UNIVERSITÀ
DEGLI STUDI
DI GENOVA

EUSFiL
Jean Monnet Centre of Excellence on Sustainable Finance and Law

EUSFiL Research Working Paper Series

2020 no. 3

D. Busch, G. Ferrarini & A. van den Hurk

The European Commission's Sustainable Finance Action Plan and Other International Initiatives

December 2020

www.eusfil.eu/working-papers

With the support of the
Erasmus+ Programme
of the European Union

EUSFiL Research Working Paper Series

EUSFiL project has been funded with support from the European Commission. The Research Working Paper Series reflects the views only of the author, and the European Commission cannot be held responsible for any use which may be made of the information contained therein.

With the support of the Erasmus+ Programme of the European Union

The European Commission's Sustainable Finance Action Plan and Other International Initiatives[1]

Danny Busch

d.busch@jur.ru.nl

Chair in Financial Law at Radboud University Nijmegen

Guido Ferrarini

guido.ferrarini@unige.it

Visiting Professor at Radboud University Nijmegen
Emeritus Professor of Business Law at the University of Genoa

Arthur van den Hurk

a.vandenhurk@jur.ru.nl

Senior regulatory counsel at Aegon N.V. in The Hague
Academic fellow at the Financial Law Centre (FLC) at Radboud University Nijmegen

December 2020

[1] This chapter was completed on 15 December 2020. No account could be taken of developments since that date. This chapter is an expanded and updated version of an earlier contribution of the authors to the 2019 book edited by Frits-Joost Beekhoven van den Boezem, Corjo Jansen and Ben Schuijling, *Sustainability and financial markets* (Law of Business,and Finance series, volume 17), Wolters Kluwer, Deventer, the Netherlands.

Abstract

The actions proposed by the Commission's Action Plan and analyzed in this chapter respond to five broad strategies that can be defined as 'public incentives', 'standardization', 'disclosure', 'corporate governance' and 'financial regulation'. The first strategy consists of fostering investments through financial and technical support for sustainable infrastructure and other projects. In perspective, the European Commission will establish a single investment fund providing support and technical assistance to crowd in private investment. The second strategy includes the establishment of an EU taxonomy of sustainable activities which should help shifting capital flows towards them. It also includes the setting of standards and labels for green financial products, which should enhance the trust in the market of these products and ease investors' access to them. These two strategies will help establishing well-defined and deep markets in sustainable investments and will work as preconditions to the others. The third strategy covers both corporate disclosure and third party information and assessments. The Non-Financial Disclosure Directive is being reviewed and complemented by other measures, such as an impact assessment of IFRS on sustainability. Sustainability benchmarks have been developed in order to allow investors to track and measure performance and allocate assets accordingly. In addition, credit rating agencies and market research services should integrate sustainability into their assessments. The fourth strategy combines sustainable corporate governance with attenuating short-termism in capital markets, and assumes that boards should develop their own sustainability strategies and act in the company's long term interest. Both disclosure and corporate governance are traditional strategies in capital markets regulation and functioning, whilst their extension to sustainability is a reflection of the new interest of investors and corporate stakeholders for ESG issues in addition to financial performance. The fifth strategy implies at least three types of regulatory reform. First, the Markets in Financial Instruments Directive (MiFID II) and the Insurance Distribution Directive (IDD) should be amended in the sense that investment firms and insurance distributors should consider sustainability issues when offering financial advice. Second, fiduciary duties of asset managers and institutional investors should be clarified so as to include ESG factors in the investment processes. Third, ESG should be incorporated in prudential requirements of financial institutions so that they channel their investments towards a more sustainable economy, while reducing the risks deriving from unsustainable economic development. These five strategies represent a very ambitious design of the European Commission which will require multiple actions at all levels. These actions generally require regulation and/or supervision often at EU level, but private incentives and cultural developments towards an environmentally-sustainable economic system will also be important in furthering the success of the Action Plan.

I INTRODUCTION

On 11 December 2019 the European Commission launched the European Green Deal and announced that it had reset its commitment to tackling climate and environmental-related challenges, such as the warming of the atmosphere and changing climate, loss of species on the planet and destruction and pollution of oceans and forests.[2]

The European Green Deal also serves as a new growth strategy for the EU, to transform the European Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.[3] The Green Deal is an integral part of this Commission's strategy to implement the United Nation's 2030 Agenda and the UN sustainable development goals.[4]

The Commission has estimated that achieving the current 2030 climate and energy targets will require €260 billion of additional annual investment, about 1.5% of 2018 GDP. This flow of investment will need to be sustained over time. The magnitude of the investment challenge requires mobilising both the public and private sector.

As already indicated with the announcement of the initial sustainable finance strategy in 2018, the European Commission reiterates in the context of the European Green Deal that the private sector is key to financing the green transition. Long-term signals are needed to direct financial and capital flows to green investment and to avoid stranded assets. The Commission announced that it would present a renewed sustainable finance strategy in the third quarter of 2020 that will focus on a number of actions.[5]

But let us go back in time a little further. At the end of 2016, the Commission appointed a High-Level Expert Group on Sustainable Finance. On 31 January 2018, the expert group published its final report, offering a comprehensive vision on how to build a sustainable finance strategy for the EU. The Report argues that sustainable finance is about two urgent imperatives: (1) improving the contribution of finance to sustainable and inclusive growth by funding society's long-term needs; (2) strengthening financial stability by incorporating environmental, social and governance (ESG) factors into investment decision-making. The Report proposes eight key recommendations,

---

[2] Communication from Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal,* COM/2019/640 final, December 11, 2019.

[3] Resolution 70/1 adopted by the United Nations General Assembly on 25 September 2015, https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

[4] https://sdgs.un.org/goals

[5] Communication from Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal,* COM/2019/640 final, December 11, 2019, paragraph 2.2.1.

several cross-cutting recommendations and actions targeted at specific sectors of the financial system.[6]

On 8 March 2018 the Commission launched its initial Action Plan on Sustainable Finance. The Action Plan builds upon the expert group's recommendations to set out an EU strategy for sustainable finance. The Action Plan on sustainable finance is part of broader efforts to connect finance with the specific needs of the European and global economy for the benefit of the planet and society.[7]

Specifically, the Action Plan aims to: (i) reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth; (ii) manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues; and (iii) foster transparency and long-termism in financial and economic activity.[8]

In the Action Plan these aims are translated into ten concrete actions: (1) establishing an EU classification system for sustainable activities; (2) creating standards and labels for green financial products; (3) fostering investment in sustainable projects; (4) incorporating sustainability when providing financial advice; (5) developing sustainability benchmarks; (6) better integrating sustainability in ratings and market research; (7) clarifying institutional investors' and asset managers' duties; (8) incorporating sustainability in prudential requirements; (9) strengthening sustainability disclosure and accounting rule-making; (10) fostering sustainable corporate governance and attenuating short-termism in capital markets.[9]

Following up on the announcement by the Commission in the context of the European Green Deal, the European Commission launched a consultation on 8 April 2020 on a renewed sustainable finance strategy, building on the 10 action points identified in the initial 2018 Action Plan. According to the Commission in the context of this consultation, the financial system as a whole is not yet transitioning fast enough. Substantial progress still needs to be made to ensure that the financial sector genuinely supports businesses on their transition path towards sustainability, as well as further supporting businesses that are already sustainable.[10]

The renewed sustainable finance strategy fits within the broader context of the European Green Deal Investment Plan (EGDIP or SEIP[11]), which is the investment

---

[6]EU High-Level Expert Group on Sustainable Finance, Financing a Sustainable European Economy (https://ec.europa.eu/info/sites/info/files/180131-sustainable-finance-final-report_en.pdf).

[7] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 2.

[8] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 3.

[9] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 4-11.

[10] European Commission, consultation on the renewed sustainable finance strategy, April 8, 2020, https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-sustainable-finance-strategy-consultation-document_en.pdf

[11] Sustainable Europe Investment Plan.

pillar of the Green Deal. The objectives of the Investment Plan are threefold: (1) it will increase funding for the transition, and mobilise at least €1 trillion to support sustainable investments over the next decade through the EU budget and associated instruments, in particular InvestEU; (2) it will create an enabling framework for private investors and the public sector to facilitate sustainable investments; and (3) it will provide support to public administrations and project promoters in identifying, structuring and executing sustainable projects.[12]

Within the context of these objectives of the Investment Plan the renewed sustainable finance strategy will aim to: (1) create a strong basis to enable sustainable investment; (2) increase opportunities for citizens, financial institutions and corporates to have a positive impact on society and the environment; and (3) fully manage and integrate climate and environmental risks into the financial system.

First, according to the Commission, the strategy will strengthen the foundations for sustainable investment, in particular by the adoption of the taxonomy for classifying environmentally sustainable activities. Furthermore, sustainability should be further embedded into the corporate governance framework and companies and financial institutions will need to increase their disclosure on climate and environmental data so that investors are fully informed about the sustainability of their investments. To this end, the Commission will review the Non-Financial Reporting Directive. To ensure appropriate management of environmental risks and mitigation opportunities, and reduce related transaction costs, the Commission will also support businesses and other stakeholders in developing standardised natural capital accounting practices within the EU and internationally.

Second, the European Commission proceeds with the development of clear labels for sustainable retail investment products and the development of an EU green bond standard.

