



Brussels, 24.5.2018
COM(2018) 354 final

2018/0179 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on disclosures relating to sustainable investments and sustainability risks and amending
Directive (EU) 2016/2341**

(Text with EEA relevance)

{SEC(2018) 257 final} - {SWD(2018) 264 final} - {SWD(2018) 265 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal is part of a broader Commission's initiative on sustainable development. It lays the foundation for an EU framework which puts environmental, social and governance (ESG) considerations at the heart of the financial system to help transform Europe's economy into a greener, more resilient and circular system. ESG factors should be considered when taking decisions on investments in order to make investments more sustainable.

This proposal and the legislative acts proposed alongside it aim to integrate ESG considerations into the investment and advisory process in a consistent manner across sectors. This should ensure that financial market participants — undertakings for collective investment in transferable securities (UCITS) management companies, alternative investment fund managers (AIFMs), insurance undertakings, institutions for occupational retirement provision (IORPs), European venture capital fund (EuVECA) managers, European social entrepreneurship funds (EuSEF) managers and investment firms - that receive a mandate from their clients or beneficiaries to take investment decisions on their behalf would integrate ESG into their internal processes and inform their clients in this respect. This proposal would also ensure that investment firms and insurance intermediaries providing advice consider ESG as drivers of value in the advice given as part of their duties towards investors and that they provide investors with the related information. Furthermore, to help investors compare the carbon footprint of investments, the proposals introduce new categories of low carbon and positive carbon impact benchmarks. These proposals, which are mutually reinforcing should facilitate investments in sustainable projects and assets across the EU.

The Commission's package follows global efforts towards a more sustainable economy. Governments from around the world chose a more sustainable path for our planet and our economy by adopting the **2016 Paris agreement on climate change** and the **United Nations 2030 Agenda for Sustainable Development**.

The EU is committed to development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainability has long been at the heart of the European project. The EU Treaties recognise social and environmental dimensions and that they should be addressed together.

The 2016 **Commission Communication on the next steps for a sustainable European future**¹ links the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda for Sustainable Development to the European policy framework to ensure that all EU actions and policy initiatives, within the EU and around the world, take the SDGs on board from the outset. The EU is also fully committed to reaching the EU 2030 climate and energy targets and to mainstreaming sustainable development into EU policies, as Jean-Claude Juncker announced in the **2014 Political Guidelines for the European Commission**². Therefore, many of the European Commission's policy priorities for 2014-2020 feed into the EU climate objectives and implement the 2030 Agenda for Sustainable Development. These include the **Investment**

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Next steps for a sustainable European future. European action for sustainability (COM(2016) 739 final).

² A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change - Political Guidelines for the next European Commission, Strasbourg, 15 July 2014.

Plan for Europe³, the **Circular Economy Package**, the **Energy Union package**, the review of the **EU Bioeconomy Strategy**⁴, the **Capital Markets Union**⁵ and the **EU budget for 2014-2020**, including the **Cohesion fund** and research projects. In addition, the Commission launched a multi-stakeholder platform to follow-up and exchange best practices on implementing the SDGs.

Achieving EU sustainability goals requires major investments. It is estimated that an additional annual investment of EUR 180 billion is needed to meet climate and energy targets alone by 2030.⁶ A substantial part of these financial flows will have to come from the private sector. Closing this investment gap means significantly redirecting private capital flows towards more sustainable investments and requires comprehensively rethinking the European financial framework.

In this context, in December 2016 the Commission established a **High-Level Expert Group** to develop an overarching and comprehensive EU strategy on sustainable finance. The Group's report, published on 31 January 2018, provided a comprehensive vision on sustainable finance for Europe and identified two imperatives for Europe's financial system. The first is to improve the contribution of finance to sustainable and inclusive growth. The second is to strengthen financial stability by incorporating environmental, social and governance factors into investment decision-making. As a follow-up, on 7 March 2018 the Commission published an **Action Plan on Financing Sustainable Growth**⁷.

Financial products, be they investment funds, life insurance or pension products, and portfolio management services are provided to pool investors' capital, and invest that capital collectively through a portfolio of financial instruments such as stock, bonds and other securities. While existing rules in Directive 2009/65/EC⁸, Directive 2009/138/EC⁹, Directive 2011/61/EU¹⁰, Directive 2014/65/EU¹¹ and Directive (EU) 2016/2341¹² require institutional investors and

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: An Investment Plan for Europe (COM(2014) 0903 final).

⁴ Commission Staff Working Document on the review of the 2012 European Bioeconomy Strategy (SWD(2017) 374 final).

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan on Building a Capital Markets Union (COM(2015)468 final).

⁶ The estimate is a yearly average investment gap for the period 2021 to 2030, based on PRIMES model projections used by the European Commission in the Impact Assessment of the Proposal of the Energy Efficiency Directive (2016).

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth (COM(2018)097 final).

⁸ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302 17.11.2009, p. 32).

⁹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

¹⁰ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174 1.7.2011, p. 1).

¹¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

¹² Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

asset managers to act in the best interest of their clients and provide scope for integrating sustainability risks, they do not systematically consider and integrate them in a consistent way in their investment decisions and disclosure processes.

Directive 2009/65/EC and Directive 2011/61/EU are complemented by four fund frameworks:

- Regulation (EU) No 345/2013 on European venture capital funds¹³,
- Regulation (EU) No 346/2013 on European social entrepreneurship funds¹⁴,
- Regulation (EU) 2015/760 on European long-term investment funds¹⁵, and
- Regulation (EU) 2017/1131 on money market funds¹⁶.

The regulatory landscape for financial products is completed by distribution rules, including the rules on advice, laid down in Directive 2014/65/EU and Directive (EU) 2016/97¹⁷. These Directives require investment firms and insurance intermediaries providing advice to act in the best interest of their clients, but they do not require them to explicitly consider ESG risks in their advice nor to disclose those considerations.

Directive (EU) 2016/2341 represents a first step towards a more concise disclosure framework in the financial services sector in relation to ESG factors. Directive (EU) 2017/828¹⁸ on long-term shareholder engagement increased the transparency obligations for institutional investors and asset managers by requiring them to develop and disclose an engagement strategy including a description of how they monitor investee companies on non-financial performance, social and environmental impact and corporate governance, and to disclose on an annual basis how their engagement policy has been implemented. Nevertheless, there is still a lack of transparency on how institutional investors, asset managers and financial advisors consider sustainability risks in their investment decision-making or advisory processes. As a result, their clients do not get the full information they need to inform their investment decisions or recommendations. In addition, undertakings subject to Directive 2014/95/EU¹⁹ on disclosure of non-financial and diversity information by certain large undertakings and groups which amended Directive 2013/34/EU²⁰ on the annual financial statements, consolidated financial statements and related reports draw up non-financial statements about the undertakings' development, performance, position and impact of their activities, relating to *inter alia* environmental, social and employee matters.

¹³ Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

¹⁴ Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

¹⁵ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

¹⁶ Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

¹⁷ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

¹⁸ Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ L 132, 20.5.2017, p. 1).

¹⁹ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

²⁰ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p.19).

- **Consistency with existing policy provisions in the policy area**

This proposal introduces additional requirements to existing elements of the relevant legislation. These new elements are consistent with the objectives of the existing policy provisions in the policy area, and in particular Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013, Regulation (EU) No 346/2013 and Regulation (EU) 2015/760. The proposal aligns the rules in the different legislative frameworks and safeguards consistency with them.

