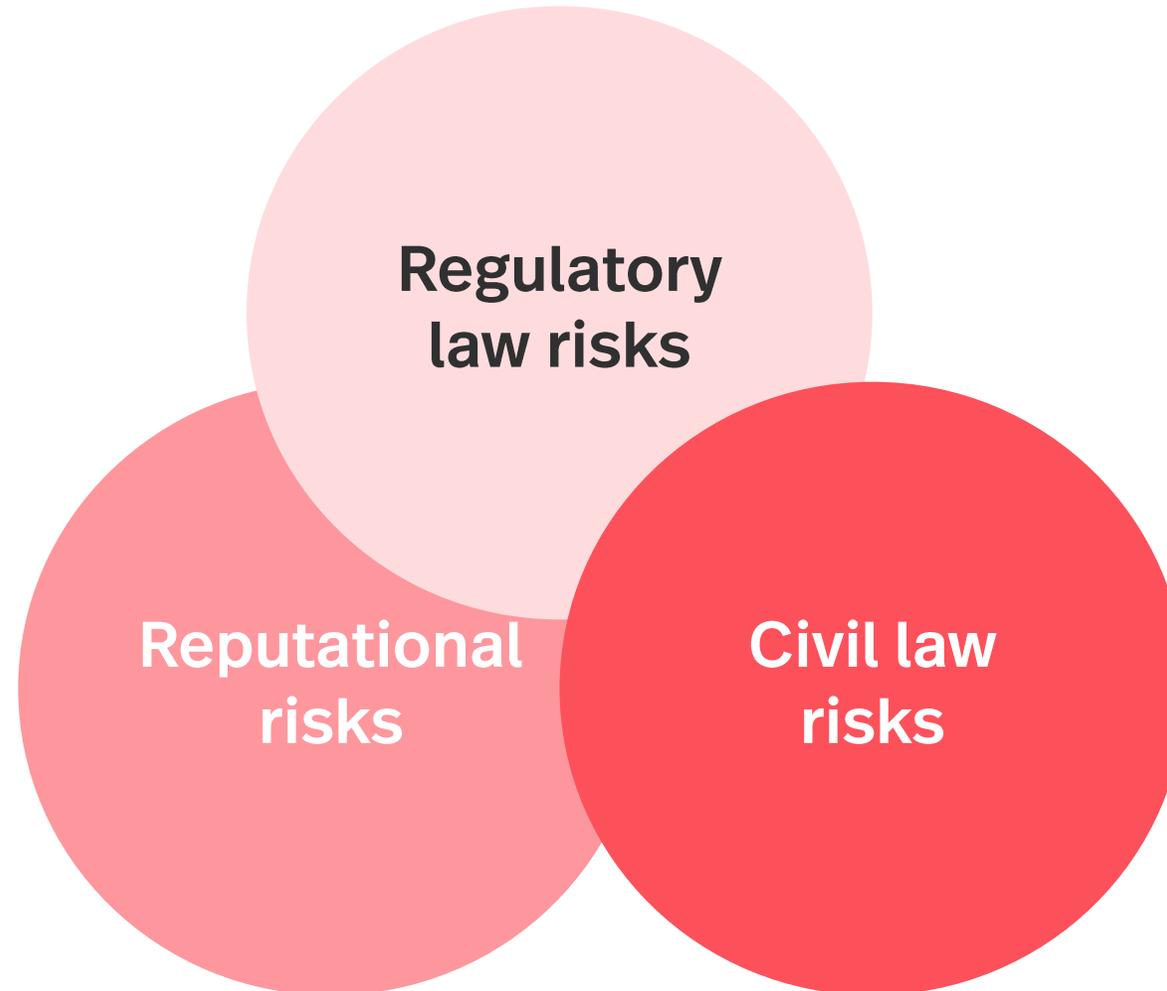


On **20 July 2022**, EIOPA published its updated Guidelines on certain aspects of the IDD suitability preferences and assessment. The guidelines especially pick up on the consideration of **client's sustainability preferences** within the suitability assessment. The key takeaways are:

