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From: General Secretariat of the Council
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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL on sustainability-related disclosures in the financial
services sector
- Confirmation of the final compromise text with a view to agreement

Delegations will find attached the Presidency compromise text on the above proposal.

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on sustainability-related disclosures in the financial services sector

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(-1) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development³, having at its core the Sustainable Development Goals (SDGs). The Commission's Communication of 2016 on the next steps for a sustainable European future⁴ 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 2017⁵ 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.

¹ OJ C , , p. .

² OJ C , , p. .

³ Transforming our World: The 2030 Agenda for Sustainable Development (UN 2015).

⁴ COM(2016) 739 final.

⁵ CO EUR 17, CONCL. 5.

(1) The transition to a low-carbon, more sustainable, resource-efficient and circular economy in line with the SDGs is key to ensuring long-term competitiveness of the economy of the Union. The Paris Climate Agreement (COP21) which was ratified by the Union on 5 October 2016⁶ and entered into force on 4 November 2016, seeks to strengthen the response to climate change, among other means, by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

In order to reach the long-term global warming targets of the Paris Climate Agreement and significantly reduce the risks and impacts of climate change, the global objective should be to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

⁶ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

(2) A common objective of Directive 2009/65/EC of the European Parliament and of the Council⁷, Directive 2009/138/EC of the European Parliament and of the Council⁸, Directive 2011/61/EU of the European Parliament and of the Council⁹, Directive 2013/36/EU of the European Parliament and of the Council,¹⁰ Directive 2014/65/EU of the European Parliament and of the Council¹¹, Directive (EU) 2016/97 of the European Parliament and of the Council¹², Directive (EU) 2016/2341 of the European Parliament and of the Council¹³, Regulation (EU) No 345/2013 of the European Parliament and of the Council¹⁴, Regulation (EU) No 346/2013 of the European Parliament and of the Council¹⁵ and Regulation (EU) No XYZ of the European Parliament and of the Council

⁷ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

⁸ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).

¹⁰ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

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

¹² Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

¹³ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

¹⁴ Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

¹⁵ Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

[OJ – please insert reference to the Regulation on a pan-European Personal Pension Product (PEPP)] is to facilitate the uptake and pursuit of the activities of undertakings for collective investment in transferable securities (UCITS), credit institutions, alternative investment fund managers (AIFMs) which manage and/or market alternative investment funds, including European long-term investment funds in accordance with Regulation (EU) 2015/760 of the European Parliament and of the Council¹⁶, insurance undertakings, investment firms, insurance intermediaries, institutions for occupational retirement provision (IORPs), managers of qualifying venture capital funds (EuVECA managers), managers of qualifying social entrepreneurship funds (EuSEF managers) and providers of pan-European Personal Pension Products. Those Directives and Regulations ensure more uniform protection of end investors and make it easier for them to benefit from a wide range of financial products and services (financial products), and at the same time provide for rules that enable end-investors to make informed investment decisions.

¹⁶ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p.98).

While those goals have been largely achieved, disclosures to end-investors on the integration of sustainability risks, the consideration of adverse sustainability impacts and sustainable investment goals or environmental or social characteristics, or the combination of those characteristics, in investment decision-making by UCITS management companies, AIFMs, insurance undertakings which make available insurance-based investment products (IBIPs) to retail as well as professional investors, credit institutions which provide portfolio management, investment firms which provide portfolio management, IORPs, pension providers, EuVECA managers and EuSEF managers and PEPP providers (financial market participants) and disclosures to end-investors on the integration of sustainability risks and the consideration of adverse sustainability impacts in advisory processes by insurance intermediaries and insurance undertakings which provide insurance advice with regard to IBIPs to retail as well as professional investors, credit institutions which provide investment advice, AIFMs which provide investment advice, UCITS management companies which provide investment advice and investment firms which provide investment advice with the exception of insurance intermediaries and investment firms that are enterprises irrespective of their legal form, including natural persons or self-employed persons, which employ fewer than three persons (financial advisers) are insufficiently developed because such disclosures are not yet subject to harmonised requirements. The exemption for financial advisers which employ fewer than three persons from this Regulation should be without prejudice to the application of Directive 2014/65/EU and Directive (EU) 2016/97, in particular the rules on investment and insurance advice. This means that while such advisers are not obliged to provide information in accordance with this Regulation, they shall in their advisory processes consider and factor in the sustainability risks.

Entities covered by this Regulation, depending on the nature of their activities, should comply with rules on financial market participants if they manufacture financial products or on financial advisers where they provide for investment advice or insurance advice. Therefore in situations where the entities carry concurrently out activities of both financial market participants and financial advisers, those entities should be deemed financial market participants if they act in the capacity of manufacturers of financial products, including provisioning of portfolio management, and financial advisers if they provide investment or insurance advice, for the purposes of disclosures in relation to the given activity under this Regulation.

As the Union is increasingly faced with the catastrophic and unpredictable consequences of climate change, resource depletion and other sustainability-related issues, urgent action is needed to mobilise capital not only through public policies but also by means of the financial services sector. In order to adapt to this new reality, financial market participants and financial advisers should be required to disclose specific information on their approaches to the integration of sustainability risks and the consideration of adverse sustainability impacts.