Third, the European Commission will focus on the integration and management of climate and environmental risks into the financial system by integrating such risks into the EU prudential framework and assessing the suitability of the existing capital requirements for green assets. The Commission will also examine how our financial system can help to increase resilience to climate and environmental risks, in particular when it comes to the physical risks and damage arising from natural catastrophes.[13]

The ten concrete actions mentioned in the Action Plan (see point (1)-(10) above) will be discussed in broad outline below. But before doing so, we will briefly put the Action Plan in a broader perspective.

---

[12]European Commission, The European Green Deal Investment Plan and Just Transition Mechanism explained, January 14, 2020, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24

[13] Communication from Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal,* COM/2019/640 final, December 11, 2019, paragraph 2.2.1.

II. THE BROADER PERSPECTIVE

The Commission's Green Deal and Sustainable Finance Action Plan follow global efforts towards a more sustainable economy. Governments from around the world have chosen a more sustainable path for our planet and our economy by adopting (1) the 2016 Paris Agreement on climate change and (2) the United Nations (UN) 2030 Agenda for Sustainable Development.[14]

On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development[15] having at its core the Sustainable Development Goals (SDGs) covering three pillars of sustainability: (1) environmental, (2) social and (3) economic/governance. The Commission's Communication of 2016 on the next steps for a sustainable European future[16] links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, within the Union and globally, take the SDGs on board at the outset. The European Council conclusions of 20 June 2017[17] confirmed the commitment of the Union and the Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner and in close cooperation with partners and other stakeholders.[18]

In 2016, the Council concluded on behalf of the Union the Paris Climate Agreement.[19] Article 2(1)(c) of the Paris Climate Agreement sets the objective 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.[20]

The United Nations Environment Programme – Finance Initiative (UNEP FI), operating under the auspices of the United Nations Environment Programme predates the initiatives mentioned above.[21] UNEP FI is a partnership between United Nations Environment and the global financial sector created in 1992, in the wake of the 1992 Earth Summit in Rio de Janeiro with a mission to promote sustainable finance. What

---

[14] Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, COM(2018) 353 final (24 May 2018), p. 1 (Explanatory Memorandum).

[15] Transforming our World: The 2030 Agenda for Sustainable Development (UN 2015) available at https://sustainabledevelopment.un.org/post2015/transformingourworld.

[16] COM(2016) 739 final.

[17] CO EUR 17, CONCL. 5.

[18] Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, COM(2018) 353 final (24 May 2018), recital (2).

[19] 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. 4).

[20] Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, COM(2018) 353 final (24 May 2018), recital (3).

[21] Established as part of the United Nations Conference on the Human Environment in Stockholm in 1972.

was launched in 1991 by a small group of commercial banks,[22] has grown into a group of hundreds of financial institutions, including banks, insurers, and investors, from across the globe that work with UN Environment to understand today's environmental, social and governance challenges, why they matter to finance, and how to actively participate in addressing them. The core document of UNEP FI is the UNEP Statement of Commitment by Financial Institutions on Sustainable Development, to which all financial institutions that have joined UNEP FI have agreed to adhere. An impressive number of initiatives has been developed under the umbrella of the UNEP FI in various areas of the financial sector, such as the UN-supported 2006 Principles for Responsible Investment[23] and the 2012 UN Principles for Sustainable Insurance,[24] whereas UNEP FI's banking membership[25], has developed principles that intend to define the banking industry's role and responsibility in shaping and financing a sustainable future. Immediately after the launch of the UN principles on responsible banking on 22 September 2019, 33 of their signatories with over $13 trillion in assets have additionally announced a Collective Commitment to Climate Action (CCAA). Signatories of the Principles are taking tangible steps towards putting their commitment to align their business with international climate goals into practice.

The CCAA sets out concrete and time-bound actions that banks will take to scale up their contribution to, and align their lending with, the objectives of the Paris Agreement on Climate, including: (1) aligning their portfolios to reflect and finance the low-carbon, climate-resilient economy required to limit global warming to well-below 2, striving for 1.5 degrees Celsius; (2) taking concrete action, within a year of joining, and use their products, services and client relationships to facilitate the economic transition required to achieve climate neutrality; (3) being publicly accountable for their climate impact and progress on these commitments.

On December 8, 2020, UNEP FI published the first progress report on the measures taken in the first year since the pledge.

Furthermore, other international bodies and standard-setters have become increasingly active in the area of SDG. For instance, in 2015 the Financial Stability Board set up the Task Force on Climate-Related Disclosures (TCFD), which has led to the publication of the final recommendations of the TCFD in 2017. UNEP FI banks have declared their intention to jointly pioneer practical approaches to implement this forward-looking framework, whereas asset managers and owners, as well as insurance companies, have subsequently joined this pilot. As another example, the International Association of Insurance Supervisors (IAIS) (jointly with the Sustainable Insurance

---

[22] More or less in parallel, the UNEP joined forces in 1995 with leading insurance and reinsurance companies, forming the UNEP Insurance Industry Initiative, working closely together with the UNEP Financial Institutions Initiative, and subsequently, in 2000, merging into the UNEP Finance Initiative.
[23] Created as a spin-off of from the UNEP FI and the UN Global Compact.
[24] Which have become part of the insurance industry criteria of the Dow Jones Sustainability Indices and FTSE4Good and (as of July 2015) representing 83 organisations, including insurers representing approximately 20% of the world premium volume and USD 14 trillion in assets under management.
[25] Representing approximately 200 banks across the world.

Forum[26]) has released two joint Issues Paper, a first one in 2018 on climate change risks to the insurance sector and as a follow-up, a second Issues Paper in February 2020 on the implementation of the Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) in the insurance sector. In addition, the IAIS held a consultation on an application paper on the supervision of climate-related risks in the insurance sector.[27]

Worth mentioning as well is the Central Banks and Supervisors Network for Greening the Financial System (NGFS), established at the Paris Summit in December 2017 by an initial group of nine central banks and financial service authorities[28] which has so far launched workstreams on supervisory/microprudential, macroprudential and on scaling up green finance.

Furthermore, on 18 October 2019, in the margins of the International Monetary Fund (IMF)/World Bank annual meetings in Washington DC, the European Union launched together with relevant authorities of Argentina, Canada, Chile, China, India, Kenya and Morocco the International Platform on Sustainable Finance (IPSF). The ultimate objective of the IPSF is to scale up the mobilisation of private capital towards environmentally sustainable investments. The IPSF therefore offers a multilateral forum of dialogue between policymakers that are in charge of developing sustainable finance regulatory measures to help investors identify and seize sustainable investment opportunities that truly contribute to climate and environmental objectives. Through the IPSF, members can exchange and disseminate information to promote best practices, compare their different initiatives and identify barriers and opportunities of sustainable finance, while respecting national and regional contexts. Where appropriate, willing members can further strive to align their initiatives and approaches.[29]

Lastly, between September and December 2020, the IFRS Foundation has held a consultation to identify the demand from stakeholders in the area of sustainability reporting and understand what the Foundation could do in response to that demand. The IFRS Foundation highlights the need to improve the consistency and comparability in sustainability reporting. A set of comparable and consistent standards will allow businesses to build public trust through greater transparency of their sustainability initiatives, which will be helpful to investors and an even broader audience in a context in which society is demanding initiatives to combat climate

[26] The Sustainable Insurance Forum (SIF) is a leadership group of insurance supervisors and regulators working together to strengthen their understanding of and responses to sustainability issues facing the insurance sector. As of October 2020, the SIF has 30 jurisdictions as its members.

[27] Available at www.iaisweb.org

[28] As of December 15, 2020, the NGFS consists of 83 members and 13 observers, with the US Federal Reserve being among the most recent joiners: https://www.ngfs.net/en/about-us/membership. International or regional financial institutions and international or regional standard setting, regulatory, supervisory and central bank bodies which have demonstrated a proven commitment in sustainable finance are eligible to be NGFS observers

[29] https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/international-platform-sustainable-finance_nl

change. As an established and recognized standard-setting body, the IFRS Foundation is considering whether its track record and expertise in standard-setting, and its relationships with global regulators and governments around the world, could be useful for setting sustainability reporting standards. In that context, it is considering three options: (1) maintaining the status quo, (2) facilitate existing initiatives or (3) create a Sustainability Standards Board and become a standard-setter working with existing initiatives and building upon their work.

III EU CLASSIFICATION SYSTEM ('TAXONOMY')

Now that we have put the Action Plan in a broader perspective, we will turn to discussing the concrete actions included in Commission's Action Plan.

The first concrete action the Commission mentions in its Action Plan is the establishment of an EU classification system - or taxonomy - for sustainable activities. According to the Commission, a shift of capital flows towards more sustainable economic activities has to be underpinned by a shared understanding of what 'sustainable' means. A unified EU classification system should provide clarity on which activities can be considered 'sustainable'. The Commission considered this as the most important and urgent action of its Action Plan.[30]

On 22 June 2020, the Taxonomy Regulation was published in the Official Journal of the European Union and entered into force on 12 July 2020. The Taxonomy Regulation sets out uniform criteria for determining whether an economic activity is environmentally sustainable. It further sets out a process involving a multi-stakeholder platform to establish a unified EU classification system based on a set of specific criteria, in order to determine which economic activities are considered sustainable. This should provide economic actors and investors with clarity on which activities are considered sustainable in order to inform their investment decisions. It should help ensuring that investment strategies are oriented towards economic activities which are genuinely contributing to the achievement of environmental objectives, while also complying with minimum social and governance standards. Greater clarity on what can be considered an environmentally sustainable investment will facilitate access to cross border capital markets for environmentally sustainable investment.[31]

---

[30] The Taxonomy Regulation is discussed in more detail in chapter 10 of this book by C.V. Gortsos.