- Insurance Companies and Intermediaries need to help clients understand the concept of sustainability preferences and **explain the difference between Insurance Based Investment Products (IBIPs) with and without sustainability features** in a clear manner and avoiding technical language.
- Client preferences will need to be **collected** in relation to the different types of **sustainable IBIPs** and to what extent they want to invest in these products.
- The suitability assessment is one of the most important requirements for **consumer protection** under the IDD, ensuring that insurers and insurance intermediaries providing advice provide personal recommendations to their customers as to which products are suitable for them based on their personal circumstances.
- Staff involved require appropriate training on sustainability topics and companies need to **keep appropriate records of the sustainability preferences of the client** (if any) and of any updates of these preferences.

# What are the risks?

Greenwashing and Greenbleaching



# Your Simmons & Simmons contacts



## Udo Pickartz

**Counsel**, Dispute Resolution  
Düsseldorf, Germany

**T** +49 211 4705346

**E** [udo.pickartz@simmons-simmons.com](mailto:udo.pickartz@simmons-simmons.com)

Udo is a lawyer in our Düsseldorf office specialised in insurance and compliance issues. He represents international and national companies, in particular in the financial services sector.

He worked in the insurance industry for international brokers and insurance companies in various positions at board, leadership and operational levels before joining Simmons. He has been responsible for different entities and for their relationships to the respective regulators in various jurisdictions, as well as for the set-up of branches and joint ventures, both national and cross-border.

He is a lecturer at the German Insurer Academy (Deutsche Versicherungs-Akademie - DVA).

Udo studied law in Cologne and Sydney. He holds a Master of Laws (LL.M.) from the University of Sydney. He also completed parts of his legal training in Australia and worked for multinational corporations in Moscow and London.

He is a member of the Simmons & Simmons Product Liability Cross Border Group and regularly advises on cross-border regulatory and ESG matters.



## Daniel Lühmann

**Counsel**, FS Regulatory  
Frankfurt, Germany

**T** +49 69 90745425

**E** [daniel.luehmann@simmons-simmons.com](mailto:daniel.luehmann@simmons-simmons.com)

Daniel is a lawyer based in our Frankfurt office and works in the area of financial services and investment funds. He advises national and international clients on the regulatory aspects of banking and finance law.

Daniel regularly publishes articles and holds presentations on financial services regulation.

Daniel studied law at the University of Leipzig and completed his legal clerkship in Berlin. He gained his first practical experience in Vienna, where he worked as a German qualified lawyer for two leading international commercial law firms with a focus on corporate/M&A and regulatory law. Before joining Simmons & Simmons, Daniel worked as a German lawyer for a law firm of one of the leading auditing companies in the field of financial services with a focus on banking supervision law. Additionally, Daniel holds a Master of Laws (LL.M.) from the University of Edinburgh.

# Our ESG Global Solutions tracker

The EU Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation (TR) are the cornerstones of the European ESG disclosure framework. However, a number of EU jurisdictions have implemented additional local rules, so called “gold-plating”. More may follow.

Furthermore, jurisdictions outside the EU (including the UK), are in the process of adopting their own ESG rules aimed at asset managers, their products and services.

For managers, navigating the ever evolving global landscape of ESG regulation and market standards and based on extensive client feedback we have developed a new ESG Global Solutions tool dedicated to asset management.



**Watch this webinar on demand to learn more about this subscription-based product.**

**Watch on demand**

**Click here for the product page and to request a demonstration of the product.**

**Request a demo**

“We always overestimate the change that will occur in the next two years and underestimate the change that will occur in the next ten. Don’t let yourself be lulled into inaction.”

– Bill Gates

**simmons-simmons.com**

**STRICTLY PRIVATE AND CONFIDENTIAL**

© Simmons & Simmons LLP and its licensors. All rights asserted and reserved. This document is for general guidance only. It does not contain definitive advice. Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS, United Kingdom. It is authorised and regulated by the Solicitors Regulation Authority and its SRA ID number is 533587. The word "partner" refers to a member of Simmons & Simmons LLP or one of its affiliates, or an employee or consultant with equivalent standing and qualifications. A list of members and other partners together with their professional qualifications is available for inspection at the above address.