- **Consistency with other Union policies**

Europe is increasingly faced with the catastrophic and unpredictable consequences of climate change and resource depletion. That is why more sustainable economic growth, i.e. transitioning to a low-carbon, more resource-efficient and circular economy, more transparency and long-term thinking and planning, whilst ensuring the stability of the financial system, is key to the long-term competitiveness of the EU economy. As the financial system has a vital role to play here, we must stimulate private capital in more sustainable investments. Such thinking is at the core of the **Capital Markets Union (CMU)**²¹ project.

This proposal is complementary to this objective and a priority action in the **CMU mid-term review** as it contains measures to harness the transformative power of financial technology and to shift private capital towards sustainable investment. It contributes to the development of more integrated capital markets by making it easier for investors to benefit from the single market whilst taking informed decisions.

This proposal is part of a more comprehensive EU package to achieve the EU's climate and sustainable development agenda and feeds into the Union's energy and climate goals for 2014-2020, such as **the Clean Air Policy, the Circular Economy Package, the Energy Union Strategy, including the Clean Energy for All Europeans Package and the EU Strategy on Adaptation to Climate Change**. Unlike the other EU initiatives, this proposal focuses explicitly on financing aspects by the private sector. It is consistent with the **review of the European System of Financial Supervision**²² that provides for amendments to regulations establishing the European Banking Authority²³, the European Insurance and Occupational Pensions Authority²⁴ and the European Securities and Markets Authority²⁵ so that the Authorities take account of risks related to environmental, social and governance factors when carrying out their tasks. In this way it ensures that financial market activities are more consistent

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan on Building a Capital Markets Union (COM(2015)468 final).

²² Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1093/2010, 1094/2010, 1095/2010, 345/2013, 346/2013, 600/2014, 2015/760, 2016/1011, 2017/1129 (COM(2017) 536 final).

²³ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

²⁴ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

²⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

with sustainable objectives. The Commission proposal on a **pan-European personal pension product** (PEPP) provides for several disclosures in relation to ESG factors²⁶.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal falls within the area of shared competence in accordance with Article 4(2)(a) of the Treaty on the Functioning of the European Union (TFEU) and is based on Article 114 TFEU which allows the adoption of measures for the approximation of national provisions having as their object the establishment and functioning of the internal market.

Disclosures to end-investors reinforce their protection because they aim to better inform their investment choices. Currently, end-investors cannot reap the benefit of the internal market because there is no dedicated and coherent disclosure framework on the integration of ESG risks by asset managers, including investment firms which provide portfolio management, IORPs and other pension providers, insurance undertakings which make available IBIPs, insurance intermediaries and investment firms providing advice. Moreover, end-investors do not currently receive coherent disclosures by financial products and services that target sustainable investments.

The analysis carried out as part of the impact assessment report suggests that financial market participants and financial advisors lack regulatory incentives to disclose to end-investors how they integrate sustainability factors in their investment decision process. This, in turn makes it more difficult and costly for end-investors to make informed investment choices. Disclosures in asset management, insurance and pensions sectors remain unsystematic, incoherent and fail to ensure comparability.

The impact assessment report identified considerable differences among Member States and financial services sectors. There is also a parallel development of market-based practices based on commercially-driven priorities which give rise to divergent outcomes and thus cause further unnecessary market fragmentation. Divergent disclosure standards and market-based practices make it very difficult to compare different financial products and services, create unfair conditions for different financial products and services, manufacturers and distribution channels, and erect additional barriers to the internal market. Divergences are also confusing to end-investors and distort their investment decisions and reduce opportunities for sustainable investments. Different requirements and approaches obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market. Also, in order to respond to the Paris Climate Agreement, as financial market participants represent an important driving force, Member States are likely to adopt additional divergent national measures to incentivise more sustainable investments. However, these divergent measures could create obstacles to the smooth functioning of the internal market and be detrimental to financial market participants. The disclosure rules do not regulate market access for these financial market participants and financial advisors but govern the way their activities are carried out. The rules underpin the correct and safe functioning of the internal market, safeguard competition between different financial market participants and financial advisors and preserve behavioural incentives for innovation. Consequently, the appropriate legal basis is Article 114 TFEU.

²⁶ Commission Proposal for a Regulation of the European Parliament and of the Council on a pan-European Personal Pension Product (PEPP) (COM(2017) 343 final).

The taking up of activities as fund managers is regulated by Directive 2009/65/EC, Directive 2011/61/EU, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013. Taking up activity as IORPs is regulated by Directive (EU) 2016/2341, as insurance undertakings by Directive 2009/138/EC, as providers of portfolio management by Directive 2014/65/EU and as financial advisors by Directive 2014/65/EU and Directive (EU) 2016/97. These financial market participants and financial advisors will continue to be subject to these frameworks, and the disclosure rules they lay down will be supplemented by the disclosure rules contained in this new Regulation.

This proposal amends Directive (EU) 2016/2341, which was based on Articles 53, 62 and 114(1) TFEU. It empowers the Commission to adopt delegated acts specifying the 'prudent person' rule with respect to the consideration of ESG risks and the inclusion of ESG factors in internal investment decisions and risk management processes. Since general governance and risk-management should already integrate ESG factors and risks, these activities should be organised to comply with the delegated acts. As the Commission plans to make use of current empowerments under Directive 2009/65/EC, Directive 2009/138/EC and Directive 2011/61/EU to specify the integration of ESG risks under those Directives, the empowerments under Directive (EU) 2016/2341 provide for means to equally safeguard consumer protection and a level playing field between IORPs and other financial market participants. As the proposed changes to Directive (EU) 2016/2341 concern rules related to investment behaviour by IORPs, Article 114 TFEU is the appropriate legal basis.

- **Subsidiarity (for non-exclusive competence)**

This proposal complies with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU).

According to the principle of subsidiarity, Union action may only take place if the envisaged aims cannot be achieved by Member States alone. The identified problems are not limited to the territory of one Member State. Consequently, the proposal's aim is to ensure a coordinated solution to shortcomings stemming from the current EU legislation covering financial market participants and financial advisors. Uniformity and legal certainty of the exercise of the Treaty freedoms can be better ensured by taking action at EU level.

- **Proportionality**

This proposal complies with the principle of proportionality as set out in Article 5 TEU. The proposed measures are necessary to achieve the objectives of transparency and reducing investors' search costs to determine how sustainability risks are integrated in the investment process by financial market participants and financial advisors. The availability and quality of information on this aspect is key element in creating equal conditions by ensuring a coherent approach across sectors and Member States. Consultation showed that the costs of considering and integrating ESG factors are limited.

The impact assessment report accompanying this proposal suggests that Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 do not explicitly consider and require disclosures on sustainability. This proposal aims reduce search costs for end-investors on sustainable investments.

Consequently, the proposal does not go beyond what is necessary to tackle the issues at EU level.