[31] To this end, pursuant to article 8 of the Taxonomy Regulation, any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9 of the Taxonomy Regulation.

It will also serve as the basis for standards and labels for sustainable financial products under the Sustainable Finance Disclosure Regulation.[32] As follows from the above, the Taxonomy Regulation is closely linked to other pieces of the EU legislation, in particular the Sustainable Finance Disclosure Regulation, the Non-Financial Reporting Directive and the Consolidated Accounting Directive.

As part of the Taxonomy Regulation, the Commission is tasked with coming forward with technical screening criteria through delegated acts to develop the taxonomy further. The first two sets of criteria have been published for public consultation on 20 November 2020, relating to those activities that substantially contribute to climate change mitigation or climate change adaptation. It is the intent that the relevant criteria will apply as of 1 January 2022. The activities and criteria are based on the recommendations of the Technical Expert Group on Sustainable Finance (TEG) that were published in March 2020. This gradual approach demonstrates the evolving knowledge of environmental impacts and the developing expertise in this area, which necessitates an approach that is flexible enough to take account of future developments.

Under article 20 of the Taxonomy Regulation, the European Commission has recently established a platform on sustainable finance.[33] The platform is an advisory body and consists of experts from the private and public sector. This group of experts will have four main tasks: (1) advise the Commission on the technical screening criteria for the EU Taxonomy, including on the usability of the criteria; (2) advise the Commission on the review of the Taxonomy Regulation and on covering other sustainability objectives, including social objectives and activities that significantly harm the environment; (3) monitor and report on capital flows towards sustainable investments; (4) advise the Commission on sustainable finance policy more broadly.

In addition to the Platform, a Member State Expert Group on Sustainable Finance has been established pursuant to article 24 of the Taxonomy Regulation that shall advise the Commission on the appropriateness of the technical screening criteria and the approach taken by the Platform regarding the development of those criteria.

IV STANDARDS AND LABELS FOR GREEN PRODUCTS

Building on the EU sustainability taxonomy discussed in the previous paragraph, the Commission's second concrete action included in the Action Plan concerns the creation of EU standards and labels for sustainable financial products.[34] In the view of the Commission, this will protect the integrity of and trust in the sustainable financial market, as well as enable easier access for investors seeking those products. The

---

[32] The Sustainable Finance Disclosure Regulation is discussed in more detail in chapter 11 of this book by D. Busch.

[33] European Commission, Platform on sustainable finance: https://ec.europa.eu/info/publications/sustainable-finance-platform_nl

[34] For a more elaborate discussion, we refer to chapter 10 of this book by M. Driessen, Sustainable Finance: an overview of ESG in the financial markets.

Commission gives the example of green bonds, which allow entities (companies, banks, governmental organizations, etc.) to borrow money from investors in order to finance or re-finance 'green' projects, assets or business activities. While the green bond market is expanding rapidly, it still accounts for less than 1% of total bonds outstanding worldwide.[35]

Drawing on current best practices, an EU standard accessible to market participants would in the Commission's view facilitate channeling more investments into green projects and would constitute a basis for the development of reliable labelling of financial products. According to the Commission, labelling schemes can be particularly useful for retail investors who would like to express their investment preferences on sustainable activities. They could facilitate retail investors' choice by gradually being integrated in tools, like comparison websites or financial planning services, such as currently developed in the context of the Commission's Consumer Financial Services Action Plan.[36]

According to the Commission, surveys suggest that retail investors increasingly want their investments to take into account climate, environmental and social considerations. However, the lack of labelled financial products may prevent investors from directly channeling their funds into sustainable investments. The Commission sees potential merit in the use of the already existing EU Ecolabel Regulation to create a voluntary EU-wide labelling scheme. Criteria would have to be identified for specific financial products offered to retail investors (such as Packaged Retail Investment and Insurance Products or PRIIPs).

The Commission will also consider the merits of a labelling scheme for socially responsible financial products, such as SRI (Socially responsible investment funds or Sustainable and responsible investment funds),[37] building on the experience of the European Social Entrepreneurship Funds.

In view of the above, the Commission wishes to create standards and labels for green financial products. On 12 June 2020 the European Commission has launched a consultation on a European standard for green bonds, building on earlier preparatory work undertaken by the Technical Expert Group[38].[39] Finally, the Commission will explore the use of the EU Ecolabel framework for certain financial products, to be

[35] G20 Green Finance Study Group, G20 Green Finance Synthesis Report, 2016; European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 4-5.
[36] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 5.
[37] These are funds integrating environmental, social and governance factors in their investment decision making process. European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), footnote 20 on p. 5.
[38] EU Technical Expert Group on Sustainable Finance, Proposal for an EU green bond standard, June 2019, https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustainable-finance-teg-report-green-bond-standard_en.pdf
[39] See further chapter 9 of this book by M. Driessen.

applied once the EU sustainability taxonomy is adopted.[40] Recently the European Commission published a first study in this context on the use of EU ecolabel criteria on UCITS equity funds.[41] According to the Commission, the study will assist with the development of the Ecolabel criteria for financial products and assessing whether the proposed criteria achieve the right balance between promoting environmental excellence and maintaining the integrity of the EU Ecolabel while ensuring there are a sufficient number of eligible products available in the market.

Somewhat related, and predating the Action Plan, is the request for advice and subsequent joint technical advice of the European Supervisory Authorities (or ESAs) to the European Commission on the procedures used to establish whether a PRIIP targets specific environmental or social objectives, pursuant to Article 8(4) of Regulation (EU) No. 1286/2014 on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs).[42] The European Commission has requested this advice assuming that PRIIPs increasingly target specific social or environmental objectives, and not only financial objectives. The European Commission requested the ESAs to consider the processes required to ensure that disclosed environmental or social objectives are effectively met.[43] The ESAs provided their advice to the European Commission on 28 July 2017. Although not specifically requested by the European Commission in the context of the development of the Sustainable Finance Disclosure Regulation (SFDR)[44], this technical advice also served as input to the formation of the SFDR.

On December 29, 2019, the SFDR entered into force and is expected to apply as from 10 March 2021. The SFDR introduces sustainability related disclosure requirements on

[40] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 5.

[41] European Commission, June 26, 2020, Study: the use of EU ecolabel criteria on UCITS equity funds, https://ec.europa.eu/info/publications/200626-study-eu-ecolabel-criteria-ucits_en. The study examines the application of the proposed Ecolabel Criterion 1 to a sample of 100 'green' UCITS equity funds domiciled in the EU to determine the eligibility of these funds for the Ecolabel.

[42] ESAs joint technical advice on the procedures used to establish whether a PRIIP targets specific environmental or social objectives pursuant to Article 8 (4) of Regulation (EU) No 1286/2014 on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs), July 28, 2017, JC 2017 43, https://esas-joint-committee.europa.eu/Publications/Technical%20Advice/Joint%20Technical%20Advice%20on%20the%20PRIIPs%20with%20environmental%20or%20social%20objectives.pdf.

[43] ESAs joint technical advice on the procedures used to establish whether a PRIIP targets specific environmental or social objectives pursuant to Article 8 (4) of Regulation (EU) No 1286/2014 on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs), https://esas-joint-committee.europa.eu/Publications/Technical%20Advice/Joint%20Technical%20Advice%20on%20the%20PRIIPs%20with%20environmental%20or%20social%20objectives.pdf

[44] In fact, on April 20, 2020, the ESAs launched a specific consultation on draft regulatory technical standards with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a, Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of the SFDR.

financial market participants,[45] and financial advisers,[46] both at an entity level and at a product level. The SFDR distinguishes between disclosures regarding sustainability *risks*[47] and those concerning sustainability *factors*[48], and distinguishes between regular financial products, financial products that promote, among other characteristics, environmental or social characteristics, and financial products that have sustainable investment as their objective.[49]

V. FOSTERING INVESTMENTS IN SUSTAINABLE PROJECTS

The third concrete action included in the Action Plan concerns fostering investment in sustainable projects. The Commission explains that mobilizing private capital for sustainable projects, especially for infrastructure, is a prerequisite for the transition to a more sustainable economic model. According to the OECD, infrastructure contributes to about 60% of greenhouse gas emissions.[50] Given the needs for sustainable infrastructure investment, continued progress in developing appropriate frameworks to leverage private investment alongside public funds is considered key by the Commission. The capacity to develop and implement projects, however, varies widely across the EU and between sectors. According to the Commission, greater advisory and technical assistance would contribute to a larger pipeline of sustainable projects.[51]

Beyond large-scale infrastructure projects, the clean energy transition also requires adequate finance available for smaller-scale, distributed projects. The Commission explains that this concerns particularly energy efficiency improvements, for example in buildings, and deployment of renewable energy. The Commission has proposed actions that stimulate such investments as part of the Clean Energy for all Europeans package.[52]

In addition to grants (such as the Connecting Europe Facility), as part of the Investment Plan for Europe, the Commission claims that it has significantly boosted its financial and technical support for sustainable infrastructure investment, in particular through the European Fund for Strategic Investments (EFSI) and the

---

[45] As defined in article 2(1) of the SFDR.

[46] As defined in article 2(11) of the SFDR. This includes financial market participants providing investment or insurance advice, as well as (e.g.) insurance intermediaries providing advice regarding insurance based investment products (IBIPs).

