

Insurance Europe comments on the EC proposal for a regulation on disclosures for sustainable investments and sustainability risks

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Summary

Insurance Europe welcomes the opportunity to provide comments on the European Commission proposal for a regulation on disclosures relating to sustainable investments and sustainability risks.

With more than €10tn of assets under management, the insurance industry is the largest institutional investor in Europe. As a result of their business model, insurers invest their assets with a long-term perspective. Several considerations affect insurers' investment decisions and **sustainability is already a key factor for insurers**. This includes sustainable investment strategies, but also sustainable approaches based on stewardship and engagement to contributing to sustainability. The increasing number of insurance companies voluntarily committing to sustainability objectives confirms that a transition towards sustainability is already taking place.

Insurance Europe welcomes the work conducted in parallel on an EU taxonomy (EC proposal 2018/0178¹) and it looks forward to achieving a shared understanding of sustainability across market players. In this context, the development of the EU taxonomy needs to be prioritised and accelerated. Equally important, sustainability-related regulatory requirements that are linked to the taxonomy should apply on a voluntary basis until all aspects of the taxonomy are sufficiently mature. This approach will ensure that market players are not exposed to uncertainty and legal risks.

With respect to the EC proposal, Insurance Europe particularly **welcomes** that:

- **the definition of sustainable investment is not limited to the environmental objective, but also includes social and governance components.** This approach not only recognises the significance of the E, S, G factors individually, but also their interconnection.
- **the proposal improves availability of information on sustainability**, which has the potential to limit greenwashing.

¹ COM (2018) 353 final / 2018/0178 (COD)

- the proposal includes a certain degree of **flexibility and a materiality condition** with respect to the **assessment of sustainability risks**. This will support efficiency and proportionality in implementation.

However, **the EC proposal requires a number of changes** to ensure that:

- the **scope and definitions** used are consistent with existing legislations. Notably, the proposal should:
 - **consider existing pre-contractual requirements** with respect to the integration of sustainability in the advisory process for insurance-based investment products (IBIPs).
 - address conflicts with the Insurance Distribution Directive² (IDD) and Markets in Financial Instruments Directive³ (MiFID II) regarding the **protection of the individual customer/investor**. **Remuneration policies** should not provide incentives to specific investments or asset classes.
- the meaning of key concepts like “impact” and “sustainability risks” is clarified.
- the **scope of the empowerment of the European Supervisory Authorities** (ESAs) with respect to the development of draft regulatory technical standards is clearly defined.
- an **appropriate sequencing and timing** for implementation and application is achieved. Specifically, the EC should review and change its intention to apply Level 1 before Level 2 is finalised.
- pre-contractual disclosures are balanced and help consumers make informed financial decisions aligned with their objectives. Specifically, the EC should avoid **information overload** and remove duplication of the same disclosure requirement of sustainable investments.

² Directive (EU) 2016/97

³ Directive 2014/65/EU

Detailed comments

Insurance Europe provides below detailed comments on the proposed regulation.

Link between proposals for regulations on disclosures and the EU framework under development

The insurance sector encourages an appropriate sequencing and timing of the relevant legislative proposals, notably the EC proposal on the framework to facilitate sustainable investment (here called the Taxonomy Regulation⁴). Since **sustainability has different meanings to investors across markets**, reaching a common understanding of what is sustainable must be the key priority of the EC. Regulatory requirements on sustainability that are related to the taxonomy, specifically those contained in the Disclosure Regulation, should remain **voluntary** until the central elements of the sustainability taxonomy have been completed and all ESG factors have been integrated in its scope.

Completing the development of the taxonomy, before related binding requirements, would eliminate unnecessary legal uncertainty and cost duplications associated with the sustainability disclosures, to the benefit of the consumers/investors. Additionally, a clearly identified EU taxonomy would make it more efficient for insurers to adapt their product development and advisory processes, and incorporate the necessary disclosures. To this end, Insurance Europe stresses the need to reconsider the sequencing of the sustainability initiatives and to prioritise the taxonomy framework, before the disclosure requirements and the distribution-related aspects.

Subject matter and definitions – Article 1 and Article 2

Insurance Europe welcomes the intention of the EC proposal to increase transparency for all financial market participants and to achieve harmonised standards for sustainability-related disclosures to end-investors. A consistent integration of transparency rules on sustainability within the existing legislation requires **the scope and the definitions used in the EC proposal to be accurate and clear**. This means that the EC proposal should not only reference other legislative measures, but also consider their context and granted exceptions.