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

(3a) This Regulation aims to reduce information asymmetries in principal-agent relationships with regard to the integration of sustainability risks, the consideration of adverse sustainability impacts and the promotion of environmental or social characteristics as well as sustainable investment by means of pre-contractual and ongoing disclosures to end-investors, acting as principals, by financial market participants or financial advisors, acting as agents on behalf of principals.

(3b) This Regulation lays down disclosure requirements supplementing the rules enshrined in Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013, Regulation (EU) No 346/2013, Regulation (EU) 2015/760 and Regulation (EU) No XYZ of the European Parliament and of the Council [OJ – please insert reference to the Regulation on a pan-European Personal Pension Product (PEPP)] and national law governing personal and individual pension products. To ensure orderly and effective supervision of compliance with the requirements of this Regulation, Member States should rely on already designated competent authorities under the above mentioned rules. Where the above mentioned rules are not directly adapted by this Regulation Member States should designate the competent authorities in this respect.

(3c) Regulation maintains the requirements on financial market participants and financial advisors of acting in the best interest of end-investors, including but not limited to, conducting adequate due diligence prior to making the investment, as provided for enshrined in Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2013/36/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 and national law governing personal and individual pension products. In order to comply with their duties under those rules, financial market participants and financial advisors should integrate in their processes, including in their due diligence processes, and assess on a continuous basis, not only all relevant financial risks but also all including relevant sustainability risks that may have a relevant material negative impact on the financial return of an investment and advice respectively. In consequence, under this Regulation financial market participants and financial advisors should specify in their policies how they integrate those risks and publish those policies.

(3d) That is why this Regulation lays down the obligation on the financial market participants and financial advisers which provide investment advice or insurance advice with regard to IBIPs respectively, regardless the design of the financial products and the target market, to publish written policies on the integration of sustainability risks and ensure the transparency of the integration of sustainability risks.

(3e) A sustainability risk should mean an uncertain environmental, social or governance event or condition that, if it occurs, could cause a negative material impact on the value of the investment, as specified in sectoral legislation, in particular in Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2013/36/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, or delegated acts and regulatory technical standards adopted in accordance with them.

(3f) This regulation is without prejudice to the rules on the risk integration under Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2013/36/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013 and national law governing personal and individual pension products, including but not limited to the relevant applicable proportionality criteria such as size, internal organisation and the nature, scope and complexity of activities in question. This Regulation seeks to achieve more transparency on how financial market participants and financial advisers integrate sustainability risks into their investment decision, investment or insurance advice. Where the sustainability risks assessment leads to the conclusion that there are no sustainability risks deemed to be relevant for the financial product, the reasons should be explained. Where the assessment leads to the conclusion that these risks are relevant, the extent to which sustainability risks may impact the performance of the financial product should be disclosed either in qualitative or quantitative terms. The sustainability risks assessments and related pre-contractual disclosures by financial market participants should feed into pre-contractual disclosures by financial advisers. Financial advisers should disclose how they take sustainability risks into account in the selection process of the financial offering that is presented to the end-investors regardless of the sustainability preferences of the end-investors, prior to providing the advice. This should be without prejudice to the application of Directive 2014/65/EU and Directive (EU) 2016/97, in particular the obligations on financial market participants and financial advisers as regards product governance, assessment of suitability and appropriateness, or demands-and-needs test.

(4) To ensure a coherent and consistent application of this Regulation and that the disclosure obligations laid down in this Regulation are clearly and consistently applied by financial market participants, it is necessary to lay down a harmonised definition of ‘sustainable investments’, including investments in economic activities that contribute to environmental or social objectives as well their combination, provided that the invested companies follow good governance practices and the precautionary principle of "do no significant harm" is ensured, i.e. that neither the environmental nor the social objective is significantly harmed.

(4-a) Investment decisions and advice might cause, contribute to or be directly linked to negative, material or likely to be material, effects on sustainability factors.

(4 –a) Where financial market participants, taking due account of their size, nature and scale of their activities and the types of their financial products, consider principal adverse impacts, material or likely to be material, of investment decisions on sustainability factors, they should integrate in their processes, including in their due diligence processes, the arrangements to consider the principal adverse impacts alongside the relevant financial risks and relevant sustainability risks. The information on arrangements might describe how financial market participants discharge their sustainability-related stewardship responsibilities or other shareholder engagements. Financial market participants should include on their websites information on these arrangements and descriptions of the principal adverse impacts. In this respect, the Joint Committee of EBA, EIOPA and ESMA and financial market participants and financial advisers should consider the due diligence guidance for responsible business conduct developed by the Organisation for Economic Co-operation and Development and the United Nations-supported Principles for Responsible Investment.

(4- - a) Consideration of sustainability factors in the investment decision making and advisory processes, can realise benefits beyond the financial markets. It can increase the resilience of the real economy and the stability of the financial system and in so doing ultimately impact on the risk-return of financial products. It is therefore key that financial market participants and financial advisers provide the necessary information to enable end-investors to take informed investment decisions.