- **Choice of the instrument**

This proposal includes provisions which in a coordinated manner address shortcomings in investor protection measures and guarantee end-investors more legal certainty. The lack of transparency on the integration of sustainability risks and on pursuing sustainable investments would not be solved solely by amending Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013, as this could give rise to uneven implementation. The proposal aims to increase transparency on the integration of sustainability risks and on the pursuance of sustainable investments. A directly applicable regulation, providing full harmonisation, is necessary to achieve these policy objectives and is the best way to deliver maximum harmonisation between the various regulatory frameworks while avoiding divergences.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Responses to a **public consultation on long-term and sustainable investment** (18 December 2015 to 31 March 2016) suggested that the link between the duties of institutional investors and asset managers and ESG is weak and that the markets do not sufficiently integrate ESG risks and do not sufficiently respond to ESG opportunities.

The High-Level Expert Group on Sustainable Finance (HLEG) was set up in December 2016 to help develop an EU strategy on Sustainable Finance through recommendations: it published a **HLEG interim report on Financing a Sustainable European Economy** in mid-July 2017 and presented the report at a stakeholder event on 18 July 2017, followed by a **consultation questionnaire**. A feedback statement was published along with the **HLEG final report on Financing a Sustainable European Economy** on 31 January 2018. The feedback statement summarises the respondents' replies to the questionnaire. There were certain strong trends in all the responses, including

- the importance of a clear EU-wide strategy on sustainability;
- the importance of providing a favourable environment for sustainable investment and subsequent finance;
- the need to define institutional investors' and asset managers' duties regarding sustainability, which could be extended to embed wider environmental, social and governance considerations; that duty should also include the notion of sustainability;
- the need for improved disclosures.

The Commission received eight responses to the **inception impact assessment on institutional investors and asset managers' duties regarding sustainability** (13 November 2017 to 11 December 2017). All of them supported the Commission's work to ensure that sustainability factors are assessed, consistently taken into account and disclosed by institutional investors and asset managers. Moreover, they all referred to issues such as transparency and disclosure, supervision of ESG integration, clarity of investors' duties in the existing EU legislation, comparability and reliability of available data or risk management and governance arrangements.

The Commission further consulted stakeholders through a **public consultation on institutional investors' and asset managers' duties regarding sustainability** (13 November 2017 to 29 January 2018). The consultation followed up on the two out of the eight recommendations in HLEG interim report and, in particular, sought views on the integration of ESG factors by institutional investors and asset managers. The Commission received 191 responses to the consultation.

The Commission also conducted **targeted interviews with stakeholders** (January to February 2018), i.e. with medium-sized/large asset managers and institutional investors (insurance companies and pension funds) that have already integrated ESG factors in their investment decision process and/or have socially responsible investment products. 23 entities were interviewed. Questionnaires on input and data were used. The vast majority of interviewed entities confirmed the need to clarify at EU level whether institutional investors' and asset managers' duties involve assessing ESG-related risks and taking them into account if they are relevant. The interviewed entities provided further details on areas such as investment strategy, risk management, governance measures (i.e. an ESG specific committee, ESG board member, ESG internal control processes), engagement with investees and voting policy. Some entities also mentioned that they have in place separate ESG policies, must report to an ESG committee and to their board and that their remuneration policies were aligned with ESG. Asset managers mentioned that the benefits of integrating ESG included its positive impact on financial performance (particularly over the long term), improved risk/return characteristics of the portfolio they manage, reputational benefits of ESG integration, and ability to attract new clients. Insurers and pension providers mentioned an increase in demand by investors. Most of the interviewed entities disclose ESG-related at entity level and in annual/periodic reports, while others have client-specific disclosure, which is not public. A few entities have started to make public ESG disclosure at product level.

In addition, on 18 July 2017, the Commission organised a conference on the 'Sustainable Finance: Interim Report'. Approximately 450 representatives had the opportunity to discuss the HLEG interim report and to provide feedback. The Commission also organised a high-level conference on 'Financing sustainable growth' on 22 March 2018 to keep up the momentum with the One Planet Summit and continue to consolidate the support and commitment from EU leaders and key private players for the changes needed in the financial system to fund the transition towards a low-carbon economy.

- **Collection and use of expertise**

The Commission relied on several studies, information and data sources from the United Nations Environment Programme, the OECD, the HLEG, Eurosif, academia, think tanks, the European Fund and Asset Management Association, market reports and studies by private companies. The process also drew on a Commission study on Resource Efficiency and Fiduciary Duties of Investors published in 2015. The Commission also relied on experience with two Horizon 2020 projects related to sustainable finance, i.e. a project on developing sustainable energy investment (SEI) metrics, benchmarks, and assessment tools for the financial sector and a project on energy transition risks and opportunities.

- **Impact assessment**

An impact assessment was carried out to prepare this initiative.

The proposal takes into account the opinions (the positive opinion with reservations issued on 14 May 2018 and the previous two negative opinions) issued by the Regulatory Scrutiny Board (RSB). The proposal and revised impact assessment address the comments of the RSB, which

concluded in their opinions that adjustments were necessary before proceeding further with this initiative. The Board's major concerns were about the costs related to the disclosure requirements, both for smaller issuers and for relevant financial entities. Consequently, the policy options in the impact assessment report reflect the Board's concerns by:

- (a) clarifying the disclosures in relation to the integration of sustainability risks and disclosure requirements of financial products or services pursuing sustainable investments;
- (b) identifying incentives for financial market participants and financial advisors to cut the costs which may be borne by investee companies, namely to use information in management reports or non-financial statements in accordance with Directive 2013/34/EU;
- (c) providing for examples of situations where the information and data may not be directly available on the market or the available data may be of low quality and/or not comparable;
- (d) improving the presentation of the cost-benefit trade-offs.

In general terms, the policy choices assessed in the impact assessment are as follows:

- (a) explicitly requiring the integration of ESG risks in the investment decision or advisory processes as part of duties towards investors and/or beneficiaries;
- (b) introducing mandatory disclosures at the level of the financial market participants and financial advisors on how ESG risks are integrated in the investment decision and advisory process;
- (c) introducing mandatory disclosures for the given financial product or service, on integrating ESG risks in the investment decision or advisory process;
- (d) in addition, where financial market participants and financial advisors market financial products or services claim that such products or services pursue sustainable investment objectives, obliging them to disclose information on the contribution of the investment decisions to the sustainable investment objectives (*ex-post* disclosure in regular reporting) and on how the investment strategy is aligned with the sustainable investment objectives (*ex-ante* disclosure in pre-contractual and contractual documents).

This Regulation covers policy choices (a), (b), (c) and (d). Policy choice (a) is covered by the amendment to Directive (EU) 2016/2341 introducing empowerments for the Commission to adopt respective delegated acts.

Feedback received from stakeholders showed that a clear and coherent approach on integration of ESG risks would have the following economic impacts. First of all, end-investors will have more information on how financial market participants and financial advisors integrate ESG risks in their investment decision-making or advisory processes. ESG risks would be more systematically taken into account in financial modelling, leading to an optimal risk-return trade-off at least in the long-term, thereby fostering market efficiency. This will encourage financial market participants and financial advisors to be innovative in investment strategies or in their recommendations due to the consideration of a wider range of factors, both financial and non-financial, creating the conditions to attract new investors. And it will ultimately increase competition, incentivising entities to adopt high ESG standards.

Feedback from stakeholders also indicated that ESG-related costs are part of the overall internal and organisational costs related to the risk management and monitoring of certain exposures. In fact, the additional tasks imposed on financial market participants and financial advisors covered by this initiative would be incorporated within the existing organisational and operating procedures.