The insurance industry notes that the **Packaged Retail Investment and Insurance-Based Products (PRIIPs) Regulation**⁵ and the EC proposal share the objective to help investors make informed investment decisions. For consistency, the sector invites the EC to consider the structure of the PRIIPs Regulation in Article 4(2) of the Disclosure Regulation. In the PRIIPs Regulation, the wide definition of IBIP is balanced by the exemption of non-life products in Article 2(2)(a) and risk insurance policies in Article 2(2)(b). Given the focus on financial products with an investment element, these exemptions could be extended and explicitly included in Article 2(a)(i) and Article 2(c) of the proposal. This would be in line with the objective of the proposal to ensure uniform **protection to end-investors** as indicated in Recitals 2 and 3. In this respect, the industry encourages the EC to make the definition of IBIPs more precise and consider replacing the current definition with that contained in Article 2(1)(17) of IDD, which defines the IBIP comprehensively and without ambiguity.

Similarly, Insurance Europe considers that the exemptions under the **Institutions for Occupational Retirement Provision (IORP) II Directive**⁶ should apply to the Disclosure Regulation.

In addition, the definition of “**pension products**” in Article 2(h) should be clarified to avoid possible ambiguity regarding the distinction between IBIPs and pension products. Both IBIPs and pension products are used as

⁴ COM (2018) 353 final / 2018/0178 (COD)

⁵ Regulation (EU) No 1286/2014

⁶ Directive (EU) 2016/2341

retirement instruments and the differences are related to recognition under national law (Article 2 (h) (i)) and financial contribution by the employer (Article 2 (h) (ii)).

With respect to the **definition of sustainable investment**, Insurance Europe supports a holistic approach encompassing sustainability issues in a broad sense. Therefore, Insurance Europe welcomes that the definition of what is sustainable goes beyond that provided in the EU proposal on the establishment of a framework to facilitate sustainable investments, allowing for a more generous definition. Specifically, the industry welcomes that the EC proposal does not only focus on the environmental objective, but also includes a social and governance component as defined in Article 2 (o).

Transparency of sustainability risk policies – Article 3

The insurance industry has long started to incorporate ESG factors in its business models and investment strategies. Given the strong political and economic drive for sustainability, the coverage of sustainability objectives is increasingly growing across the industry, and ESG considerations have increasingly become a significant factor in insurers' investment decisions. In this respect, Insurance Europe believes that **increased transparency** in the integration of sustainability risks in the investment process might bring reputational benefits to the market players involved. Additionally, it is key that financial market participants have methodological freedom with respect to the way and level of granularity in which they publish such information.

With respect to the **publication of sustainability risk policies** on financial markets participants' websites, the insurance industry interprets Article 3 as a requirement on transparency. In this respect, Insurance Europe is concerned by the lack of a **definition of sustainability risks** and strongly encourages the EC to elaborate on this. The industry currently interprets this concept as the financial risks of an investment with respect to ESG factors and believes that risk policies should address sustainability risks with a **material financial impact**.

Transparency of the integration of sustainability risks – Article 4

Insurance Europe is supportive of the need to provide customers with relevant and accurate information at the pre-contractual stage, including how ESG risks are identified and dealt with in the investment decision process.

Insurance Europe emphasises that the objective of transparency disclosures is to **allow customers to make informed decisions regarding the investment of their premiums**. Although ESG preferences are key factors, consumers make decisions based on a wider series of factors, ie return profile, risk appetite, risk profile and investment horizon. Consequently, **information about sustainability needs to be balanced** as consumers receive information also about product features such as risks, reward and costs. In addition, given that financial literacy of investors is relatively low in Europe, disclosures should provide guidance rather than be a burden on investors.

In this respect, the insurance industry understands that Article 4, like Article 3, introduces a transparency requirement at entity level with respect to how relevant entities consider ESG factors within the investment decisions. Such disclosure requirements would also be in line with the approach used in the IORP II Directive, Recital 58. Provided this is the case, Insurance Europe believes that such requirements would have the benefit of:

- **encouraging competition** to include sustainability risks in the investment processes among an increasing number of market players, while respecting proportionality considerations, ie the diversity in the industry with respect to availability of resources and investment capacities for insurers with various sizes, as well as the existing differences in engagement on sustainability.
- **avoiding costly constraints** related to the level of detail of the disclosures and the related assessment methodologies. Such granularity would not provide any added value to investors due to the limited comparability of the wide range of existing methods to assess the sensitivity of ESG factors on investments.