[47] This means an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment (article 2(2) SFDR.

[48] This means environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters (article 2(24) SFDR).

[49] The Sustainable Finance Disclosure Regulation is discussed in more detail in chapter 11 of this book by D. Busch.

[50] OECD, Investing in Climate, Investing and Growth, 2017.

[51] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 5.

[52] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 5 and footnote 22.

European Investment Advisory Hub. As of February 2018, the EFSI has proven to be instrumental in crowding in private investment for strategic projects across the EU, mobilizing almost EUR 265 billion in total investments.[53]

Following its successful first years of operation, the EFSI has been recently extended until 2020 (EFSI 2.0) and its investment target has been raised to half a trillion euros. In addition, the EFSI 2.0 will focus even more on sustainable projects, with at least 40% of EFSI financing for infrastructure and innovation to support climate action projects. The European Investment Advisory Hub, the EU's gateway for investment support, will also provide greater advisory capacity at regional and local level to promote projects with a climate, environmental and social impact.[54]

The Commission explains that in parallel, the roll-out of the EU External Investment Plan (EIP) will encourage sustainable investments in partner countries, starting from Africa and the EU Neighborhood. The EIP is expected to leverage more than €44 billion of investments by 2020, by mobilizing public and private finance through the European Fund for Sustainable Development (EFSD), providing technical assistance on investment projects, and fostering a favorable investment climate and business environment. Sustainable development is integrated into the design of the instrument and all projects will have a clear sustainability dimension, for example by supporting sustainable agriculture and connectivity, as well as the creation of jobs.[55]

For the post-2020 multiannual financial framework, the Commission has come forward with the idea of establishing a single investment fund integrating all EU market-based instruments to further increase the efficiency of EU investment support for discussion by the European Union's Leaders.[56] Building on the successful roll-out of the EFSI, such a fund could provide financial support and related technical assistance to crowd in private investment, including for sustainable infrastructure. Backed by an EU budgetary guarantee, a single investment fund could support investment priorities and simplify interaction between investors, beneficiaries, the EU Commission, implementing partners, like the European Investment Bank (EIB) and national promotional banks, and potential new partners, such as foundations and philanthropic organizations. As a continuation of the European Investment Advisory Hub, such support could also include a project development assistance component to continue to build more capacity for developing sustainable projects.[57]

---

[53] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 5-6 and footnotes 23 and 24.
[54] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 6.
[55] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 6.
[56] Communication from the Commission "A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020" - The European Commission's contribution to the Informal Leaders' meeting on 23 February 2018.
[57] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 6.

Finally, as already mentioned in the introduction, there is the European Green Deal Investment Plan (EGDIP or SEIP[58]), which is the investment pillar of the Green Deal. The objectives of the Investment Plan are threefold: (1) it will increase funding for the transition, and mobilise at least €1 trillion to support sustainable investments over the next decade through the EU budget and associated instruments, in particular InvestEU; (2) it will create an enabling framework for private investors and the public sector to facilitate sustainable investments; and (3) it will provide support to public administrations and project promoters in identifying, structuring and executing sustainable projects.[59]

VI INCORPORATING SUSTAINABILITY WHEN PROVIDING FINANCIAL ADVICE

The fourth concrete action included in the Action Plan concerns the incorporation of sustainability when providing advice.[60] By providing advice, investment firms and insurance distributors (including insurers that offer products directly) can play a central role in reorienting the financial system towards sustainability. Prior to the advisory process, these intermediaries and distributors are required to assess clients' investment objectives and risk tolerance in order to recommend suitable financial instruments or insurance products. However, according to the European Commission, investors' and beneficiaries' preferences as regards sustainability are often not sufficiently taken into account when advice is given. The Markets in Financial Instruments Directive (MiFID II) and the Insurance Distribution Directive (IDD) require investment firms and insurance distributors to offer 'suitable' products to meet their clients' needs, when offering advice. For this reason, the Commission proposes that those firms should ask about their clients' preferences (such as environmental, social and governance factors) and take them into account when assessing the range of financial instruments and insurance products to be recommended, i.e. in the product selection process and suitability assessment.[61]

In view of the above, the Commission has launched a consultation to assess how best to include ESG considerations into the advice that investment firms and insurance distributors offer to individual clients. The aim is to amend delegated acts under MiFID II and IDD (with respect to investment based insurance products).[62] Based on

---

[58] Sustainable Europe Investment Plan.

[59]European Commission, The European Green Deal Investment Plan and Just Transition Mechanism explained, January 14, 2020, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24

[60] See further chapter 12 of this book by V. Colaert.

[61] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 6-7.

[62] Commission Delegated Regulation (EU) …/.. of XXX, amending Delegated Regulation (EU) 2017/2359 with regard to environmental, social and governance preferences in the distribution of insurance-based investment products, Ref. Ares(2018)2681527 - 24/05/2018, and Commission Delegated Regulation (EU) …/... of XXX amending Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and

these delegated acts, the Commission has invited the European Securities Markets Authority (ESMA) to include provisions on sustainability preferences in its MiFID guidelines on the suitability assessment.[63] Accordingly, ESMA has included a good practice to that end in its guidelines on suitability.[64]

Furthermore, the European Commission has invited the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA to provide technical advice with regard to the integration of sustainability risks and sustainability factors, in particular on potential delegated acts under articles 25(2) (product governance and governance requirements) and 28(4) IDD and articles 16(12), 23(4) and 24(13) MiFID II.[65] EIOPA has held a consultation on its draft technical advice between 28 November 20218 and 30 January 2019: EIOPA Consultation Paper on Technical Advice on the integration of sustainability risks and factors in the delegated acts under Solvency II and IDD. ESMA had held a comparable consultation between 19 December 2018 and 19 February 2019 on integrating sustainability risks and factors in MiFID II. This has led to a technical advice by ESMA and EIOPA to the European Commission, both dated 30 April 2019.[66] As per the date of the finalization of this chapter, this has not yet resulted in formal changes to MiFID and IDD.

VII SUSTAINABILITY BENCHMARKS

The fifth concrete action included in the Action Plan concerns the development of sustainability benchmarks. Benchmarks are indices that play a central role in the price formation of financial instruments and other relevant assets in the financial system. Benchmarks are useful instruments for investors, as they allow to track and measure performance and allocate assets accordingly. Traditional benchmarks reflect the status quo and their methodologies, as a result, reflect sustainability goals only to a limited degree. As such, they are not appropriate to measure the performance of sustainable investments. The Commission explains that in response, index providers have been developing ESG benchmarks to capture sustainability goals, but that the lack of transparency regarding their methodologies has affected their reliability. More transparent and sounder sustainable indices' methodologies are needed to reduce greenwashing risks (i.e. the use of marketing to portray an organization's products, activities or policies as environmentally friendly when they are not). For instance, a sound methodology for low carbon indices should reflect compatibility with the

operating conditions for investment firms and defined terms for the purposes of that Directive, Ref. Ares(2018)2681500 - 24/05/2018.

[63] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 7.

[64] ESMA, Final Report Guidelines on certain aspects of the MiFID II suitability requirements, May, 28, 2018, ESMA35-43-869, p. 5-6.

[65] Available at www.eiopa.europa.eu.

[66] ESMA 35-43-1737 and EIOPA-BoS-19/172 respectively.

objectives of the Paris Agreement, in order to improve the performance assessment of low-carbon funds.[67]

Against this backdrop, the Commission has published on 24 May 2018 a proposal for a Regulation amending Regulation (EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks, which has subsequently resulted in the adoption, on 27 November 2019, of a Regulation[68] amending the EU Benchmarks Regulation[69] as regards EU climate transition benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks. This Regulation was published in the Official Journal on 9 December 2019 and entered into application on 30 April 2020.[70] The rules create a new category of benchmarks, comprising (1) the low-carbon benchmark or 'decarbonised' version of standard indices, and (2) the positive-carbon impact benchmark. This new market standard should reflect companies' carbon footprint and give investors greater information on an investment portfolio's carbon footprint. While the low-carbon benchmark would be based on a standard 'decarbonising' benchmark, the positive-carbon impact benchmark would allow an investment portfolio to be better aligned with the Paris agreement objective of limiting global warming to below 2° C.[71]

VIII BETTER INTEGRATING SUSTAINABILITY IN RATINGS AND MARKET RESEARCH

The sixth concrete action included in the Action Plan concerns the better integration of sustainability in ratings and market research. The Commission explains that in recent years, market research providers and sustainability rating agencies have stepped up their efforts to assess companies' environmental, social and governance performance and their ability to manage sustainability risks. Such assessments may indeed contribute to a more sustainable allocation of capital and improve the information flow between issuers and investors. The lack of broadly-accepted market standards to assess companies' sustainability performance makes the transparency of the methodology used by research providers particularly important. Additionally, some stakeholders argue that the focus of sustainability research providers on very large issuers has a negative impact on the attractiveness of smaller issuers for institutional investors.[72]

---

[67] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 7.
[68] (EU) 2019/2089
[69] (EU) 2016/1011
[70] See further chapter 9 of this book by M. Driessen.
[71] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks, COM(2018) 355 final (24 May 2018).
[72] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 7.