(4 - - - a) Financial market participants which consider principal adverse impacts of investment decisions on sustainability factors should disclose for each financial product in pre-contractual information, in a concise manner, in qualitative or quantitative terms, how the principal adverse impacts are considered and a statement that information on principal adverse impacts on sustainability factors is available in the ongoing reporting. Principal adverse impacts should be understood as those impacts of investment decisions and advice that result in negative effects on sustainability factors.

(4a) Sustainable products with various degrees of ambition have been developed so far. Therefore, it is necessary to distinguish, for the purposes of pre-contractual disclosures and disclosures by means of periodical reports, between the requirements for financial products which present, environmental or social characteristics, on the one hand, financial products which have as an objective a positive impact for the environment and society, on the other hand. As a consequence, as regards the financial products with environmental or social characteristics, financial market participants should disclose whether and how the designated index, sustainability index or mainstream index, is aligned with those characteristics and where no benchmark is used, information on how the sustainability characteristics of the financial products are met. As regards financial products which have as objective a positive impact for the environment and society, financial market participants should disclose which sustainable benchmark they use to measure the sustainable performance and where no benchmark is used, explain how the sustainable objective is met. The disclosures by means of periodical reports should be carried out annually.

(4) This Regulation is without prejudice to the rules on remuneration or assessment of the performance of staff of financial market participants and financial advisers under Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2013/36/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013, implementing acts and national law governing personal and individual pension products, including but not limited to the relevant applicable proportionality criteria such as size, internal organisation and the nature, scope and complexity of activities in question. It is however appropriate to achieve more transparency, in qualitative or quantitative terms, on the remuneration policies of financial market participants and financial advisers, with respect to their investment or insurance advice, that promote sound and effective risk management with respect to sustainability risks whereas the structure of remuneration does not encourage excessive risk-taking with respect to sustainability risks and is linked to risk-adjusted performance.

(8) To enhance transparency and inform end-investors, access to information on how relevant sustainability risks, material or likely to be material, are integrated by financial market participants in the investment decision making processes, including organisational, risk management and governance aspects and by financial advisers in advisory processes, should be regulated by requiring those entities to maintain concise information about these policies on their websites.

(9) The current disclosure requirements set out in Union legislation do not provide that all the information necessary to properly inform end-investors about the sustainability-related impact of their investments through financial products that aim to incorporate environmental or social characteristics or financial products which pursue sustainability objectives must be disclosed. Therefore, it is appropriate to set out more specific and standardised disclosure requirements with regard to such investments. For instance, the overall sustainability-related impact of financial products should be reported regularly by means of indicators relevant for measuring the chosen sustainable investment objective. Where an appropriate index has been designated as reference benchmark that information should also be provided for the designated index and to a broad market index to allow for comparison. Where EuSEF managers make available information on the positive social impact a given fund has as the objective, the overall social outcome achieved and the related methods used in accordance with Regulation (EU) No 346/2013, they may, where appropriate, use this information for the purposes of the disclosures under this Regulation.

(10) Directive 2013/34/EU of the European Parliament and of the Council¹⁷ imposes transparency obligations as regards social, environmental and corporate governance aspects in non-financial reporting. The required form and presentation established by those Directives is not, however, always suitable for direct use by financial market participants and financial advisers when dealing with end-investors. The financial market participants and financial advisers should have the option to use information in management reports and non-financial statements in accordance with Directive 2013/34/EU for the purposes of this Regulation, where appropriate.

Where the information provided under this Regulation is not subject to appropriate checks in accordance with Union or national law, financial market participants and financial advisers are encouraged to have in place proper arrangements for that purpose.

(11) To ensure the reliability of information published on financial market participants' and financial advisers' websites, that information should be kept up-to-date, and any review or change should be clearly explained.

¹⁷ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(11a) Even though this Regulation does not cover national social security schemes covered by Regulations (EC) No 883/2004 and (EC) No 987/2009, in view of the fact that Member States increasingly open up parts of the management of compulsory pension schemes within their social security systems to financial market participants or other entities of private law, and that they are exposed to sustainability risks as well as that they might consider adverse sustainability impacts or promote environmental or social characteristics or pursue sustainable investments like financial market participants and other financial products, in order to mitigate information asymmetries in such principal-agent relationships, Member States should be allowed to apply this Regulation.

This Regulation does not prevent Member States from adopting or maintaining in force more stringent provisions on publication of climate change adaptation policies and additional disclosures to end-investors on sustainability risks only by financial market participants and financial advisers with head offices in their territories. Such provisions should not, however, hamper the effective application of this Regulation or the achievement of its objectives, and should, in any event, comply with the rules laid down in the Treaty.

(12) In accordance with Directive (EU) 2016/2341, IORPs should ensure governance and risk-management rules already apply to their investment decisions and the risks assessments in order to ensure continuity and regularity. The investment decisions and the assessment of relevant risks, including environmental, social and governance risks, should be made in such a manner as to ensure compliance with the interests of members and beneficiaries of IORPs. The European Insurance and Occupational Pensions Authority ('EIOPA') should issue guidelines specifying how investment decisions and risks assessment by IORPs take into account environmental, social and governance risks under Directive (EU) 2016/2341.