- respecting **confidentiality** with respect to investments limiting disclosures to the **aggregate portfolio** level and avoiding negative competitive issues for insurers. As financial market participants should not be obliged to disclose investment secrets, disclosures should not refer to specific asset classes or assets.

With respect to Article 4(1)(a), the insurance sector stresses that this requirement should be at portfolio level and non-prescriptive about the processes for integration of financially relevant sustainability factors. Additionally, discretion on the consideration of material sustainability risks should be left to insurers. In this respect, the industry notes that the **prudent person principle** of the Solvency II framework already requires insurers to invest in a manner that ensures security, quality, liquidity and profitability of the portfolio, and in line with the nature and duration of insurance liabilities.

Concerning Article 4(2)(a), the insurance sector notes that the draft Commission Delegated Regulation amending **Delegated Regulation (EU) 2017/2359** already provides for the integration of sustainability risk in the advisory process for IBIPs. In this respect, the pre-contractual disclosures in Article 4(2)(a) are **redundant** as Article 30(1) of the IDD and Article 9(4) of the Delegated Regulation (EU) 2017/2359 clearly require insurance intermediaries and insurance undertakings to identify the investment objectives of their customers, implying that whenever a customer expresses sustainability preferences, they need to be explicitly considered in the investments.

With respect to Article 4(1)(b), the insurance sector notes that conclusive evidence on the influence of ESG criteria on returns is lacking and the assessment of future investment performance is uncertain. Considering this and the currently limited market methodologies, the request to disclose the impact of sustainability risks on returns is premature. Even addressing sustainability risks based on **materiality** (ie when ESG factor would affect noticeably the risk profile and therefore the financial performance of the financial products), the disclosures in Article 4(1)(b) might expose insurers to potential liability risks and even **mislead customers**.

Regarding Article 4(1)(c) on remuneration policies, Insurance Europe welcomes the room given to market players to develop their remuneration policies consistently with the integration of sustainability risks and encourages the EC to avoid potential interferences with the investment decision process, notably with its **risk based nature and the established prudent person principle requirements**. In this respect, the industry believes that a distinction should be drawn between:

- **general remuneration** related to the offering of all products, regardless of their degree of sustainability. While it is key to promote transparency regarding the integration of sustainability risks into the investment decision process, the remuneration policy should not force incentives to specific investments or asset classes on market players, as this would be at odds with the risk-based approach of the Solvency II regime and would potentially lead to misallocations of capital.
- **specific remuneration linked to financial products with sustainability targets**. Also in this case, capital allocation should not be the subject of remuneration incentives, as this would promote sustainable products over others, raising unnecessary competitive issues. Consistency with remuneration should rather refer to the characteristics of the financial products, eg the alignment to the reference index with the sustainability target.

Concerning Article 4 (2)(c), the insurance industry stresses that there is a potential divergence between the objectives of the IDD/MiFID II and the EC proposal. The IDD clearly states that there should be no remuneration incentive to recommend a given product to customers, as indicated in Recital 46. The MiFID II sets similar requirements as noted in Recital 56 and Article 23(1). Both IDD and MiFID II aim at the **protection of the individual customer/investor**. In contrast, as noted in Recital 5, the Disclosure Regulation aims to contribute to long-term sustainable growth in general and encourages market participants to act accordingly. Notwithstanding the significance of promoting sustainable investments, the insurance industry encourages the EC to address **potential inconsistencies**. This would protect individual customer interests and avoid that customers without ESG preferences suffer the effects of information overload or inappropriate remuneration policies.

Regarding the disclosure of the information described in Article 4(1) and Article 4(2) pursuant to Article 185(2) of the Solvency II framework, Insurance Europe encourages the EC to allow for the **use of references to the disclosed information** if already reported elsewhere.

Transparency of sustainable investments in pre-contractual disclosures – Article 5

The insurance industry welcomes the proposal to increase the transparency of sustainable products as a means to **reduce greenwashing and enhance comparability of investments**. In this respect, Insurance Europe believes that pre-contractual disclosures at the investment level should consider the limited availability, quality and consistency of adequate ESG data. In addition, they should add value to customers' decision-making process.