Mandatory disclosures will increase overall transparency, by reducing the asymmetry of information between end-investors and financial entities. The granularity of available information to end-investors will increase. Information will be effective in reaching the market, and better serve the general objective of reducing search costs for end-investors.

Some stakeholders indicated that the most significant costs would come from reviewing the pre-contractual and contractual documents (e.g. about EUR 40 000 *per* prospectus, which would be a one-off cost). However, these costs are expected to be limited if there is a transitional period, as suggested under the preferred option. Moreover, they indicated that the prospectus has to be periodically revised in any event; hence, the cost of adding ESG related information should be a fraction of it. Moreover, there are reputational benefits for financial entities from disclosure, as well as reduced costs for end-investors in finding financial products and/or services and taking investment decisions that correspond to their sustainability preferences.

The combination of a more competitive and efficient market in ESG products and services and the growing demand from end-investors for them, helped by the reduction in search costs, should ultimately cause this market to grow.

- **Fundamental rights**

The proposal promotes rights enshrined in the Charter of Fundamental Rights (the ‘Charter’). It has an impact on the integration of a high level of environmental protection (Article 37 of the Charter) and various social rights (such as Articles 25 and 26 of the Charter) as well as social cohesion (Article 36 of the Charter) since its main objective is to foster the integration of sustainability factors by institutional investors and asset managers and provide for a disclosure framework as regards the integration and impacts of investments on the real economy and their ability to stimulate and provide for the right incentives for transitioning to a green, low-carbon and resource-efficient economy.

4. BUDGETARY IMPLICATIONS

The proposal does not have a budgetary impact for the Commission.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An evaluation of this Regulation will be conducted at the latest 60 months after its entry into force.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 lays down the subject matter of the Regulation, namely the transparency requirements of financial market participants, insurance intermediaries which provide insurance advice on insurance-based investment products (‘IBIPs’) and investment firms which provide investment advice (financial advisors), on the integration of sustainability risks in their investment decision-making processes or, where relevant, advisory processes and transparency as regards

financial products which target sustainable investments, including reduction in carbon emissions.

Article 2 sets out terms and definitions that are used for the purposes of this Regulation, in particular ‘financial market participant’, ‘financial product’, ‘sustainable investments’ and others. In particular, ‘financial market participant’ means an insurance undertaking which makes available an IBIP, a manager of an alternative investment fund (‘AIFM’), an investment firm which provides portfolio management, an institution for occupational retirement provision (‘IORP’), or a UCITS management company, a manager of a qualifying venture capital fund or a qualifying social entrepreneurship fund. Since under Regulation (EU) 2015/760²⁷, European long-term investment funds (‘ELTIFs’) may only be managed by AIFMs, AIFMs managing ELTIFs fall under the definition of financial market participant and are thus obliged to meet the transparency requirements under this Regulation with regard to ELTIFs. In order to include group life insurance policies with investment components in the scope of this Regulation, for the purposes of this Regulation IBIPs include IBIPs as defined in Article 4(2) of Regulation (EU) No 1286/2014²⁸ as well as insurance investment products made available to professional investors.

Under Article 3 financial market participants are required to publish written policies on the integration of sustainability risks in investment decision making process. The financial market participants are required to publish them on their websites and maintain the policies up-to-date. This obligation also extends to financial advisors.

Article 4 lays down that financial market participants must include in pre-contractual disclosures information on how financial market participants and financial advisors incorporate sustainability risks. This is in addition to what is already required under applicable sectorial rules (Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013). Financial market participants are required to provide descriptions of the procedures and conditions applied for integrating sustainability risks in investment decisions, the extent to which sustainability risks are expected to have an impact on the returns of the financial products offered and how the remuneration policies of financial market participants take into account the integration of sustainability risks and sustainable investments. The same obligations, adapted to fit the advisory process, are imposed on financial advisors.

Article 5 sets out pre-contractual transparency rules on sustainable investments. Financial market participants are required to include information on how the target of sustainable investments is ensured, i.e. whether an index has been designated as a reference benchmark and an explanation as to why the weighting and constituents of the benchmark differ from a broad market index. Managers of qualifying social entrepreneurship funds making available information on the positive social impact targeted by a given fund in accordance with the methodologies under Regulation (EU) No 346/2013, may use this information for the purposes of Article 5. Article 5 lays down specific disclosure rules for financial products that target the reduction in carbon emissions. To standardise and streamline the pre-contractual disclosures, this Article empowers the Commission to adopt regulatory technical standards. Draft regulatory technical standards should be jointly developed, through the Joint Committee of the European Supervisory Authorities (‘Joint Committee’), by the European Banking Authority (‘EBA’), the

²⁷ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

²⁸ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

European Insurance and Occupational Pensions Authority ('EIOPA') and the European Securities and Markets Authority ('ESMA').

Article 6 introduces a requirement for financial market participants to publish on their websites next to the information to be provided in accordance with Article 5 and Article 7, a description of the sustainable investments target, information on the methodologies used to assess, evaluate and monitor the effectiveness of investments. To standardise and streamline the pre-contractual disclosures, this Article also provides for an empowerment for regulatory technical standards. Draft regulatory technical standards should be developed, jointly through the Joint Committee, by the EBA, the EIOPA and the ESMA.

Since the current disclosure requirements set out by EU legislation do not provide all the information necessary to properly inform end-investors about the sustainability-related impact of their investments, financial market participants are therefore required under Article 7 to describe in periodical reports the specification of the impacts of sustainable investments by means of relevant sustainability indicators. Managers of qualifying social entrepreneurship funds making available information on the overall social outcome achieved and the related methods used in accordance with Regulation (EU) No 346/2013 may use this information for the purposes of Article 7. Where an index has been designated as a reference benchmark, financial market participants are also required to include a comparison where an index has been designated as a reference benchmark, between the impacts of the portfolio with the benchmark, and a broad market index in terms of weighting, constituents and sustainability indicators. The descriptions should be added to the reporting obligations on financial market participants laid down by Directive 2009/65/EC, Directive 2011/61/EU, Directive (EU) 2016/2341, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013. As regards insurance-based investment products, Directive 2009/138/EC lays down no annual reporting obligations on insurance undertakings. Therefore, Article 7 ensures that the respective disclosures are made available annually and in accordance with Article 185(6) of Directive 2009/138/EC, i.e. in writing, and in an official language as determined in accordance with that Directive. Article 7 also ensures that investment firms which provide portfolio management disclose the information in the periodical reports referred to in Article 25(6) of Directive 2014/65/EU. To meet the disclosure requirements, financial market participants may use information in management reports in accordance with Article 19 or non-financial statements in accordance with Article 19a of Directive 2013/34/EU. To standardise and streamline the disclosures, this Article also lays down an empowerment for regulatory technical standards. Draft regulatory technical standards should be developed jointly through the Joint Committee, by the EBA, the EIOPA and the ESMA.

Under Article 8 financial market participants and financial advisors must ensure that all the information published on their websites is kept up-to-date, including a clear explanation of any amendments to the published information.

Under Article 9 financial market participants and financial advisors must ensure that marketing communications do not contradict the information disclosed pursuant to this Regulation unless sectoral legislation, in particular Directive 2009/65/EC, Directive 2014/65/EU, Directive (EU) 2016/97 and Regulation (EU) No 1286/2014 provide for stricter rules. Article 9 also empowers the Commission to implement technical standards. Draft implementing technical standards should be developed jointly through the Joint Committee, by the EBA, the EIOPA and the ESMA.