(13) The European Banking Authority ('EBA'), EIOPA and European Securities and Markets Authority ('ESMA') (collectively known as the 'ESAs') established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council,¹⁸ Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹⁹ and Regulation (EU) No 1095/2010 of the European Parliament and of the Council²⁰ respectively should, through the Joint Committee, develop regulatory technical standards further specifying the details of the content, methodologies and presentation of information in relation to sustainability indicators on climate and other environment-related adverse impacts and social and employee matters, respect for human rights, anti-corruption and bribery matters, of the presentation and content of the information with regard to the promotion of environmental or social characteristics and sustainability investment objectives to be disclosed in pre-contractual documents, periodical annual reports and websites of financial market participants in accordance with Articles 10 to 14 of Regulation No 1093/2010, Regulation No 1094/2010 and of Regulation (EU) No 1095/2010. The Commission should be empowered to adopt those regulatory technical standards.

¹⁸ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

¹⁹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

²⁰ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(14) The Commission should be empowered to adopt implementing technical standards developed by the ESAs through the Joint Committee, by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010, Article 15 of Regulation (EU) No 1094/2010 and Article 15 of Regulation (EU) No 1095/2010, to establish the standard presentation of the promotion of environmental or social characteristics and sustainable investments in marketing communication.

(15) Since periodical reports in principle summarize business results for complete calendar years, the application of the provisions of this Regulation on transparency requirements in periodical reports should be deferred to ... [PO: Please insert 1st January of the year following the date referred to in the second subparagraph of Article 12].

(16) The disclosure rules contained in this Regulation should supplement, and should apply in addition to, the provisions of Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2014/65/EU, Directive (EU) 2016/97, Directive (EU) 2016/2341, Regulation (EU) No 345/2013, Regulation (EU) No 346/2013, Regulation (EU) 2015/760, Regulation (EU) No XYZ [OJ – please insert reference to the Regulation on a pan-European Personal Pension Product (PEPP)].

(17) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.

(18) Since the objectives of this Regulation, namely to strengthen protection for end-investors and improve disclosures to them, including in cases of cross-border purchases for end-investors, cannot be sufficiently achieved by the Member States but can be better achieved at Union level because of the need to lay down uniform disclosure requirements at Union level the Union may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down harmonised rules on the transparency to be applied by financial market participants and financial advisers with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information on financial products.

Article 2

Definitions

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

(a) ‘financial market participant’ means any of the following:

(i) an insurance undertaking which makes available an IBIP;

(ia) an investment firm which provides portfolio management,

(ib) an IORP;

(ic) a manufacturer of a pension product;

(id) an AIFM;

(ie) a PEPP provider;

(ii) a manager of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013;

(iii) a manager of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013;

(iv) a UCITS management company;

(v) a credit institution which provides portfolio management;

(b) ‘insurance undertaking’ means an insurance undertaking authorised in accordance with Article 18 of Directive 2009/138/EC;

(c) ‘IBIP’ means either of the following:

(i) an insurance-based investment product as defined in Article 4(2) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council²¹;

(ii) an insurance product, made available to a professional investor, which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations;

(d) ‘AIFM’ means an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU;

²¹ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

(e) ‘investment firm’ means an investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU;

(f) ‘portfolio management’ means portfolio management as defined in Article 4(1)(8) of Directive 2014/65/EU;

(g) ‘IORP’ means an institution for occupational retirement provision authorised or registered in accordance with Article 9 of Directive (EU) 2016/2341 unless a Member State has chosen to apply Article 5 of that Directive or an IORP operates pension schemes which together have less than 15 members in total;

(h) ‘pension product’ means either of the following:

(i) a pension product referred to in Article 2(2)(e) of Regulation (EU) No 1286/2014;

(ii) an individual pension product referred to in Article 2(2)(g) of Regulation (EU) No 1286/2014;

(ha) a "pan-European Personal Pension Product (PEPP)" means a product referred to in Article 2(2) of the [PO: Please insert reference to Regulation of the European Parliament and of the Council on a pan-European Personal Pension Product (PEPP)];

(i) 'UCITS management company' means a management company as defined in Article 2(1)(b) of Directive 2009/65/EC or an investment company authorised in accordance with Directive 2009/65/EC which has not designated a management company authorised under that Directive for its management;

(ib) 'financial adviser' means an insurance intermediary which provides insurance advice with regard to IBIPs, an insurance undertaking which provides insurance advice with regard to IBIPs, a credit institution which provides investment advice, an investment firm which provides investment advice, an AIFM which provides investment advice in accordance with Article 6(4)(b)(i) of Directive 2011/61/EU, and a UCITS management company which provides investment advice in accordance with Article 6(3)(b)(i) of Directive 2009/65/EC;

(j) ‘financial product’ means any of the following:

(i) means a portfolio managed in accordance with point (f) of this paragraph

(ii) an AIF,

(iii) an IBIP,

(iv) a pension product,

(iv) a pension scheme,

(v) UCITS,

(vi) a pan-European Personal Pension Product

(k) ‘AIF’ means an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU;