Credit ratings are also an important element of well-functioning financial markets, as they provide investors with assessments of the creditworthiness of companies and public institutions. Credit rating agencies operate in a highly concentrated market and adopt their credit ratings based on the relevant available information. However, it remains unclear to what extent sustainability factors are being considered. The Commission is monitoring developments in the credit rating market and acknowledges the need for greater understanding of and transparency about how credit rating agencies take sustainability factors into account. The Commission will invite ESMA to promote solutions which would ensure that credit rating agencies fully integrate sustainability and long-term risks. The Commission will also continue engaging on those issues with all relevant stakeholders, including as regards the possible emergence of new credit rating agencies that would meet this objective.[73]

Since mid-2018, the Commission has been engaged with all relevant stakeholders to explore the merits of amending the Credit Rating Agency Regulation to mandate credit rating agencies to explicitly integrate sustainability factors into their assessments in a proportionate way to preserve market access for smaller players.[74]

To strengthen disclosure on how ESG factors are being considered, ESMA updated its Guidelines on disclosure requirements for credit ratings in July 2019[75] and has started checking how credit rating agencies apply these new guidelines in April 2020. Moreover, in December 2019, the Commission launched a study on sustainability ratings and research that explores the types of products that are provided in for ratings and market research, the main players, data sourcing, transparency of methodologies and potential shortcomings in the market. The study is expected to be completed by the Summer 2020.

Furthermore, the Commission invited ESMA to: (1) assess current practices in the credit rating market by mid-2019, analyzing the extent to which environmental, social and governance considerations are taken into account; (2) include environmental and social sustainability information in its guidelines on disclosure for credit rating agencies by mid-2019 and consider additional guidelines or measures, where necessary.[76] In July 2019 ESMA published its technical advice on these matters.[77]

---

[73] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 7-8.
[74] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 8.
[75] Final Report: ESMA Guidelines on Disclosure Requirements Applicable to Credit Ratings, July 18, 2019
ESMA33-9-320 https://www.esma.europa.eu/sites/default/files/library/esma33-9-320_final_report_guidelines_on_disclosure_requirements_applicable_to_credit_rating_agencies.pdf
[76] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 8.
[77] ESMA, Technical Advice to the European Commission on Sustainability Considerations in the credit rating market (18 July 2019) (ESMA 33-9-321) (https://www.esma.europa.eu/press-news/esma-news/esma-advises-credit-rating-sustainability-issues-and-sets-disclosure).

IX CLARIFYING INSTITUTIONAL INVESTORS' AND ASSET MANAGERS' DUTIES

The seventh concrete action included in the Action Plan concerns the clarification of institutional investor's and asset manager's duties. As the Commission explains, several pieces of EU legislation (including Solvency II, IORP II, UCITS, AIFMD, IDD and MiFID II) require institutional investors, advisors and asset managers to act in the best interest of their end-investors/beneficiaries. This is commonly referred to as 'fiduciary duty'.[78] In the context of the project 'Fiduciary Duty in the 21st Century',[79] significant work is also undertaken at global level from the starting point that there are positive duties to integrate environmental, social and governance factors in the investment processes.[80]

However, current EU rules on the duty of institutional investors and asset managers to consider sustainability factors and risks in the investment decision process are neither sufficiently clear nor consistent across sectors. According to the Commission, evidence suggests that institutional investors and asset managers still do not systematically consider sustainability factors and risks in the investment process. Also, institutional investors and asset managers do not sufficiently disclose to their clients if and how they consider these sustainability factors in their decision-making. End-investors may, therefore, not receive the full information they need, should they want to take into account sustainability-related issues in their investment decisions. As a result, investors do not sufficiently take into account the impact of sustainability risks when assessing the performance of their investments over time.[81]

In view of the above, the Sustainable Finance Disclosure Regulation (SFDR) entered into force on 29 December 2019 and will apply as from 10 March 2021.[82] The SFDR aims to introduce consistency and clarity on how institutional investors, such as asset managers, insurance companies, pension funds, insurance intermediaries which provide insurance advice and investment advisors should integrate environmental, social and governance (ESG) factors in their investment decision-making process or advisory process. The primary purpose of the Regulation is to provide harmonized rules on the transparency that these market participants have to apply with respect to the integration of sustainability risks in these activities or with respect to financial products that have as their targets sustainable investments, including the reduction of

---

[78] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 8.

[79] www.fiduciaryduty21.org.

[80] This project has three components: (i) work to develop and publish a global statement on investors' obligations and duties; (ii) publishing roadmaps on the policy changes required to achieve full ESG integration in investment practices across eight countries; (iii) extending research into investor's obligations and duties to six Asian markets.

[81] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 8.

[82] About the SFDR, see further chapter 11 of this book by D. Busch.

carbon emissions.[83] Exact requirements will be further specified through Delegated Acts, which will be adopted by the Commission at a later stage.

Interestingly, the feedback statement accompanying the initial proposal suggests that the majority of the respondents already takes into account sustainability factors in their investment decisions due to related national legal requirements or related soft law provisions (e.g. UN Global Compact, Human Rights). In addition, respondents from various member states also referred to national disclosure requirements or practices (e.g. in France, Italy, and Germany).[84] Apparently, this has also been a reason for the European Commission to maintain the application date of the SFDR as per 10 March 2021, and only postpone the level 2 measures. According to the Commission, because numerous financial market participants already comply with the non-financial reporting requirements under Directive 2013/34/EU or adhere to international standards and might consider using that information for compliance with the level 1 requirements of the SFDR. Even without the full regulatory technical standards, the Commission considers that there are no impediments to financial market participants and financial advisers complying with the Level 1 requirements laid down in the Regulation.[85]

X INCORPORATING SUSTAINABILITY IN PRUDENTIAL REQUIREMENTS

The eighth concrete action included in the Action Plan concerns the incorporation of sustainability in prudential requirements. As the Commission explains, banks, insurance companies and pension funds are the main source of external finance for the European economy and an important channel of savings for investments. As a result, they could provide the critical mass of investments needed to close the gap for the transition to a more sustainable economy.[86]
However, banks, insurance companies and pension funds may also be exposed to risks related to unsustainable economic development. According to the Commission, some estimates suggest that at least half of the assets of banks in the Euro area are currently exposed to climate change-related risks. Such risks for financial stability have also been flagged by macro-prudential supervisors. According to the Commission this calls for

---

[83] 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, COM(2018) 354 final (24 May 2018).

[84] Feedback Statement, Public Consultation on Institutional Investors' and Asset Managers' Duties regarding Sustainability page 23, https://ec.europa.eu/info/files/2017-investors-duties-sustainability-feedback-statement_en, May 24, 2018.

[85] Letter of the European Commission to the three European Supervisory Authorities, dated October 20, 2020, application of Regulation (EU) 2019/2088 on the sustainability-related disclosures in the financial services sector, https://www.esma.europa.eu/sites/default/files/library/eba_bs_2020_633_letter_to_the_esas_on_sfdr.pdf

[86] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 9.

a better reflection of risks associated with climate and other environmental factors in prudential regulation with a careful calibration that would not jeopardize the credibility and effectiveness of the current EU prudential framework and its risk-based nature.[87]

On 1 August 2018, EIOPA and ESMA received a formal request from the Commission to provide technical advice supplementing the initial package of proposals and to assist the Commission on potential amendments to, or introduction of, delegated acts under various sectoral directives with regard to the integration of sustainability risks and sustainability factors. Both EIOPA and ESMA submitted technical advice to the European Commission on 30 April 2019.[88] Furthermore, EIOPA issued an opinion on sustainability within Solvency II on 30 September 2019.[89]

Building on the development of the EU sustainability taxonomy (see § III above), the Commission committed to assess whether more appropriate capital requirements could be adopted to better reflect the risk of sustainable assets held by banks and insurance companies, with a careful calibration that would not jeopardise the credibility and effectiveness of the current EU prudential framework and its risk-based nature. Such a supporting factor would need to be progressively phased in, as the EU taxonomy develops. Also, when establishing and updating technical screening criteria for environmentally sustainable activities, the Commission should assess whether the establishment of those criteria would give rise to stranded assets or would result in inconsistent incentives, or would have any other adverse impact on financial markets.[90] For instance, in its calibration, the Commission will consider all the available evidence on the link between energy efficiency savings and mortgage loan performance. Moreover, in its analysis of the Basel recommendations of December 2017, the Commission will pay particular attention to the possible negative impact on European bank lending, investment and other activities, which are critical for sustainable finance.[91]

Against this backdrop, the Commission committed to explore the feasibility of the inclusion of risks associated with climate and other environmental factors in

---

[87] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 9.

[88] ESMA's technical advice to the European Commission on integrating sustainability risks and factors in MiFID II, Final Report (ESMA 35-43-1737), April 30, 2019, https://www.esma.europa.eu/sites/default/files/library/esma35-43-1737_final_report_on_integrating_sustainability_risks_and_factors_in_the_mifid_ii.pdf and EIOPA's Technical Advice on the integration of sustainability risks and factors in the delegated acts under Solvency II and IDD (EIOPA-BoS-19/172), April 30, 2019, https://register.eiopa.europa.eu/Publications/EIOPA-BoS-19-172_Final_Report_Technical_advice_for_the_integration_of_sustainability_risks_and_factors.pdf

[89] EIOPA Opinion on Sustainability within Solvency II EIOPA-BoS-19/241, September 30, 2019, https://register.eiopa.europa.eu/Publications/Opinions/2019-09-30%20OpinionSustainabilityWithinSolvencyII.pdf

[90] Recital 46 of the Taxonomy Regulation.