Article 10 amends Directive (EU) 2016/2341. The amendment empowers the Commission to specify in delegated acts, in accordance with Article 290 TFEU, the 'prudent person' rule with respect to the consideration of environmental, social and governance risks and the inclusion of

environmental, social and governance factors in internal investment decisions and risk management processes. Since governance and risk-management rules under Directive (EU) 2016/2341 already apply to investment decisions and risks assessments, including environmental, social and governance considerations, the activities and underlying processes of IORPs should be informed to comply with the delegated acts. The delegated acts should ensure consistency, where relevant, with delegated acts adopted under Directive 2009/65/EC, Directive 2009/138/EC and Directive 2011/61/EU.

Article 11 lays down that an evaluation of the application of this Regulation must be conducted at the latest 60 months after it enters into force.

Under Article 12, this Regulation should apply 12 months following its publication in the Official Journal of the European Union. However, the empowerments laid down in Article 5(5), Article 6(2), Article 7(4), Article 9(2) and Article 10 apply from the date this Regulation enters into force. Also, to ensure the first annual reports containing information in accordance with Article 7(1) to (3) relate to the complete calendar year, the application of Article 7(1) to (3) is deferred to January 1 of the year following the date referred to in the second subparagraph of this Article.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank²⁹,

Having regard to the opinion of the European Economic and Social Committee³⁰,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The transition to a low-carbon, more sustainable, resource-efficient and circular economy is key to ensuring long-term competitiveness of the economy of the Union. The Paris Climate Agreement (COP21) as ratified by the Union on 5 October 2016³¹ and entered into force on 4 November 2016, seeks to strengthen the response to climate change, among other means, by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
- (2) A common objective of Directive 2009/65/EC of the European Parliament and of the Council³², Directive 2009/138/EC of the European Parliament and of the Council³³, Directive 2011/61/EU of the European Parliament and of the Council³⁴, Directive 2014/65/EU of the European Parliament and of the Council³⁵, Directive (EU) 2016/97

²⁹ OJ C , , p. .

³⁰ OJ C , , p. .

³¹ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

³² Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

³³ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

³⁴ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).

³⁵ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

of the European Parliament and of the Council³⁶, Directive (EU) 2016/2341 of the European Parliament and of the Council³⁷, Regulation (EU) No 345/2013 of the European Parliament and of the Council³⁸ and Regulation (EU) No 346/2013 of the European Parliament and of the Council³⁹ is to facilitate the taking-up and pursuit of the activities of undertakings for collective investment in transferable securities (UCITS), alternative investment fund managers (AIFMs), insurance undertakings, investment firms, insurance intermediaries, institutions for occupational retirement provision (IORPs), managers of qualifying venture capital funds (EuVECA managers), and managers of qualifying social entrepreneurship funds (EuSEF managers). Those Directives and Regulations ensure more uniform protection of end-investors and make it easier for them to benefit from a wide range of financial products and services, and at the same time provide for rules that enable investors to make informed investment decisions. While those objectives have been largely achieved, disclosures to end-investors on the integration of sustainability risks and sustainable investment targets in investment decision-making by UCITS management companies, AIFMs, insurance undertakings, investment firms which provide portfolio management, IORPs, pension providers, EuVECA managers and EuSEF managers (financial market participants) and disclosures to end-investors on the integration of sustainability risks in advisory processes by insurance intermediaries which provide insurance advice with regard to insurance-based investment products (IBIPs) and investment firms which provide investment advice (financial advisors) are insufficiently developed because such disclosures are not yet subject to harmonised requirements.

- (3) In the absence of harmonised Union rules on sustainability-related disclosures to end-investors, it is likely that diverging measures will continue to be adopted at national level and different approaches in different financial services sectors might persist. Such divergent measures and approaches would continue to cause significant distortions of competition resulting from significant differences in disclosure standards. In addition, a parallel development of market-based practices, based on commercially-driven priorities that produce divergent results currently causes further market fragmentation and might even further exacerbate the functioning of the internal market in the future. Divergent disclosure standards and market-based practices make it very difficult to compare between different financial products and services and create an uneven playing field between these products and services and between distribution channels, and erect additional barriers to the internal market. Such divergences can also be confusing for end-investors and can distort their investment decisions. In ensuring compliance with the Paris Climate Agreement, Member States are likely to adopt divergent national measures which could create obstacles to the smooth functioning of the internal market and be detrimental to financial market participants and financial advisors. In addition, the lack of harmonised rules relating to transparency makes it difficult for end-investors to effectively compare different financial products and services in different Member States as to their environmental, social and governance risks and sustainable investment

³⁶ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

³⁷ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

³⁸ Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

³⁹ Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

targets. It is therefore necessary to address existing to the functioning of the internal market and to prevent likely future obstacles.

- (4) To ensure a coherent application of this Regulation and that the disclosure obligations laid down in this Regulation are clearly and consistently applied by financial market participants, it is necessary to lay down a harmonised definition of ‘sustainable investments’.
- (5) Remuneration policies of financial market participants and financial advisors should be consistent with the integration of sustainability risks and, where relevant, sustainable investment targets and should be designed to contribute to long-term sustainable growth. Pre-contractual disclosures should therefore include information on how the remuneration policies of those entities are consistent with the integration of sustainability risks and are in line, where relevant, with the sustainable investment targets of the financial products and services that the financial market participants make available or financial advisors advise on.
- (6) Since sustainability benchmarks serve as standard points of reference against which sustainable investments are measured, end-investors should be informed by means of pre-contractual disclosures about the appropriateness of the designated index, namely the alignment of that index with the sustainable investment target. Financial market participants should also disclose the reasons for different weighting and constituents of the designated index compared to a broad market index. To further foster transparency, financial market participants should also indicate where the methodology used for the calculation of the designated index and the broad market index is to be found, so that end-investors have the necessary information on how the underlying assets of the indexes were selected and weighted, which assets were excluded and for what reason, how sustainability-related impacts of the underlying assets were measured, or which data sources were used. Such disclosures should allow for effective comparison and contribute to develop a correct perception of sustainably-friendly investments. Where no index has been designated as a reference benchmark financial market participants should explain how the sustainable investment target is reached.
- (7) Where a financial product or service targets a reduction in carbon emissions, pre-contractual disclosures should include the targeted low carbon emission exposure. In situations where no Union harmonised carbon benchmark is available, the disclosures should include a detailed explanation of how the continued adherence to that target is ensured.
- (8) To enhance transparency and inform end-investors, access to information on how sustainability risks are integrated by financial market participants in the investment decision making processes and by financial advisors in advisory processes should be regulated by requiring those entities to maintain that information on their websites.
- (9) The current disclosure requirements set out by Union legislation do not provide that all the information necessary to properly inform end-investors about the sustainability-related impact of their investments must be disclosed. Therefore, it is appropriate to set out more specific disclosure requirements with regard to sustainable investments. For instance, the overall sustainability-related impact of financial products should be reported regularly by means of indicators relevant for the chosen sustainable investment target. Where an appropriate index has been designated as reference benchmark that information should also be provided for the designated index and to a broad market index to allow for comparison. Information on the constituents of the designated index and of the broad market index along with their weightings should also be disclosed, to

provide further information on how the sustainable investments targets are achieved. Where EuSEF managers make available information on the positive social impact targeted by a given fund, the overall social outcome achieved and the related methods used in accordance with Regulation (EU) No 346/2013, they may, where appropriate, use this information for the purposes of the disclosures under this Regulation.