(l) ‘pension scheme’ means a pension scheme as defined in Article 6(2) of Directive (EU) 2016/2341;

(m) ‘UCITS’ means an undertaking for collective investment in transferable securities authorised in accordance with Article 5 of Directive 2009/65/EC;

(n) ‘investment advice’ means an investment advice as defined in Article 4(1)(4) of Directive 2014/65/EU;

(o) ‘sustainable investments’ mean any of the following or a combination of any of the following:

(i) investments in an economic activity that contribute to an environmental objective, such as measured by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, and on the impact on biodiversity and the circular economy;

(ii) investments in an economic activity that contribute to a social objective, and in particular investments that contribute to tackling inequality, that foster social cohesion, social integration and labour relations, or investments in human capital or economically or socially disadvantaged communities;

Provided that the investments do not significantly harm any of those objectives and the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of relevant staff and tax compliance;

(p) ‘retail investor’ means an investor who is not a professional investor;

(q) ‘professional investor’ means a client who meets the criteria laid down in Annex II to Directive 2014/65/EU;

(r) ‘insurance intermediary’ means an insurance intermediary as defined in Article 2(1)(3) of Directive (EU) 2016/97;

(s) ‘insurance advice’ means an advice as defined in Article 2(1)(15) of Directive (EU) 2016/97.

(t) ‘sustainability risk’ 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 arising from an adverse sustainability impact.

(u) ‘ELTIF’ means a European long-term investment fund authorised in accordance with Article 6 of Regulation (EU) 2015/760.

(v) ‘sustainability factors’ mean environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.

Article 3

Transparency of the sustainability risk policies

1. Financial market participants shall publish information on their policies on the integration of sustainability risks in their investment decision-making process on their websites.

2. Financial advisers shall publish information on their policies on the integration of sustainability risks in their investment advice or insurance advice on their websites.

Article 3gamma

Transparency of adverse sustainability impacts at entity level

1. Financial market participants shall publish and maintain on their websites either of the following:
 - a) where they consider principal adverse impacts of investment decisions on sustainability factors, a statement on due diligence policies with respect to these principal adverse impacts, taking due account of their size, nature and scale of their activities and the types of their financial products;
 - b) where they do not consider adverse impacts of investment decisions on sustainability factors, clear reasons for not doing so, and, where relevant, including information as to whether and when they intend to consider such adverse impacts.
2. Information provided in accordance with point (a) of the paragraph 1 shall include at least the following:
 - a) information on policies on the identification and prioritisation of principal adverse sustainability impacts and indicators;
 - b) a description of the principal adverse sustainability impacts and of the actions taken and, where relevant, planned;

c) brief summaries of engagement policies in accordance with Article 3g of Directive 2007/36/EC, where applicable;

d) reference to the adherence to responsible business conduct codes and internationally recognised standards for due diligence and reporting and, where relevant, the degree of alignment with the long-term global warming targets of the Paris Climate Agreement.

3. By way of derogation from paragraph 1, from [*PO: please insert 18 months after the date of entry into force of this Regulation*], financial market participants exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall publish and maintain on their websites a statement on due diligence policies with respect to principal adverse impacts of investment decisions on sustainability factors.

The statement referred to in the first subparagraph shall at least include the information referred to in points (a) to (d) of paragraph 2.

4. By way of derogation from paragraph 1, from [*PO: please insert 18 months after the date of entry into force of this Regulation*], financial market participants which are parent undertakings of a large group as referred to in Article 3(7) of Directive 2013/34/EU exceeding on its balance sheet dates, on a consolidated basis, the criterion of the average number of 500 employees during the financial year shall publish and maintain on their websites a statement on due diligence policies with respect to principal adverse impacts of investment decisions on sustainability factors.

The statement referred to in the first subparagraph shall at least include the information referred to in points (a) to (d) of paragraph 2.

5. Financial advisers shall publish and maintain on their websites either of the following:

a) information as to whether, taking due account of their size, nature and scale of their activities and the types of the financial products they advise on, they consider in their investment advice or insurance advice the principal adverse impacts on sustainability factors;

b) information as to why they do not to consider adverse impacts of investment decisions on sustainability factors in their investment advice or insurance advice, and, where relevant, including information as to whether and when they intend to consider such adverse impacts.

6. By ... [PO: *please insert 12 months after the date of entry into force of this Regulation*], in respect of sustainability indicators in relation to climate and other environment-related adverse impacts, EBA, EIOPA and ESMA shall develop, through the Joint Committee, Regulatory Technical Standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, and thereafter update them periodically, on the content, methodologies and presentation of information referred to in paragraphs 1 to 5 of this Article.

EBA, EIOPA and ESMA shall, where relevant, seek input from the European Environment Agency and the Joint Research Centre of the European Commission.

7. By ... [PO: *please insert 24 months after the date of entry into force of this Regulation*], in respect of sustainability indicators in relation to adverse impacts in the field of social and employee matters, respect for human rights, anti-corruption and bribery matters, EBA, EIOPA and ESMA shall develop, through the Joint Committee, Regulatory Technical Standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, and thereafter update them periodically, on the content, methodologies and presentation of information referred to in paragraphs 1 to 5 of this Article.