Against this background, providing granular information as indicated in Article 5 might be challenging from an investment perspective and end up hindering the **financial attractiveness of ESG investments**. Specifically, such disclosures might bring about high costs for customers due to compliance and administrative pressures related to the modification of pre-contractual disclosures within undertakings, diverting the use of resources and specific expertise destined to the development of specific and innovative methodologies.

Consequently, Insurance Europe encourages the EC to consider a **gradual application over time** of the requirements set out in Article 5, especially in terms of granularity. Without a functional taxonomy to assess what is sustainable, it will be inefficient for insurers to develop their sustainable investment products. In this context, the insurance industry is also concerned that the requirement contained in Article 5(3) is too detailed. Providing a "detailed explanation of how the continued effort of reaching a target of reducing carbon emissions is ensured" will allow to **tackle greenwashing, but in practice this would introduce a barrier to developing innovative sustainable products**. In addition, regarding the disclosure of the information described in Article 5(1) and Article 5(3), Insurance Europe encourages the EC proposal to allow for the **use of references** to the information disclosed by the index provider.

Insurance Europe also recommends to clarify how the obligations of Article 5 stand in relation to those covered in Article 4 of the Taxonomy Regulation.

Transparency of sustainable investments on websites – Article 6

The insurance sector believes that the content of Article 6 is aligned with the overall objective of the EC proposal to enhance transparency for end-investors. In this respect, the industry notes that the term "**impact**" could be misleading because the overall impact of a financial product cannot always be measured directly. Therefore, Insurance Europe encourages the EC to elaborate on the meaning of this concept.

In addition, the insurance sector believes that the **scope of the ESAs empowerment** should be better defined and the timeline for the adoption of the regulatory technical standard by the ESAs aligned with the application of the EC proposal.

Transparency of sustainable investments in periodical reports – Article 7

In line with the above considerations, Insurance Europe advocates that **pre-contractual disclosures should be proportional to the already available information and customers' needs**. In this respect, the sector notes that the new information described in Article 5 of the EC proposal needs to be disclosed pursuant to Article 4(1)5, as well as on websites and periodical reports.

While the support for an increase in transparency related to sustainability is legitimate, such provision of information should be efficient and should not lead to **increased confusion and information overload**. Notwithstanding the need to ensure regular reporting on performance of ESG products, the insurance industry encourages the EC to limit unnecessary bureaucracy and amend the requirements set out in Article 7 to avoid unnecessary duplication of information.

Marketing communications – Article 9

Insurance Europe welcomes the provision in Article 9 as a good starting point to limit greenwashing in the markets. Specifically, the industry fully supports the **alignment of marketing initiatives** with the disclosure requirements in the EC proposal.

However, the sector questions the need for Level 2 regulation and encourages the EC to reassess the choice and the scope of the implementing technical standards. Specifically, this **empowerment to the ESAs** should clearly contain the key elements and specify the meaning of “standard presentation of information on sustainable investments”. The sector highlights that the PRIIPs Regulation already provides a standardised “key information document”, as a tool to compare investment products more effectively.

Amendments to Directive (EU) 2016/2341 – Article 10

While Insurance Europe recognises that ESG considerations are relevant for the investment policy and risk management of IORPs, it notes that no formal requirements for IORPs to integrate ESG factors in their investment decision process is currently in place and that the IORP II Directive is due for transposition into national law by January 2019.

Article 19 of the IORP II Directive leaves it to member states to require or not IORPs to consider ESG factors in their investment policies. In addition, Recital 58 of the IORP II Directive clearly states that the decision to require IORPs to explicitly disclose whether ESG factors are considered in investment decisions is at Member State level and that such requirement can be satisfied simply “*by stating in such information that environmental, social and governance factors are not considered in its investment policy or that the costs of a system to monitor the relevance and materiality of such factors and how they are taken into account are disproportionate to the size, nature, scale and complexity of its activities*”.

Insurance Europe would suggest to align the current EC proposal to ensure **legal consistency and clarity**, as well as avoid duplication and/or overlaps between the two pieces of legislation and their foreseen legislative processes.

Entry into force and application – Article 12

Insurance Europe notes that there will be a period during which the EC proposal will be applicable without draft technical regulatory requirements in place, as the ESAs will develop such regulatory requirements only 6 months after the entry into force of the regulation as currently foreseen in the proposal. In this respect, the insurance industry believes that the transparency requirements in Article 5 and Article 6 should apply a set time, possibly 6 months, after the entry into force of the delegated acts to allow insurers time to implement internal procedures to produce the necessary data and documentation.