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Analysis and synthesis

Energy and Climate Law: Insurers shall carry on making progress

GENERAL SUMMARY

This translation is limited to the general summary and the best practices and areas of attention identified in the analysis. Full report is available in French.

Life insurance undertakings and institutions for occupational retirement provision published a report in 2022 and 2023 laying out their *policy on sustainability risks*[1], pursuant to Article 29 of the French Energy and Climate Law (hereafter referred to as the 29LEC reports). For undertakings offering *an insurance product which is made available to a professional investor and which offers a maturity or surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations*[2], a *statement on principal adverse impacts of investment decisions on sustainability factors*, pursuant to Article 4 of the *European Sustainable Finance Disclosure Regulation* (SFDR) of 27 November 2019 was required.

The ACPR is responsible for ensuring compliance with the provisions set out in these regulations and for ensuring that the information provided by institutions is clear, accurate and non-misleading.[3] The report relies on an analysis of the compliance of the topics covered in the reports published by insurers pursuant to Article 29 of the Energy and Climate Law, and of the relevance of their content. The study compares reports published in 2022 and 2023 where possible.

The aim is to improve future publications by clarifying the ACPR's expectations, while also warning readers about possible limits regarding the content of reports published by insurers.

The concerned undertakings most often published the report required by Article 29 of the Energy and Climate Law. The content of these reports is very heterogeneous and none of them fully complies with regulatory requirements, in terms of either completeness, accuracy or precision of the information published. There was an improvement in 2023 compared with 2022, but heterogeneity also increased. Some undertakings continued to develop and deepen their analyses, while others merely updated the figures provided the previous year.

Generally speaking, the reports are more detailed on the scope used to calculate the indicators presented or on the construction of these indicators. Such clarifications are essential for the reader to fully understand the scope of the information available: the presentation of data on a limited scope that is not clearly defined and not representative of the insurer's business may be considered potentially misleading (e.g., disclosure of information is necessary both for the euro fund and for unit-linked products).

In addition, the ACPR established, by way of instructions, a standard plan for 29LEC reports made by insurers. This plan was not always followed, which hindered the comparability of the reports.

Another major factor is that a significant share of undertakings did not publish or submit the report to the ACPR within the regulatory deadlines. The majority of these delays seem to be due to a lack of understanding or knowledge of the regulations. In particular, undertakings must publish their reports on their websites and send them to both ADEME[4] and the ACPR. Needless to say, the reports published and transmitted to the authority are expected to be identical.

[1] L. 533-22-1 of the *code monétaire et financier*

[2] Article 2 regulation (EU) 2019/2088 of the European Parliament and the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector

[3] L. 612-1 II. 8° of the *code monétaire et financier* and Decree No 2021-663 of 27 May 2021 adopted pursuant to Article L. 533-22-1 of the same code.

[4] ADEME is a public agency that advises, proposes and supports ecological transition actors in their sustainable development projects

The findings regarding the information to be provided by undertakings falling within the scope of the European SFDR are similar: none of the reports presented the complete set of information required, which is sometimes incomplete in order to reflect a true and fair view of the actions taken by insurers. In particular, the main negative impacts on sustainability factors are supplemented but the associated explanations required by the regulation are not very detailed or even absent.

These new disclosure requirements need to be seen in a broader context of considering sustainability risk in the governance and risk management of insurers, as required by Delegated Regulation (EU) 2015/35 (Solvency II[5]) since 2 August 2022. For example, the lack of information on topics related to governance and risk management practices in the 29LEC reports may raise questions as to whether insurers are properly applying their prudential obligations. Similarly, consistency between data disclosed to the public and data provided to the supervisory authority in the context of prudential supervision (list of assets, ORSA[6] processes, etc.) is essential, particularly if discrepancies lead to a more advantageous view of the entity's practices being made public.

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[5] Solvency 2 is a set of rules laying down the solvency regime applicable to insurance undertakings in the European Union.

[6] The ORSA is an internal risk and solvency assessment process performed by the undertaking. It should illustrate the ability of the undertaking or group to identify measure and manage elements that could affect its solvency or financial situation. Therefore, its operational approach makes it a key strategic tool that the undertaking must understand as a risk-based tool for steering the activity.