Article 3a

Transparency of remuneration policies in relation to the integration of sustainability risks

1. Financial market participants and financial advisers shall include in their remuneration policies information on how their remuneration policies are consistent with the integration of sustainability risks, and publish that information on their websites.

2. The disclosure referred to in paragraph 1 shall be included in remuneration policies that financial market participants and financial advisers shall establish and maintain in accordance with sectoral legislation, in particular Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/65/EU, (EU) 2016/97 and (EU) 2016/234.

Article 4

Transparency of the integration of sustainability risks

1. Financial market participants shall include descriptions of the following in pre-contractual disclosures:

(a) the manner in which sustainability risks are integrated into their investment decisions, and

(b) the result of the assessment of the likely impacts of sustainability risks on the returns of the financial products.

Where sustainability risks are deemed not to be relevant, the descriptions referred to in points (a) and (b) shall include a clear and concise explanation of why they are not relevant.

2. Financial advisers shall include descriptions of the following in pre-contractual disclosures:

(a) how sustainability risks are integrated into their investment or insurance advice, and

(b) the result of the assessment of the likely impacts of sustainability risks on the returns of the financial products.

Where sustainability risks are deemed not to be relevant, the descriptions referred to in points (a) and (b) shall include a clear and concise explanation of why they are not relevant.

3. The information referred to in paragraphs 1 and 2 shall be disclosed in the following manner:

(a) for AIFMs, in the disclosures to investors referred to in Article 23(1) of Directive 2011/61/EU;

(b) for insurance undertakings, in the provision of information referred to in Article 185(2) of Directive 2009/138/EC or, where relevant, in accordance with Article 29(1) of Directive (EU) 2016/97;

(c) for IORPs, in the provision of information referred to in Article 41 of Directive (EU) 2016/2341;

(d) for managers of qualifying venture capital funds, in the provision of information referred to in Article 13(1) of Regulation (EU) No 345/2013;

(e) for managers of qualifying social entrepreneurship funds, in the provision of information referred to in Article 14(1) of Regulation (EU) No 346/2013;

(f) for manufacturers of pension products, in writing in good time before a retail investor is bound by a contract relating to a pension product;

(g) for UCITS management companies, in the prospectus referred to in Article 69 of Directive 2009/65/EC;

(h) for investment firms which provide portfolio management or provide investment advice, in accordance with Article 24(4) of Directive 2014/65/EU;

(ha) for credit institutions which provide portfolio management or provide investment advice, in accordance with Article 24(4) of Directive 2014/65/EU;

(i) for insurance intermediaries and insurance undertakings which provide insurance advice with regard to IBIPs and for insurance intermediaries which provide insurance advice with regard to pension products exposed to market fluctuations, in accordance with Article 29(1) of Directive (EU) 2016/97;

(j) for AIFMs of ELTIFs, in the prospectus referred to in Article 23 of Regulation (EU) 2015/760;

(k) for providers of PEPPs, in the PEPP key information document referred to in Article 26 of Regulation (EU) XYZ [OJ – please insert reference to the PEPP Regulation on a pan-European Personal Pension Product (PEPP)].

Article 4gamma

Transparency of adverse sustainability impacts at financial product level

1. No later than ... [PO: *please insert 36 months after entry into force of this Regulation*], for each financial product, where a financial market participant applies Article 3γ(1)(a), (3) or (4) disclosures referred to in points (a) to (k) of Article 4(3) shall include the following:

(a) a clear and reasoned explanation of whether, and, if so, how a financial product considers principal adverse impacts on sustainability factors;

(b) a statement that information on principal adverse impacts on sustainability factors is available in the information to be disclosed pursuant to points (a) to (j) of Article 7(2).

Where information in points (a) to (j) of Article 7(2) includes quantifications of principal adverse impacts on sustainability factors, that information may rely on the provisions of the RTS adopted in accordance with Article 3γ(6) and (7).

2. For each financial product, where a financial market participant applies Article 3γ(1)(b), disclosures referred to in points (a) to (k) of Article 4(3) shall include a statement that the financial market participant does not consider the adverse impacts of investment decisions on sustainability factors and a reasoned explanation for not doing so.

Article 4a

Transparency of the promotion of environmental or social characteristics in pre-contractual disclosures

1. Where a financial product presents, among other characteristics, the promotion of environmental or social characteristics, or a combination thereof, provided the companies in which the investments are made follow good governance practices, the information to be disclosed pursuant to Article 4(1) and (3) shall include the following:

(a) information on how those characteristics are met;

(b) if an index has been designated as a reference benchmark, information on whether and how this index is consistent with those characteristics.

2. Financial market participants shall include in the information to be disclosed pursuant to Article 4(1) and (3) an indication of where the methodology used for the calculation of the indices referred to in paragraph 1 of this Article is to be found.