- (10) Directive 2013/34/EU of the European Parliament and of the Council⁴⁰ impose transparency obligations as regards social, environmental and corporate governance aspects in non-financial reporting. The required form and presentation established by those Directives is not, however, suitable for direct use by financial market participants and financial advisors when dealing with end-investors. The financial market participants and financial advisors should have the option to use information in management reports and non-financial statements in accordance with Directive 2013/34/EU for the purposes of this Regulation, where appropriate.
- (11) To ensure the reliability of information published on financial market participants' and financial advisors' websites, that information should be kept up-to-date, and any review or change should be clearly explained.
- (12) In order to specify how IORPs make investment decisions and assess risks in order to take into account environmental, social and governance risks, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in Directive (EU) 2016/2341. Governance and risk-management rules already apply to the investment decisions and the risks assessments in order to ensure continuity and regularity in the performance of IORPs activities. The investment decisions and the assessment of relevant risks, including environmental, social and governance risks, should be made in such a manner as to ensure compliance with the interests of members and beneficiaries. The activities and underlying processes of IORPs should ensure that the aim of the delegated acts is achieved. The delegated acts should ensure consistency, where relevant, with delegated acts adopted under Directive 2009/65/EC, Directive 2009/138/EC and Directive 2011/61/EU. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (13) The European Banking Authority ('EBA'), European Insurance and Occupational Pensions Authority ('EIOPA') and the European Securities and Markets Authority ('ESMA') (collectively known as the 'ESAs') established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council,⁴¹ Regulation (EU) No

⁴⁰ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁴¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

1094/2010 of the European Parliament and of the Council⁴² and Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴³ respectively should, through the Joint Committee, develop regulatory technical standards further specifying the details of the presentation and content of the information on sustainability investment targets to be disclosed in pre-contractual documents, periodical reports and websites of financial market participants in accordance with Articles 10 to 14 of Regulation No 1093/2010, Regulation No 1094/2010 and of Regulation (EU) No 1095/2010. The Commission should be empowered to adopt those regulatory technical standards.

- (14) The Commission should be empowered to adopt implementing technical standards developed by the ESAs through the Joint Committee, by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010, Article 15 of Regulation (EU) No 1094/2010 and Article 15 of Regulation (EU) No 1095/2010, to establish the standard presentation of sustainable investments in marketing communication.
- (15) Since periodical reports in principle summarize business results for complete calendar years, the application of the provisions on transparency requirements in periodical reports should be deferred to [*PO: Please insert 1st January of the year following the date referred to in the second subparagraph of Article 12*].
- (16) The disclosure rules contained in this Regulation should supplement, and should apply in addition to, the provisions of Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive (EU) 2016/2341 of the European Parliament and of the Council,⁴⁴ Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013.
- (17) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.
- (18) Since the objectives of this Regulation, namely to strengthen protection for end-investors and improve disclosures to them, including in cases of cross-border purchases for end-investors, cannot be sufficiently achieved by the Member States but can be better achieved at Union level because of the need to lay down uniform disclosure requirements at Union level the Union may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

⁴² Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁴³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁴⁴ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down harmonised rules on the transparency to be applied by financial market participants, insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice on the integration of sustainability risks in investment decision-making process or advisory process and the transparency of financial products that have as their targets sustainable investments, including the reduction in carbon emissions.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) 'financial market participant' means any of the following:
 - (i) an insurance undertaking which makes available an IBIP, an AIFM, an investment firm which provides portfolio management, an IORP or a provider of a pension product;
 - (ii) a manager of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013;
 - (iii) a manager of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013;
 - (iv) a UCITS management company;
- (b) 'insurance undertaking' means an insurance undertaking authorised in accordance with Article 18 of Directive 2009/138/EC;
- (c) 'IBIP' means either of the following:
 - (i) an insurance-based investment product as defined in Article 4(2) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council⁴⁵;
 - (ii) an insurance product, made available to a professional investor, which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations;
- (d) 'AIFM' means an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU;
- (e) 'investment firm' means an investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU;
- (f) 'portfolio management' means portfolio management as defined in Article 4(1)(8) of Directive 2014/65/EU;

⁴⁵ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

- (g) ‘IORP’ means an institution for occupational retirement provision authorised or registered in accordance with Article 9 of Directive (EU) 2016/2341;
- (h) ‘pension product’ means either of the following:
 - (i) a pension product referred to in Article 2(2)(e) of Regulation (EU) No 1286/2014;
 - (ii) an individual pension product referred to in Article 2(2)(g) of Regulation (EU) No 1286/2014;
- (i) ‘UCITS management company’ means a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an investment company referred to in Article 1(2) thereof;
- (j) ‘financial product’ means a portfolio management, an AIF, an IBIP, a pension product, a pension scheme or a UCITS;
- (k) ‘AIF’ means an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU;
- (l) ‘pension scheme’ means a pension scheme as defined in Article 6(2) of Directive (EU) 2016/2341;
- (m) ‘UCITS’ means an undertaking for collective investment in transferable securities authorised in accordance with Article 5 of Directive 2009/65/EC;
- (n) ‘investment advice’ means an investment advice as defined in Article 4(1)(4) of Directive 2014/65/EU;
- (o) ‘sustainable investments’ mean any of the following or a combination of any of the following:
 - (i) investments in an economic activity that contributes to an environmental objective, including an environmentally sustainable investment as defined in Article 2 of [*PO: Please insert reference to Regulation on the establishment of a framework to facilitate sustainable investment*];
 - (ii) investments in an economic activity that contributes to a social objective, and in particular an investment that contributes to tackling inequality, an investment fostering social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities;
 - (iii) investments in companies following good governance practices, and in particular companies with sound management structures, employee relations, remuneration of relevant staff and tax compliance;
- (p) ‘retail investor’ means an investor who is not a professional investor;
- (q) ‘professional investor’ means a client who meets the criteria laid down in Annex II to Directive 2014/65/EU;
- (r) ‘insurance intermediary’ means an insurance intermediary as defined in Article 2(1)(3) of Directive (EU) 2016/97;
- (s) ‘insurance advice’ means an advice as defined in Article 2(1)(15) of Directive (EU) 2016/97.

Article 3

Transparency of the sustainability risk policies

1. Financial market participants shall publish written policies on the integration of sustainability risks in the investment decision-making process on their websites.
2. Insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice shall publish written policies on the integration of sustainability risks in investment advice or insurance advice on their websites.