Annex 2 - Best practices and areas of attention identified in the analysis of published 29LEC reports

The purpose of this annex is to clarify the ACPR's expectations with regard to practices observed pursuant to article 29 of the Energy and Climate Law (hereinafter referred to as 29LEC). This document draws on analyses of insurers' disclosures conducted by the ACPR in 2022 and 2023. It seeks to respond to entities' requests for both comparability of their practices with their peers and clarity about regulatory requirements.

Unless otherwise specified, "the entity" in this document corresponds to insurance or reinsurance undertakings and institutions for occupational retirement provision subject to article L. 533-22-1 of the *code monétaire et financier*.

The 29LEC report must be consistent with the report required by article 4 of Regulation (EU) 2019/2088, as further specified by Delegated Regulation (EU) 2022/1288 (hereinafter the SFDR. report) for entities subject to both regulations.

1. Considérations d'ordre général

Publishing format

The reports sent to the ACPR, those published on the entity's website and those submitted on ADEME's CTH platform are identical.

As indicated in Instruction 2022-I-24, the reports must be in a computer-readable format.

Presentation of content

References in the 29LEC report to other web pages or reports do not exempt the summarization, in the 29LEC report, of the information necessary to comply with the regulations. External references should therefore be limited to providing additional details.

The report is to be produced at entity level, thus in the case of presentation at group level (e.g.: for the investment or commitment strategy), an indication of the entity-level transposition is expected.

Annex E (correlation table of the content of the report with the provisions of the decree implementing Article 29LEC), which is required by the ACPR instruction, does not exempt the publication of the plan for continuous improvement provided for in section 9 of part III of article D.533-16-1 of the *code monétaire et financier*. To make the report easier to read, information on the continuous improvement plan may be published either by section, or by reproducing Annex E communicated to the ACPR. This includes planned actions, strategic or operational changes to be implemented, with specific objectives and implementation schedules.

The 29LEC report is not a CSR[7] report. More generally, the 29LEC report should not be mixed with other information except those required by 29LEC and SFDR.

When benchmarks are used in the 29LEC report, in particular to present the entity's results, the benchmarks and the methodology used are precisely defined.

[7] Corporate Social Responsibility

2. Practices identified following the plan of instruction 2022-I-24

1. Information about the entity's overall approach

Presentation of the entity's general approach to integrating ESG criteria, particularly in its investment policy and strategy

The presentation includes:

- general principles,
- the criteria used,
- the results of this integration into the investment strategy,
- the scope limits included in the ESG criteria integration approach.

Including in this part all exclusion policies makes the reports easier to read. Exclusion policies relating to the Paris Agreement may be referred to in Part 6.
Sectoral exclusion policies are sufficiently specific to be binding and include the exemptions provided for and the asset classes covered.

Content, frequency and means used by the entity to inform subscribers, affiliates, contributors, allocates or customers on the criteria relating to ESG objectives taken into account in the investment policy and strategy

The 29LEC report includes the targets, outlines, frequency and means of communication carried out by the entity to inform its subscribers, members, contributors, beneficiaries or customers about the criteria relating to ESG objectives. Thus, in the case of sales of savings products, information should be given on the compliance with the duty of advice.
Examples can illustrate the communication choices made.

List of financial products mentioned under Articles 8 and 9 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 and the overall percentage share of assets taking ESG criteria into account in the total amount of assets managed by the entity

This list of financial products may be included as an annex to the 29LEC report or in a dedicated document with a link to it in the 29LEC report.
The amount of assets under management meeting the definition of the SFDR Articles 8 and 9 is nevertheless included in the report. The assets associated with unit-linked items and the general assets can be distinguished.

Whether the entity or certain financial products adhere to a charter, a code, an initiative, or a label based on ESG criteria, and a brief description of these

It is desirable to specify the operational or organizational impacts of adherence to all charters, codes and labels on the entity and to include the proportion of investments or activity impacted by the commitments arising from these charters, codes and labels**.**

2. Information on the entity's internal resources

Description of the financial, human and technical resources dedicated to the integration of ESG criteria into the investment strategy by relating them to the total assets managed or held by the entity

This description includes quantitative elements: actual and forecast budgets (absolute, percentage shares), costs of service providers (data providers, asset managers), FTE[8] equivalents, costs of training.
As such, delegating asset management does not exempt the reporting of allocated resources.
A good practice is to present multi-year developments in these resources.