3. The European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) shall, through the Joint Committee of the European Supervisory Authorities ('Joint Committee') develop draft regulatory technical standards further specifying the details of the presentation and content of the information to be disclosed pursuant to this Article.

When developing the draft regulatory technical standards EBA, EIOPA and ESMA shall take into account the various types of financial products, their characteristics referred to in paragraph 1 and differences thereof and the aim of accurate, fair, clear, not misleading, simple and concise disclosures.

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by ... [PO: Please insert date 12 months after the date of entry into force].

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

Article 5

Transparency of sustainable investments in pre-contractual disclosures

1. Where a financial product has as its objective sustainable investments and an index has been designated as a reference benchmark, the information to be disclosed pursuant to Article 4(1) and (3) shall be accompanied by the following:

(a) information on how the designated index is aligned with that objective;

(b) an explanation as to why and how the designated index aligned with that objective differs from a broad market index.

2. Where a financial product has as its objective sustainable investments and no index has been designated as a reference benchmark, the information referred to in Article 4(1) and (3) shall include an explanation on how that objective is attained.

3. Where a financial product has as its objective the reduction in carbon emissions, the information to be disclosed pursuant to Article 4(1) and (3) shall include the objective of low carbon emission exposure in view of achieving the long-term global warming targets of the Paris Climate Agreement.

By way of derogation from paragraph 2, where no EU Climate Transition Benchmark or EU Paris-aligned Benchmark in accordance with Regulation (EU) 2016/1011 is available, the information referred to in Article 4 shall include a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming targets of the Paris Climate Agreement.

4. Financial market participants shall include in the information to be disclosed pursuant to Article 4(1) and (3) an indication of where the methodology used for the calculation of the indices referred to in paragraph 1 of this Article and benchmarks referred to in the second subparagraph of paragraph 3 of this Article are to be found.

5. The EBA, EIOPA and ESMA shall, through the Joint Committee of the European Supervisory Authorities ('Joint Committee') develop draft regulatory technical standards further specifying the details of the presentation and content of the information to be disclosed pursuant to this Article.

When developing the draft regulatory technical standards EBA, EIOPA and ESMA shall take into account the various types of financial products, their objectives as referred to in paragraphs 1, 2 and 3 and differences thereof as well as the aim of accurate, fair, clear, not misleading, simple and concise disclosures.

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by ... [PO: Please insert date 12 months after the date of entry into force of this Regulation].

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

Article 6

Transparency of the promotion of environmental or social characteristics and of sustainable investments of on websites

1. Financial market participants shall publish and maintain on their websites, for each financial product referred to in paragraph 1 of Article 4a and paragraphs 1, 2 and 3 of Article 5, the following:

(a) a description of the environmental or social characteristics or the sustainable investment objective;

(b) information on the methodologies used to assess, measure and monitor the environmental or social characteristics or the impact of the sustainable investments selected for the financial product, including its data sources, screening criteria for the underlying assets and the relevant sustainability indicators used to measure the environmental or social characteristics or the overall sustainable impact of the financial product;

(c) the information referred to in Articles 4a and 5;

(d) the information referred to in Article 7.

The information to be disclosed pursuant to the first subparagraph shall be clear, succinct and understandable for investors. It shall be published in an accurate, fair, clear, not misleading, simple and concise way and in a prominent easily accessible area of the website.

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

When developing the draft regulatory technical standards EBA, EIOPA and ESMA shall take into account the various types of financial products, their characteristics and objectives referred to in paragraph 1 and differences thereof. The EBA, EIOPA and ESMA shall update the regulatory technical standards in the light of regulatory and technological developments.

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 12 months after the date of entry into force].

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

Article 7

Transparency of the promotion of environmental or social characteristics and of sustainable investments in periodic reports

1. Where financial market participants make available a financial product referred to in paragraph 1 of Article 4a and paragraphs 1, 2 and 3 of Article 5, they shall include a description of the following in periodic reports:

(a) for a financial product referred to in paragraph 1 of Article 4a, the extent to which environmental or social characteristics are attained;

(b) for a financial product referred to in paragraphs (1), (2) and (3) of Article 5,

(i) the overall sustainability-related impact of the financial product by means of relevant sustainability indicators, or

(ii) where an index has been designated as a reference benchmark, a comparison between the overall impact of the financial product with the designated index and a broad market index through sustainability indicators.

2. The information referred to in paragraph 1 shall be disclosed in the following manner:

(a) for AIFMs, in the annual report referred to in Article 22 of Directive 2011/61/EU;

(b) for insurance undertakings, annually in writing in accordance with Article 185(6) of Directive 2009/138/EC;

(c) for IORPs, in the annual report referred to in Article 29 of Directive (EU) 2016/2341;

(d) for managers of qualifying venture capital funds, in the annual report referred to in Article 12 of Regulation (EU) No 345/2013;

(e) for managers of qualifying social entrepreneurship funds, in the annual report referred to in Article 13 of Regulation (EU) No 346/2013;

(f) for manufacturers of pension products, in writing in annual reports or in reports in accordance with national law;

(g) for UCITS management companies, in annual reports referred to in Article 69 of Directive 2009/65/EC;

(h) for investment firms which provide portfolio management, in a periodic report as referred to in Article 25(6) of Directive 2014/65/EU;

(i) for credit institutions which provide portfolio management, in a periodic report as referred to in Article 25(6) of Directive 2014/65/EU,

(j) for PEPP providers, in a PEPP Benefit Statement as referred to in Article 36 of Regulation (EU) No XYZ [OJ – please insert reference to the Regulation on a pan-European Personal Pension Product (PEPP)].