Article 4

Transparency of the integration of sustainability risks

1. Financial market participants shall include descriptions of the following in pre-contractual disclosures:
 - (a) the procedures and conditions applied for integrating sustainability risks in investment decisions;
 - (b) the extent to which sustainability risks are expected to have a relevant impact on the returns of the financial products made available;
 - (c) how the remuneration policies of financial market participants are consistent with the integration of sustainability risks and are in line, where relevant, with the sustainable investment target of the financial product.
2. Insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice shall include descriptions of the following in pre-contractual disclosures:
 - (a) the procedures and conditions applied for integrating sustainability risks in investment advice or insurance advice;
 - (b) the extent to which sustainability risks are expected to have a relevant impact on the returns of the financial products advised on;
 - (c) how the remuneration policies of investment firms which provide investment advice and insurance intermediaries which provide insurance advice with regard to IBIPs are consistent with the integration of sustainability risks and are in line, where relevant, with the sustainable investments target of the financial product advised on.
3. The disclosures referred to in paragraph 1 and paragraph 2 shall be made in the following manner:
 - (a) for AIFMs, in the disclosures to investors referred to in Article 23(1) of Directive 2011/61/EU;
 - (b) for insurance undertakings, in the provision of information referred to in Article 185(2) of Directive 2009/138/EC;
 - (c) for IORPs, in the provision of information referred to in Article 41 of Directive (EU) 2016/2341;
 - (d) for managers of qualifying venture capital funds, in the provision of information referred to in Article 13(1) of Regulation (EU) No 345/2013;

- (e) for managers of qualifying social entrepreneurship funds, in the provision of information referred to in Article 14(1) of Regulation (EU) No 346/2013;
- (f) for providers of pension products, in writing in good time before a retail investor is bound by a contract relating to a pension product;
- (g) for UCITS management companies, in the prospectus referred to in Article 69 of Directive 2009/65/EC;
- (h) for investment firms which provide portfolio management or provide investment advice, in accordance with Article 24(4) of Directive 2014/65/EU;
- (i) for insurance intermediaries which provide insurance advice with regard to IBIPs, in accordance with Article 29(1) of Directive (EU) 2016/97.

Article 5

Transparency of sustainable investments in pre-contractual disclosures

1. Where a financial product has as its target sustainable investments or investments with similar characteristics, and an index has been designated as a reference benchmark, the information to be disclosed pursuant to Article 4(1) shall be accompanied by the following:
 - (a) information on how the designated index is aligned with that target;
 - (b) an explanation as to why the weighting and constituents of the designated index aligned with that target differ from a broad market index.
2. Where a financial product has as its target sustainable investments or investments with similar characteristics and no index has been designated as a reference benchmark, the information referred to in Article 4(1) shall include an explanation on how that target is reached.
3. Where a financial product has as its target the reduction in carbon emissions, the information to be disclosed pursuant to Article 4(1) shall include the targeted low carbon emission exposure.

By way of derogation from paragraph 2, where no [*EU low carbon benchmark*] or [*positive carbon impact benchmark*] in accordance with Regulation (EU) 2016/1011 is available, the information referred to in Article 4 shall include a detailed explanation of how the continued effort of reaching the target of reducing carbon emissions is ensured.
4. Financial market participants shall include in the information to be disclosed pursuant to Article 4(1) an indication of where the methodology used for the calculation of the indexes referred to in paragraph 1 of this Article and benchmarks referred to in the second subparagraph of paragraph 3 of this Article are to be found.
5. The European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) shall, through the Joint Committee of the European Supervisory Authorities ('Joint Committee') develop draft regulatory technical standards further specifying the details of the presentation and content of the information to be disclosed pursuant to this Article.

6. EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by [*PO: Please insert date 18 months after the date of entry into force*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

Article 6

Transparency of sustainable investments on websites

1. Financial market participants shall publish and maintain on their websites, for each financial product referred to in paragraphs (1), (2) and (3) of Article 5, the following:
- (a) a description of the sustainable investment target;
 - (b) information on the methodologies used to assess, measure and monitor the impact of the sustainable investments selected for the financial product, including its data sources, screening criteria for the underlying assets and the relevant sustainability indicators used to measure the overall sustainable impact of the financial product;
 - (c) the information referred to in Article 5;
 - (d) the information referred to in Article 7.

The information to be disclosed pursuant to the first subparagraph shall be published in a clear way and in a prominent area of the website.

2. EBA, EIOPA and ESMA shall, through the Joint Committee, develop draft regulatory technical standards further specifying the details of the presentation and content of information referred to in point (a) and (b) of paragraph 1.

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by [*PO: Please insert date 18 months after the date of entry into force*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

Article 7

Transparency of sustainable investments in periodical reports

1. Where financial market participants make available a financial product referred to in paragraphs (1), (2) and (3) of Article 5, they shall include a description of the following in periodical reports:
- (a) the overall sustainability-related impact by the financial product by means of relevant sustainability indicators;
 - (b) where an index has been designated as a reference benchmark, a comparison between the overall impact of the financial product with the designated index and a broad market index in terms of weighting, constituents and sustainability indicators.
2. The disclosures referred to in paragraph 1 shall be made in the following manner:

- (a) for AIFMs, in the annual report referred to in Article 22 of Directive 2011/61/EU;
 - (b) for insurance undertakings, annually in writing in accordance with Article 185(6) of Directive 2009/138/EC;
 - (c) for IORPs, in the pension benefit statement referred to in Article 38 of Directive (EU) 2016/2341 and in the provision of information referred to in Article 43 of Directive (EU) 2016/2341;
 - (d) for managers of qualifying venture capital funds, in the annual report referred to in Article 12 of Regulation (EU) No 345/2013;
 - (e) for managers of qualifying social entrepreneurship funds, in the annual report referred to in Article 13 of Regulation (EU) No 346/2013;
 - (f) for providers of pension products, in writing at least in annual reports or in reports in accordance with national law;
 - (g) for UCITS management companies or UCITS investment companies, in the half-yearly and annual reports referred to in Article 69 of Directive 2009/65/EC;
 - (h) for investment firms which provide portfolio management, in the periodical reports referred to in Article 25(6) of Directive 2014/65/EU.
3. For the purposes of paragraph 1, financial market participants may use the information in management reports in accordance with Article 19 or the information in non-financial statements in accordance with Article 19a of Directive 2013/34/EU where appropriate.
 4. EBA, EIOPA and ESMA shall, through the Joint Committee, develop draft regulatory technical standards further specifying the details of the content and presentation of information referred to in paragraph 1.

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by [*PO: Please insert date 18 months after the date of entry into force*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

Article 8

Review of disclosures

1. Financial market participants shall ensure that any information published in accordance with Article 3 or Article 6 is kept up-to-date. Where a financial market participant amends such information, a clear explanation of that change shall be published on the same website.
2. Paragraph 1 shall apply *mutatis mutandis* to insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice with regard to any information published in accordance with Article 3.

Article 9

Marketing communications

1. Without prejudice to stricter sectoral legislation, in particular Directive 2009/65/EC, Directive 2014/65/EU, Directive (EU) 2016/97 of the European Parliament and of the Council and Regulation (EU) No 1286/2014, financial market participants, insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice shall ensure that their marketing communications do not contradict the information disclosed pursuant to this Regulation.
2. EBA, EIOPA and ESMA may develop, through the Joint Committee, draft implementing technical standards to determine the standard presentation of information on sustainable investments.

Power is conferred on the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

Article 10

Amendments to Directive (EU) 2016/2341

Directive (EU) 2016/2341 is amended as follows:

- (1) In Article 19, the following paragraph 9 is added:

‘9. The Commission is empowered to adopt, by means of delegated acts in accordance with Article 60a, measures ensuring that:

 - (a) the ‘prudent person’ rule with respect to the consideration of environmental, social and governance risks is taken into account;
 - (b) environmental, social and governance factors in internal investment decisions and risk management processes are included.