[91] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 9.

institutions' risk management policies and the potential calibration of capital requirements of banks as part of the Capital Requirement Regulation (CRR) and the Capital Requirements Directive IV (CRD IV). The aim would be to take into account such factors, where this is justified from a risk perspective, to safeguard the coherence and effectiveness of the prudential framework and financial stability.[92] Any recalibration of capital requirements, based on data and the assessment of the prudential risk of banks' exposures, would need to rely on and be coherent with the future EU taxonomy on sustainable activities (see § III above).[93]

On 6 December 2019, the European Banking Authority (EBA) has published its action plan on sustainable finance, which includes a roadmap with the mandates and key milestones within EBA's remit. In accordance with the EBA Founding Regulation, it has to take into account sustainable business models and the integration of ESG factors. Furthermore, EBA should also develop a monitoring system to assess material ESG risks, taking into account the Paris Agreement, as well as assess the effect of economic scenarios on a credit institutions' or investment firms' financial position, including risks from adverse environmental developments.

EBA refers to a provision in the EBA Founding Regulation[94] for the reflection of potential environmental-related systemic risk to be reflected in the stress-testing regime. The EBA should develop common methodologies assessing the effect of economic scenarios on an institution's financial position taking into account, inter alia, risks stemming from adverse environmental developments and the impact of transition risk stemming from environmental policy changes.

Furthermore, CRD V[95] also requires from the EBA to develop appropriate qualitative and quantitative criteria, such as stress testing processes and scenario analyses, to assess the impact of ESG risks under scenarios with different severities. EBA aims to develop a dedicated climate change stress test with the main objective of identifying banks' vulnerabilities to climate-related risk and quantifying the relevance of the exposures that could be potentially hit by physical risk and transition risk. Since climate risk stress-testing frameworks are developing, there are multiple constraints on designing a robust framework.[96] In the first half of 2020, EBA has held a consultation on a discussion paper on a future stress test methodology. In addition,

---

[92] Similarly, for insurers, EIOPA is of the opinion that within a risk-based framework like Solvency II any change to capital requirements must be based on a proven risk differential compared to the status quo. Assessment of the underlying risk is therefore also the starting point and guiding principle for the analysis and opinion on capital requirements related to sustainability: EIOPA Opinion on Sustainability within Solvency II EIOPA-BoS-19/241, September 30, 2019, paragraph 4.23. https://register.eiopa.europa.eu/Publications/Opinions/2019-09-30%20OpinionSustainabilityWithinSolvencyII.pdf

[93] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 9.

[94] Article 23 EBA Regulation (Identification and measurement of systemic risk)

[95] Article 98 CRD V

[96] EBA Discussion Paper on the future changes to the EU-wide stress test, (EBA/DP/2020/0; January 26, 2020, https://eba.europa.eu/calendar/discussion-paper-future-changes-eu-wide-stress-test

EBA will provide guidance to banks and supervisors regarding banks' own stress testing.[97]

Also, the CRD V/CRR 2 package contains three mandates for EBA on sustainable finance. The *first mandate*[98] relates to the potential inclusion of ESG risks in the supervisory review and evaluation process performed by competent authorities. To that end, the EBA's assessment must comprise, inter alia: (1) the development of a uniform definition of ESG risks including physical risks and transition risks; (2) the development of criteria for understanding the impact of ESG risks on the financial stability of institutions in the short, medium and long terms; (3) the arrangements, processes, mechanisms and strategies to be implemented by the institutions to identify, assess and manage these risks; and (4) the analysis methods and tools to assess the impact of ESG risks on lending and the financial intermediation activities of institutions. EBA should submit a report on its findings to the Commission, the European Parliament and to the Council by 28 June 2021.

The *second mandate*[99] relates to the disclosure of information on ESG risks, physical and transition risks by large listed institutions. EBA shall develop technical standards implementing the disclosure requirements included in Part 8 of CRR 2.[100]

The *third mandate*[101] requires EBA to assess whether a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental and/or social objectives would be justified (as a component of Pillar 1 capital requirements). In particular, the EBA must assess: (1) methodologies for the assessment of the effective riskiness of exposures related to assets and activities associated substantially with environmental and/or social objectives compared with the riskiness of other exposures; (2) the development of appropriate criteria for the assessment of physical risks and transition risks; and (3) the potential effects of a dedicated prudential treatment of exposures associated substantially with environmental and/or social objectives and activities on financial stability and bank lending in the Union.

The final EBA report on classification and prudential treatment of assets from a sustainability perspective should be ready by June 28, 2025.[102]

---

[97] EBA Discussion paper On management and supervision of ESG risks for credit institutions and investment firms, October 30, 2020, https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Discussions/2021/Discussion%20Paper%20on%20management%20and%20supervision%20of%20ESG%20risks%20for%20credit%20institutions%20and%20investment%20firms/935496/2020-11-02%20%20ESG%20Discussion%20Paper.pdf

[98] Article 98 (8) CRD V

[99] Article 434a CRR 2.

[100] Including article 449a CRR 2 on ESG risks.

[101] Article 501c of CRR 2.

[102] Article 501c CRR 2.

Similar mandates are included in the IFR/IFD framework, to report on the introduction of technical criteria related to exposures to activities associated substantially with ESG objectives for the supervisory review and evaluation process of risks, with a view to assessing the possible sources and effects of such risks on investment firms[103] and to report on its findings of whether a dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives, in the form of adjusted K-factors or adjusted K-factor coefficients, would be justified from a prudential perspective.[104]

In addition to the activities of EBA, on 27 November the ECB has published a guide on climate-related and environmental risks following a public consultation.[105] The guide explains how the ECB expects banks to prudently manage and transparently disclose such risks under current prudential rules.

The ECB will now follow up with banks in two concrete steps. In early 2021 it will ask banks to conduct a self-assessment in light of the supervisory expectations outlined in the guide and to draw up action plans on that basis. The ECB will then benchmark the banks' self-assessments and plans, and challenge them in the supervisory dialogue. In 2022 it will conduct a full supervisory review of banks' practices and take concrete follow-up measures where needed In line with the growing importance of climate change for the economy and increasing evidence of its financial impact on banks, the ECB will conduct its next supervisory stress test in 2022 on climate-related risks. Further details will be provided in the course of 2021.

For the financial sector more broadly, the Joint Committee of the three ESAs has also highlighted that climate change and the transition to a lower-carbon economy are relatively new, emerging risks for large parts of the financial sector. The ESAs point out that, while climate risk is receiving increased attention amongst supervisors, our knowledge about the impact of these risks on the financial sector is still relatively limited.

In their 2018 report on risks and vulnerabilities in the financial sector[106], the ESAs point out that, while the transition to a lower-carbon economy also provides new opportunities in the area of sustainable finance, financial institution should be wary of new risks that may emerge, such as green bubbles and reputation damage resulting from greenwashing. Going forward, according to the ESAs, financial institutions should be encouraged to take a more forward-looking approach to include sustainability risk in their governance and risk management frameworks, and to

---

[103] Article 35 of the IFD.
[104] Article 32a of the IFR.
[105] European Central Bank, November 2020, Guide on climate-related and environmental risks Supervisory expectations relating to risk management and disclosure: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.202011finalguideonclimate-relatedandenvironmentalrisks~58213f6564.en.pdf
[106] European Supervisory Authorities' Joint Committee Report on risks and vulnerabilities in the EU Financial System, Autumn 2019: https://esas-joint-committee.europa.eu/Publications/Reports/Joint%20Committee%20Risk%20Report.pdf

develop responsible, sustainable financial products. In addition, competent authorities should enhance their analysis of potential risks related to climate change for the financial sector and financial stability. This also involves a stronger engagement of the ESAs in the area of climate change risks.

In their 2019 report,[107] the ESAs further elaborate on this point. European supervisory authorities and financial institutions should continue the work on identifying exposures to climate related risks and facilitate access to sustainable assets for investors wanting to invest in the transition to a low-carbon emission economy. As a starting point, the development of a taxonomy of green activities, as is currently being undertaken by the European Commission, can enable capital markets to identify and respond to investment opportunities that contribute to environmental policy objectives. Scenario analysis and stress testing are important tools which can be set in by supervisors to identify risks to the financial sector, with a goal to incorporate sustainability considerations into risk assessment and risk analysis. This should help the supervisory authorities to assess to which extent the build-up of buffers accounting for these risks is needed. The ESAs are currently developing these tools. Financial institutions should incorporate climate risk (and other environmental, social and governance (ESG) factors) into their risk management framework and policy decisions, if such risks are relevant, and should play a stewardship role by taking into account the impact of their activities (investment, lending and insuring) on ESG factors. Going forward, the ESAs should take a proactive stance in fulfilling upcoming tasks and mandates on sustainable finance, including on how ESG considerations can be incorporated into the regulatory and supervisory framework of EU financial institutions.