Actions taken to strengthen the entity's internal capacity

The description of the measures taken to strengthen the entity's internal capacity is not limited to mentioning training courses to raise employees' awareness of ESG topics and shall include information on the communication strategy and the development of financial products and services associated with these measures.
In the event of the integration of distribution, and in order to comply with the duty of advice, information is expected related to the training carried out, so that policyholder advice can take account of sustainability choices.
More broadly, the implemented actions should be differentiated within the entity's various departments.

3. Information on the approach to take ESG criteria into account within the entity's governance

Knowledge, skills and experience of governance bodies

This information includes the verification of the ESG skills of the governance bodies, the results of this assessment and the training provided.
In the case of entities controlling other entities, disclosure of the arrangements implemented for their subsidiaries is expected.

Inclusion in accordance with Article 5 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, in the remuneration policies, of information on how those policies are consistent with the integration of sustainability risks, including details on the criteria for linking the remuneration policy to performance indicators

Since 2 August 2022, Delegated Regulation (EU) 2015/35 (Solvency 2) requires that the remuneration policy includes information on how it takes into account the integration of sustainability risks in the risk management system.
The criteria for incorporating sustainability risks into the remuneration policy should be defined and detailed.

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[8] Full-Time Employee

4. Information on the engagement strategy to issuers or management companies and its implementation

Overview and assessment of voting policy

This part includes the principles the entity applies when voting on both direct (managed by the insurer) and indirect (managed by asset managers) investments and a monitoring of this policy.

As such, the report may incorporate the voting policy of asset managers but is complemented by the monitoring of votes on the entity's portfolio and actions taken by the entity to influence its asset manager in portfolio-related votes.

This monitoring can be carried out by voting theme (e.G.: *Say on climate*, executive remuneration, etc.).

The voting policy and its summary may be presented in greater detail in a separate document, but as a complement.

Review of the engagement strategy implemented, which may include the share of companies with which the entity has initiated a dialog, the themes covered and the actions taken to monitor this strategy

This presentation shall include the engagement strategy in terms of both direct investment (managed by the insurer) and indirect investment (managed by asset managers), and a follow-up to this strategy.

Regarding indirect investments, the strategy includes the engagement policy of the asset manager(s) and the policy of the entity under the management mandates.

In order to monitor the engagement strategy, the report includes a follow-up of the dialogs opened during the year by theme, by nature of the dialogs (meetings, letters, etc.), indicating the number of companies concerned. This monitoring may include some meaningful results.

The engagement strategy should include planned follow-up actions in case dialogs fail to achieve the set objectives.

Investment strategy decisions taken, including sectoral exit decisions

The ACPR recommends including this section in the general approach section to avoid duplication.

5. Information on the EU Taxonomy and fossil fuels

Share of assets for activities in accordance with the technical review criteria set out in the delegated acts referred to in Articles 10 to 15 of Regulation (EU) 2020/852

The entity may publish the tables provided by Instruction 2022-I-24 in their report.

Where data are estimated, the report shall include a presentation of the methodology, the share of estimated data and planned remedial actions.

Share of asset in undertakings active in the fossil fuel sector, as defined in the Delegated Act pursuant to Article 4 of the SFD Regulation

The definition of undertakings active in the fossil fuel sector as defined in Delegated Regulation (EU) 2022/1288 is: *companies that derive income from the exploration, mining, extraction, production, processing, storage, refining or distribution, including transport, storage and trade, of fossil fuels as defined in Article 2(62) of Regulation (EU) 2018/1999 of the European Parliament and of the Council.* The exposure is calculated without applying a materiality threshold and without adjustments (especially related to the part of the company's turnover that meets the definition).

The share of fossil fuel exposures can be broken down by industry, sector and asset type. A distinction between unit-linked and general asset exposures is possible.