Those delegated acts shall take into account the size, nature, scale and complexity of the activities of the IORPs and of the risks inherent to these activities and ensure consistency with Article 14 of Directive 2009/65/EC, Article 132 of Directive 2009/138/EC and Article 12 of Directive 2011/61/EU.’;

- (2) the following Article 60a is inserted:

‘Article 60a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 19(9) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of powers referred to in Article 19(9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day

following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 19(9) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.’.

Article 11

Evaluation

By [*PO: Please insert date 60 months after the date of entry into force*], the Commission shall conduct an evaluation of the application of this Regulation.

Article 12

Entry into force and application

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 following the date of publication in the Official Journal of the European Union*].

However, Article 5(5), Article 6(2), Article 7(4), Article 9(2) and Article 10 shall apply from [*PO: Please insert the date of entry into force*] and Article 7(1) to (3) shall apply from [*PO: Please insert January 1 of the year following the date referred to in the second subparagraph*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

COM (2018) 354

Information Note

1. Proposal

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341

2. Date of Commission document

24.5.2018

3. Number of Commission document

COM(2018) 354

4. Number of Council document:

2018/0179 (COD)

5. Dealt with in Brussels by

Ecofin Council & Financial Service Working Group

6. Department with primary responsibility

Department of Finance

7. Other Departments involved

N/A

8. Background to, Short summary and aim of the proposal

This proposal is part of a broader Commission's initiative on sustainable development. This proposal and the legislative acts proposed alongside it aim to integrate environmental, social and governance (ESG) considerations into the investment and advisory process in a consistent manner across sectors. This should ensure that financial market participants — undertakings for collective investment in transferable securities (UCITS) management companies, alternative investment fund managers (AIFMs), insurance undertakings, institutions for occupational retirement provision (IORPs), European venture capital fund (EuVECA) managers, European social entrepreneurship funds (EuSEF) managers and investment firms - that receive a mandate from their clients or beneficiaries to take investment decisions on their behalf would integrate ESG into their internal processes and inform their clients in this respect.

9. Legal basis of the proposal

The proposal falls within the area of shared competence in accordance with Article 4(2)(a) of the Treaty on the Functioning of the European Union (TFEU) and is based on Article 114 TFEU which allows the adoption of measures for the approximation of national provisions having as their object the establishment and functioning of the internal market.

10. Voting Method

QMV

11. Role of the EP

Co-decision

12. Category of proposal

EU Regulation

13. Implications for Ireland & Ireland's Initial View

Our preliminary view is that for this to be workable, the work on the taxonomy needs to come first and the suitability of the product in terms of risk profile of the customer etc. should remain the primary consideration. The additional burden on insurance distributors among other considerations are highlighted in the views below some of which are also relevant to funds sector:

IDD sustainable finance

The proposed amendments to the IDD itself (Ares(2018)2681527) seem to have only a very limited impact as they are solely including the duty of “ESG preferences” of the customer into the distribution process. Even though quite limited in quantity these requirements relate to a considerable risk. Financial literacy and financial education are indispensable in our current social situation, well-informed and thought through decisions of the consumer are necessary, particularly regarding the pension planning of individuals. For an individual’s decision on its old-age savings, risk appetite, risk profile of an investment and the investment horizon must remain the ultimate parameters. The decision if, and to which extent, the product follows an environmental and socially preferential strategy is important but minor.

The disclosure requirements in the current proposal (COM(2018) 354) will have a much wider impact on the distribution of investment products and investments by institutional investors. Taking into account the considerable additional costs associated with the fulfilment of these requirements, the pressure and risk related to the performance of an investment increases.

There are crucial questions, which the European Commission will have to answer before to ensure a sound, sensible and efficient implementation of the sustainable finance agenda:

- The adviser can ask about the customer’s ESG views but what do they do with that information? For the process to be meaningful, the adviser would need to have information available on the ESG status of funds that are under review so that these can be matched to the customer’s expectations. These funds may be ones where the underlying investments are managed by the insurer but in many cases the fund manager may be a third party. So must the fund manager have an obligation to provide information on the ESG status of all funds?
- And if the fund invests in the shares of a limited company, is there an obligation on that company to provide ESG information to investors?
- In relation to Solvency II and PRIIPs “look through” requirements can be problematical if there is no legal requirement on the different layers to make certain information available to the insurers or where this information is not available in the required format. How will this be ensured?

- Also with unit linked funds there is the ability to switch out of/into funds during the term of the policy so this may not just be an issue at the point of sale.

For the process to work there would potentially be multiple layers of disclosures and costs.

Furthermore, the road map provided by the European Commission may be problematic. Providers of financial products and insurance should adapt their systems, procedures and services within the next 18 months. Only an additional 18 months later and a new taxonomy/framework (COM(2018) 353) will define what ESG investments really are and how they have to be treated. The adoption of the taxonomy/framework will require additional amendments and adjustments to the internal systems, procedures and services again.

Given the huge uncertainty and fragmentation the different information processes on IDD, PRIIPs, and potentially PEPP, will have on the industry, it is not clear why another procedural layer is added. This does not only apply to the distribution of financial products but the investment of institutional investors as well. The new disclosure and reporting requirements will be influenced by the future taxonomy/framework likewise. As in distribution, major review and implementation processes are undergone in parallel.

The aim of the Commission to produce something before the end of the current term rather than following a sound and sensible process (1. Taxonomy, 2. Disclosure, 3. Distribution) is questionable.

The IORP II directive is being transposed by Department of Employment Affairs and Social Protection (DEASP) - please note that in that context the comments below were provided by DEASP:

DEASP broadly welcomes the proposed Regulation. They note that the objectives of the proposal are to:

- *Integrate environmental, social and governance (ESG) considerations into the investment and advisory process in a consistent manner across sectors, and*
- *Enhance transparency of the integration of sustainability risks.*

14. Impact on the public

There will be negligible effect on the public.

15. Have any consultations with Stakeholders taken place or are there any plans to do so?

The Department has ongoing consultations with the Central Bank and industry representative groups.

16. Are there any subsidiarity issues for Ireland?

We have identified no subsidiarity issues from an Irish perspective.

17. Anticipated negotiating period

TBC

18. Proposed implementation date

This Regulation shall enter into force on the day twentieth day following that of its publication in the *Official Journal of the European Union*.

19. Consequences for national legislation

A number of SIs may need to be amended. These include
S.I. No. 257/2013 – European Union (Alternative Investment Fund Managers) Regulations 2013;
S.I. No. 352/2011 – European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011;
S.I. No. 166/2015 – European Union (European Social Entrepreneurship Funds) Regulations 2015;
S.I. No. 167/2015 – European Union (European Venture Capital Funds) Regulations 2015;
S.I. No 375/2017 – European Union (Markets in Financial Instruments) Regulations 2017;
Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution and the deadline for its transposition is 1st July 2018.
Directive (EU) 2016/2341 of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) was adopted on 14th December 2016 and the deadline for its transposition is 13th January 2019.

20. Method of Transposition into Irish law

Transposition of Regulation may require implementation in national law via regulations.

21. Anticipated Transposition date

N/A

22. Consequences for the EU budget in Euros annually

N/A

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility

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Date 26 June 2018