In addition, on 24 July 2018 the Commission issued a formal request to EIOPA and ESMA to provide an opinion with regard to the integration of sustainability risks and sustainability factors, in the UCITS directive, the AIFMD, MiFID II, Solvency II and IDD in the decisions taken and applied by market participants subject to these rules.[108] As a follow-up, EIOPA has held a consultation on its draft technical advice between 28 November 20218 and 30 January 2019.[109] ESMA had held a comparable consultation between 19 December 2018 and 19 February 2019 on integrating sustainability risks

---

[107]European Supervisory Authorities' Joint Committee Report on risks and vulnerabilities in the EU Financial System, Autumn 2019, September 26, 2019, https://esas-joint-committee.europa.eu/Publications/Reports/Joint%20Committee%20Autumn%202019%20Risk%20Report.pdf

[108] In the period between September 12, 2018 and October 3, 2018, EIOPA has held an online survey for the Call for Advice from the European Commission on potential amendment to the delegated acts under the Insurance Distribution Directive (IDD) and the Solvency II Directive (SII) with regard to the integration of sustainability risks and sustainability factors. EIOPA indicates that, in view of the novelty of the topic, it would like to involve market participants and stakeholders at an early stage seeking their input to build up a suitable 'evidence base' for the thorough development of robust policy recommendations, which will be consulted on at a later stage. https://eiopa.europa.eu/Pages/Surveys/Online-survey-on-the-integration-of-sustainability-risks-and-sustainability-factors--in-the-delegated-acts.aspx

[109] EIOPA Consultation Paper on Technical Advice on the integration of sustainability risks and factors in the delegated acts under Solvency II and IDD.

and factors in MiFID II. This has led to a technical advice by ESMA and EIOPA to the European Commission, both dated 30 April 2019.[110]

As mentioned before, EIOPA has also issued an opinion on sustainability within Solvency II on 30 September 2019.[111] As a follow- up of the EIOPA opinion, EIOPA published a consultation on the use of climate change risk scenarios in the Own Risk and Solvency Assessment (ORSA) in the form of a draft supervisory Opinion on 5 October 5 2020[112] and on 2 December 2020, a discussion paper on a methodology for the potential inclusion of climate change in the Solvency II standard formula when calculating natural catastrophe underwriting risk.[113]

The draft Application Paper provides background and guidance on how the IAIS supervisory material can be used to manage the challenges and opportunities arising from climate-related risks.
On 16 December 2020, EIOPA published its sensitivity analysis of climate-change related transition risks in the investment portfolio of European insurers. The results still illustrate that losses on equity investments in the high-carbon sector can be high, in particular driven by investments in fossil fuel extraction, especially oil and gas. While EIOPA acknowledges that the overall impact on the balance sheets of the insurance sector is counter-balanced both by investments in renewable energy and the fact that insurers' portfolios are generally well diversified, EIOPA is working with national supervisors and expects insurers to follow up on the risks identified.[114]

At international level, to support supervisors in their efforts to integrate climate-related risks into supervisory frameworks, the IAIS has developed a draft Application Paper on the Supervision of Climate-related Risks in the Insurance Sector. The Paper was developed jointly with the Sustainable Insurance Forum (SIF), a leadership group of insurance supervisors convened by the United Nations Environment Programme (UNEP).[115] This work at the international level coincides to a large extent with the work of EIOPA in this area.

Another area with respect to insurance and sustainability that EIOPA is active on is the availability of insurance and the impact of climate risk. Non-life undertakings tend not to include climate-related risks in their pricing methodology, because the short-term nature of non-life contracts allows them to re-price annually. However, given that climate-related losses are expected to grow meaning premiums would likely increase,

---

[110] ESMA 35-43-1737 and EIOPA-BoS-19/172 respectively.
[111] EIOPA-BoS-19/241
[112] https://www.eiopa.europa.eu/content/eiopa-consults-supervision-use-climate-change-scenarios-orsa
[113] https://www.eiopa.europa.eu/content/eiopa-launches-discussion-paper-methodology-integrating-climate-change-standard-formula
[114] EIOPA sensitivity analysis of climate-change related transition risks, December 15, 2020, https://www.eiopa.europa.eu/content/sensitivity-analysis-of-climate-change-related-transition-risks-eiopa%E2%80%99s-first-assessment
[115] IAIS, October 13, 2020, Public Consultation: Draft Application Paper on the Supervision of Climate-related Risks in the Insurance Sector https://www.iaisweb.org/page/consultations/current-consultations/application-paper-on-the-supervision-of-climate-related-risks-in-the-insurance-sector/

there is the risk that insurance coverage becomes unaffordable or unavailable to policyholders. This is also referred to as the protection gap. In a recent discussion paper EIOPA highlights challenges associated with current non-life underwriting practices and options to ensure the availability and affordability of insurance products, in the context of climate change.[116]

According to EIOPA, the insurance sector can address this potential protection gap not only by transferring and pooling risk, but also by implementing the concept of impact underwriting.

Interestingly, for the insurance sector, IAIS mentions liability risks as one of the risks relating to climate change, that may be relevant to the insurance sector. This includes the risk of climate-related claims under liability policies, as well as direct claims against insurers for failing to manage climate risks.

XI STRENGTHENING SUSTAINABILITY DISCLOSURE ABD ACCOUNTING RULE-MAKING

The ninth concrete action included in the Action Plan concerns the strengthening of sustainability disclosure and accounting rule-making. Corporate reporting on sustainability issues enables investors and stakeholders to assess companies' long-term value creation and their sustainability risk exposure.

Since 2018, the EU Directive on the disclosure of Non-Financial Information (NFRD) requires large public interest entities to disclose material information on key environmental, social and governance aspects and how risks stemming from them are managed. The NFRD allows companies to report sustainability information in a flexible manner.[117]

Going forward, the Commission seeks to strike an appropriate balance between flexibility and the standardization of disclosure necessary to generate the data needed for investment decisions. In terms of disclosure by the financial sector, the Commission argues that there is merit in enhancing transparency of asset managers and institutional investors, including the way in which they consider sustainability risks and their exposures to climate-related risks.[118]

Against this backdrop, the Commission has undertaken a fitness check of EU legislation on public corporate reporting, including the NFRD, to assess whether

[116] EIOPA, December 2, 2020, discussion paper on a methodology for the potential inclusion of climate change in the Solvency II standard formula when calculating natural catastrophe underwriting risk: https://www.eiopa.europa.eu/content/eiopa-launches-discussion-paper-methodology-integrating-climate-change-standard-formula

[117] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 9-10.

[118] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 10.

public reporting requirements for listed and non-listed companies are fit for purpose, including an evaluation of sustainability reporting requirements and the prospects for digitalized reporting. [119] The Commission indicated that it would also evaluate relevant aspects of the International Accounting Standards Regulation and explore how the adoption process of IFRSs can allow for specific adjustments to standards where they are not conducive to the European public good, e.g. where the standards could pose an obstacle to long-term investment objectives.[120]

The conclusions of the fitness check were published in November 2019.[121] According to the Commission, supervisory reporting rules have been effective in delivering the necessary data. However, the assessment also shows that reporting is not as efficient as it could be. There are inconsistencies between reporting rules, which do not only increase the administrative burden for financial institutions and other market participants but also reduce the quality and usability of the data for supervisors. Additionally, the recent trend towards data-driven supervision and advances in big data technologies will require more high-quality and granular data going forward. The Commission highlights that targeted improvements are already under way - and in some cases have already been completed - as part of sectoral reviews of EU legislation and other initiatives. The fitness check also highlights the need for a comprehensive approach by the Commission, together with the relevant stakeholders, to further streamline the requirements and develop supervisory reporting that is fit for the future. This will require improvements in different areas, including: the legislative process for setting reporting rules; the review and justification of the data needs and uses by supervisors; consistency and harmonisation, including common terminology, data standards, formats and identifiers; governance, coordination and cooperation between the authorities, also when it comes to data re-use and data sharing; and the use of technological solutions for regulation and supervision.[122]

Furthermore, in 2018, a European Corporate Reporting Lab was established as part of the European Financial Reporting Advisory Group (EFRAG), to promote innovation and the development of best practices in corporate reporting, such as environmental accounting. In this forum, companies and investors can share best practices on sustainability reporting, such as the climate-related disclosure in line with the TCFD's recommendations.[123]

---

[119] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 10.

[120] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 10.

[121] Commission Staff Working Document, Fitness Check of EU Supervisory Reporting Requirements, November 6, 2019, {SWD(2019) 403 final} https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191107-fitness-check-supervisory-reporting-staff-working-paper_en.pdf

[122] European Commission daily news, November 7, 2019, https://ec.europa.eu/commission/presscorner/detail/en/mex_19_6235

[123] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 10.

More recently, in its Communication on the European Green Deal, the Commission committed to review the Non-Financial Reporting Directive, as part of the strategy to strengthen the foundations for sustainable investment. In line with that commitment, the European Commission held a public consultation between 20 February 2020 and June 11, 2020 on the review of the NFRD. According to the revised Commission Work Programme for 2020, the Commission now expects to adopt a proposal regarding the review of the NFRD in the first quarter of 2021.

Also in the context of the NFRD, in June 2020, the European Commission has issued a request for technical advice mandating EFRAG to undertake preparatory work for possible EU Non-Financial Reporting Standards in a revised Non-Financial Reporting Directive.

In addition, EFRAG Board President and European Lab Steering Group Chairman Jean Paul Gauzès was invited to consider the possible need for changes to the governance and financing of EFRAG in the context of the possible development of European non-financial reporting standards.[124] One of the questions that is being considered it that, in case EFRAG were entrusted with the development of possible EU non-financial reporting standards, its new mission would be different from its present mission of influencing the IASB and providing endorsement advice. In this respect, it is also worthwhile mentioning the developments at international level by the IFRS Foundation, mentioned in paragraph 2.