6. Information on the strategy for alignment with the international climate change mitigation targets under the Paris Agreement consistent with the SFDR

The entity publishes its strategy for alignment with the long-term objectives of Articles 2 and 4 of the Paris Agreement relating to the mitigation of greenhouse gas emissions and, where applicable, for financial products in which the underlying investments are entirely made in French territory, its national low-carbon strategy referred to in Article L. 222-1 B of the *environmental code*.

Alignment with the Paris Agreement objectives requires a target to be set for 2030. If no target is set, the difficulties encountered explaining why there is no target, the planned actions and the date on which the target will be presented shall be explained. If the entity refuses to publish an objective to align with the Paris Agreement, it must publish that refusal explicitly.

The report can show the remaining gap between the quantitative target and the Paris Agreement's carbon neutrality target of 2050.

The target is reviewed, from 2030 until 2045, every 5 years for a new 5-year target until 2050.

The target includes greenhouse gas emissions, including those related to scope 3[9]. If scope 3 is not included, an explanation of the difficulties encountered, the planned actions and a date for inclusion of scope 3 shall nevertheless be provided.

The report incorporates the base year, i.e. the starting point for the emissions reduction target.

The objective can include a "natural" path (implied by the commitments of the companies in which the entity has invested) for GHG reductions and a path showing the "remaining effort" of the entity as part of its investment strategy.

Assets associated with unit-linked products are included in the alignment and monitoring objective.

The detailed presentation of the methodology can be appended to the report as long as the key elements of understanding (objective, metric, reference year) are included in the main body of the report.

This section includes changes in the investment strategy related to the strategy of alignment with the Paris Agreement, including the policies put in place to phase out coal and unconventional hydrocarbons.

The proposed exit policy for coal and non-conventional hydrocarbons specifies the chosen exit timetable.

The alignment strategy also includes the share of the total asset managed or held (under direct or indirect management) that is covered and any measures taken to monitor results and changes made.

In response to the strategy of alignment with the Paris Agreement and the target set, the entity presents the changes to its investment policy to achieve this objective.

The exclusion policies presented include:

- the rule, the information used, the methodology and the results by showing the number of undertakings excluded
- the exclusion thresholds applicable per type of coal (or non-conventional hydrocarbon) activities across the value chain
- exceptions to the exclusion policy to reduce the risk of greenwashing charges
- amounts disinvested due to exclusion policies.

[9] The 3 scopes represent the different GHG emission categories. Scope 1 refers to direct GHG emissions from sources directly controlled or owned by an organization (examples: emissions from the company fleet, methane produced by livestock, direct emissions from an industrial furnace, etc). Scope 2 refers to indirect emissions related to the use of energy (electricity, steam, heat or cooling) and scope 3 to other indirect emissions (examples: GHG emissions from third-party companies via the acquisition of securities, waste generated by the investment, etc).

7. Information on the strategy for alignment with long-term biodiversity objectives

Strategy for alignment with long-term biodiversity targets, specifying the scope of the chosen value chain, which includes targets set by 2030 and every five years thereafter

The strategy for alignment with long-term biodiversity objectives includes:

- concise and quantitative information
- a brief description of the methodologies and the indicators, databases or providers used by the entity
- a definition of the terms used
- the internal resources deployed to meet these objectives (particularly in terms of governance)

The report shall integrate with the published indicator(s) the way in which those indicators allow the measurement of biodiversity-related objectives

8. Information on the consideration of environmental, social and quality of governance criteria in risk management, including physical, transition and liability risks related to climate change and biodiversity

The analysis of sustainability risks (physical, transition and liability risks) is performed at entity level.

Information on the consideration of sustainability risks should be consistent between the Own Risk and Solvency Assessment (ORSA) and the 29LEC report and take into account EIOPA's guidance[10] on climate change assessment.

Sustainability risk assessment scenarios result in quantitative impacts at different time points and, if not, in qualitative impacts with explanations justifying the absence of quantitative impacts and the time frame by which quantitative impacts will be considered.

In order to monitor sustainability risks, the entity may rely on surveys of the management companies in which the undertaking invests to collect the data.

The entity may adapt its comitology to reflect sustainability risks, for example by setting up a climate-related and biodiversity risk committee.

[10] Application guidance on climate change materiality assessments and climate change scenarios in ORSA (europa.eu)