Furthermore, on June 18 2019, the Commission has revised the guidelines on non-financial information which in practice consisted of a new supplement to the existing guidelines on non-financial reporting, which remain applicable. Building on the metrics to be developed by the Commission technical expert group on sustainable finance, the revised guidelines provide further guidance to companies on how to disclose climate-related information, in line with the Financial Stability Board's Task Force on Climate-related Financial Disclosure (TCFD) and the climate-related metrics developed under the new classification system (see § 3 above). The guidelines will be amended again in the near future to include other environmental and social factors as well.[125]

In terms of disclosure by asset managers and institutional investors, as part of the Commission's legislative proposal in action seven (see § IX above), they would be requested to disclose how they consider sustainability factors in their strategy and

[124] A consultation document was recently published in respect of this request. https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FProject%20Documents%2F2010051124018235%2FJPG%20Ad%20Personam%20Mandate%20-%20%20Consultation%20%20Document%20-%2030%20Nov%202020.pdf

[125] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 10.

investment decision making process, in particular for their exposures to climate change-related risks.[126]

In addition, the Commission explains that there are also growing concerns that the current accounting rules are not conducive to sustainable investment decision-making. In particular, the European Parliament's resolution on International Financial Reporting Standard (IFRS) 9, adopted on 6 October 2016, raised concerns about the impact the new accounting standard on financial instruments (IFRS 9) might have on long-term investments.[127] The Commission recognizes the importance of ensuring that accounting standards do not directly or indirectly discourage sustainable and long-term investments. In this regard, the Commission feels that consideration is needed about whether there could be more flexibility regarding the endorsement of IFRSs wherever specific adjustments would be more conducive to long-term investment.[128]

The Commission has requested EFRAG to assess the impact of new or revised IFRSs on sustainable investments and to explore potential alternative accounting treatments to fair value measurement for long-term investment portfolios of equity and equity-type instruments. On 28 November 2018, EFRAG has provided the Commission with its technical advice on possible ways to improve the requirements of IFRS 9 on the accounting for equity instruments from a long-term investment perspective. [129] Subsequently, on January 30, 2020, EFRAG delivered technical advice to the European Commission on the request for technical advice on alternative accounting treatments for long-term equity investments. [130]

XII FOSTERING SUSTAINABLE CORPORATE GOVERNANCE AND ATTENUATING SHORT-TERMISM IN CAPITAL MARKETS

The tenth and final concrete action included in the Action Plan concerns the fostering of sustainable corporate governance and attenuating short-termism in capital markets. [131] In the view of the Commission, corporate governance can significantly contribute to a more sustainable economy, allowing companies to take the strategic steps necessary to develop new technologies, to strengthen business models and to improve performance. This would in turn improve their risk management practices and competitiveness, thus creating jobs and spurring innovation. The Commission explains that many companies have corporate governance strategies to this end, even if they are not always easily comparable. [132] Despite the efforts made by several

[126] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 10.
[127] http://www.europarl.europa.eu/oeil-mobile/fiche-procedure/2016/2898(RSP).
[128] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 10.
[129] https://www.efrag.org/Activities/2010051123028442/Non-financial-reporting-standards
[130] https://www.efrag.org/Activities/2010051124018235/Ad-personam-governance-mandate
[131] See further chapter 4 of this book by G. Ferrarini and chapter 5 by A. Pacces.
[132] See further chapter 6 of this book by M. Siri and S. Zhu.

European companies, undue short-term market pressures may make it difficult to lengthen the time horizon in corporate decision-making. Corporate managers may become overly focused on short-term financial performance and disregard opportunities and risks stemming from environmental and social sustainability considerations. As a consequence, the interactions between capital market pressures and corporate incentives may lead to unnecessary exposure in the long-term to sustainability risks. The Commission will engage with all relevant stakeholders to analyze this issue more closely.[133] In this context, the three ESAs have been asked to collect evidence of potential undue short-term pressure from capital markets on corporations. The focus is on the time horizon in corporate decision-making and the undue short-term pressures that financial market participants may exert on corporate managers. The underlying concern is that for companies to consider and address relevant long-term risks and opportunities, such as those related to climate change, and invest in long-term value drivers, short-term pressures from the financial sector could be a problem. The three ESAs published their reports on 18 December 2019.[134]

This action was reconfirmed in the European Green Deal and the Commission's Communication on the (COVID-19) Recovery Plan, in which the Commission reiterated the importance of further embedding sustainability into the corporate governance framework. According to the European Commission, sustainability in corporate governance encompasses encouraging businesses to consider environmental (including climate, biodiversity), social, human and economic impact in their business decisions, and to focus on long-term sustainable value creation rather than short-term financial value. Competitive sustainability will contribute to the COVID-19 recovery and to the long-term resilience and development of companies. In this context, the European Commission launched a consultation on 21 October 2020[135] to collect stakeholder views on policy options. A Commission proposal for an EU Directive on this specific action is currently foreseen for the second quarter of 2021.

XIII CONCLUDING REMARKS

The actions proposed by the Commission's Action Plan and analyzed in this chapter respond to five broad strategies that can be defined as 'public incentives', 'standardization', 'disclosure', 'corporate governance' and 'financial regulation'.

---

[133] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 11.

[134] ESMA, Report on undue short-term pressure on corporations, https://www.esma.europa.eu/press-news/esma-news/esma-proposes-strengthened-rules-address-undue-short-termism-in-securities:
EBA Report on undue short-term pressure from the financial sector on corporations, https://eba.europa.eu/sites/default/documents/files/document_library/Final%20EBA%20report%20on%20undue%20short-term%20pressures%20from%20the%20financial%20sector%20v2_0.pdf;
EIOPA: Potential undue short-term pressure from financial markets on corporates: Investigation on European insurance and occupational pension sectors Search for evidence, year-end 2018, https://www.eiopa.europa.eu/content/potential-undue-short-term-pressure-financial-markets

[135] Ending February 8, 2021.

The first strategy consists of fostering investments through financial and technical support for sustainable infrastructure and other projects. In perspective, the European Commission will establish a single investment fund providing support and technical assistance to crowd in private investment.

The second strategy includes the establishment of an EU taxonomy of sustainable activities which should help shifting capital flows towards them. It also includes the setting of standards and labels for green financial products, which should enhance the trust in the market of these products and ease investors' access to them. These two strategies will help establishing well-defined and deep markets in sustainable investments and will work as preconditions to the others.

The third strategy covers both corporate disclosure and third party information and assessments. The Non-Financial Disclosure Directive is being reviewed and complemented by other measures, such an impact assessment of IFRS on sustainability, and potentially institutional changes to the roles and functioning of institutions such as the IFRS Foundation and EFRAG, to facilitate the credibility and reliability of non-financial information for users of that information. Sustainability benchmarks have been developed in order to allow investors to track and measure performance and allocate assets accordingly. In addition, credit rating agencies and market research services should integrate sustainability into their assessments.

The fourth strategy combines sustainable corporate governance with attenuating short-termism in capital markets, and assumes that boards should develop their own sustainability strategies and act in the company's long term interest. Both disclosure and corporate governance are traditional strategies in capital markets regulation and functioning, whilst their extension to sustainability is a reflection of the new interest of investors and corporate stakeholders for ESG issues in addition to financial performance.

The fifth strategy implies at least three types of regulatory reform. First, the Markets in Financial Instruments Directive (MiFID II) and the Insurance Distribution Directive (IDD) should be amended in the sense that investment firms and insurance distributors should consider sustainability issues when offering financial advice. Second, fiduciary duties of asset managers and institutional investors should be clarified so as to include ESG factors in the investment processes. Third, ESG should be incorporated in prudential requirements of financial institutions so that they channel their investments towards a more sustainable economy, while reducing the risks deriving from unsustainable economic development and at the same time maintaining credible and effective risk-based prudential frameworks in Europe .

These five strategies represent a very ambitious design of the European Commission which will require multiple actions at all levels. These actions generally require regulation and/or supervision often at EU level, but private incentives and cultural developments towards an environmentally-sustainable economic system will also be important in furthering the success of the Action Plan.

The Jean Monnet Centre of Excellence on EU Sustainable Finance and Law

The Jean Monnet Centre of Excellence on European Union Sustainable Finance and Law (EUSFiL), located at the Department of Law of the University of Genoa and directed by Professor Michele Siri, is a Centre of studies focused on the sustainable finance field, with a particular focus on the recent reform of the EU financial system. The Centre engages in research, education, and publications that broadens inquiry, dialogue, and debate beyond traditional academic boundaries, bridging the gap between theory and practice. The Centre gathers researchers from EU and non-EU countries affiliated to the following universities:

- Radboud University,The Netherlands
- University of Zurich, Switzerland
- Università Bocconi, Italy
- Superiore Sant'Anna di Pisa, Italy
- Universität Tübingen, Germany
- Łazarski Univesity, Poland
- KU Leuven University, Belgium
- University of Geneva, Switzerland
- Utrecht University, The Netherlands
- Essec Business School Paris and Oxford University, France
- Monash University, Australia
- University of Lodz, Poland
- Vienna Institute of Economics and Business, Austria
- Universidad Carlos III de Madrid, Spain
- Durham European, School of Law, United Kingdom
- Università degli Studi di Parma, Italy
- Università Cattolica del Sacro Cuore, Italy
- University of Oslo, Norway

Electronic Access to the Research Working Paper Series

The full set of EUSFIL Research Working Papers can be accessed through the Centre's Web-site (https://www.eusfil.eu/working-papers).

With the support of the
Erasmus+ Programme
of the European Union

Address

University of Genoa – Department of Law

Via Balbi, 22, 16126 Genoa, Italy

For further information please visit our website www.eusfil.eu or contact us at info@eusfil.eu

With the support of the Erasmus+ Programme of the European Union