3. For the purposes of paragraph 1, financial market participants may use the information in management reports in accordance with Article 19 or the information in non-financial statements in accordance with Article 19a of Directive 2013/34/EU where appropriate.

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

When developing the draft regulatory technical standards EBA, EIOPA and ESMA shall take into account the various types of financial products, their characteristics and objectives referred to in paragraph 1 and differences thereof. The EBA, EIOPA and ESMA shall update the regulatory technical standards in the light of regulatory and technological developments.

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by [PO: Please insert date 12 months after the date of entry into force].

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

Article 8

Review of disclosures

1. Financial market participants shall ensure that any information published in accordance with Article 3, Article 3a or Article 6 is kept up-to-date. Where a financial market participant amends such information, a clear explanation of that change shall be published on the same website.

2. Paragraph 1 shall apply mutatis mutandis to financial advisers with regard to any information published in accordance with Article 3 and Article 3a.

Article 9

Marketing communications

1. Without prejudice to stricter sectoral legislation, in particular Directives 2009/65/EC, 2014/65/EU, (EU) 2016/97 of the European Parliament and of the Council and Regulation (EU) No 1286/2014, financial market participants and financial advisers shall ensure that their marketing communications do not contradict the information disclosed pursuant to this Regulation.

2. EBA, EIOPA and ESMA may develop, through the Joint Committee, draft implementing technical standards to determine the standard presentation of information on the promotion of environmental or social characteristics and sustainable investments.

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

Article 9a

Competent authorities

1. Each Member State shall ensure that the competent authorities designated in accordance with sectoral legislation, in particular those referred to in points (a) to (j) of Article 4(3) and Directive 2013/36/EU, also monitor compliance with requirements placed by this Regulation on financial market participants and financial advisers. The competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions under this Regulation.
2. For the purposes of this Regulation the competent authorities shall cooperate with each other and, without undue delay, shall provide each other with such information as is relevant for the purposes of carrying out their duties under this Regulation and making use of their powers.

Article 9b

Transparency by IORPs and insurance intermediaries

1. IORPs shall publish and maintain the information referred to in Article 3, Article 3a, Art 3gamma and 4gamma, Article 4 and points (a) to (d) of the first subparagraph of Article 6(1) in accordance with point (f) of Article 36(2) of Directive (EU) 2016/2341.

2. Insurance intermediaries shall communicate the information referred to in Article 3, Article 3a, Article 3gamma (5), Article 4 and points (a) to (d) of the first subparagraph of Article 6(1) in accordance with Article 23 of Directive (EU) 2016/97.

Article 9c

Pension products covered by Regulations (EC) No 883/2004 and (EC) No 987/2009

1. Member States may decide to apply this Regulation to manufacturers of pension products operating national social security schemes which are covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council. In such cases, manufacturers of pension products referred to in Article 2(a) shall include manufacturers of pension products operating national social security schemes and pension products referred to in Article 2(h). Pension products referred to in Article 2(h) shall then also include pension products referred to in the first sentence.

2. Member States shall notify the Commission, EBA, EIOPA and ESMA of the decisions referred to in paragraph 1.

Article 9d

Exemptions

1. This Regulation shall not apply to insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice that are enterprises irrespective of their legal form, including natural persons or self-employed persons, provided that they employ fewer than three persons.

2. Member States may decide to apply this Regulation to insurance intermediaries which provide insurance advice with regard to IBIPs and investment firms which provide investment advice referred to in paragraph 1.

3. Member States shall notify Commission, EBA, EIOPA and ESMA of the decisions referred to in paragraph 2.

Article 9e

Report

EBA, EIOPA and ESMA shall take stock of the extent of voluntary disclosures in accordance with Article 3gamma 1(a) and Article 4gamma 1(a). No later than ... [PO: please insert 18 months from the date of application of Articles 3gamma and 4gamma], EBA, EIOPA and ESMA shall submit an annual report to the Commission on best practices and make recommendations towards voluntary reporting standards. The annual report shall consider the implications of due diligence practices on disclosures in accordance with this Regulation and provide guidance on this matter. That report shall be made public and be transmitted to the European Parliament and the Council.

Article 11

Evaluation

By ... [PO: Please insert date 36 months after the date of entry into force], the Commission shall conduct an evaluation of the application of this Regulation and in particular:

- (a) whether the reference to the average number of employees in Article 3γ(3) and (4) should be maintained, replaced or accompanied by other criteria, and consider the benefits and proportionality of the related administrative burden;

(b) whether the functioning of this Regulation is not inhibited by the lack of data or their suboptimal quality, including indicators on adverse impacts on sustainability factors by investee companies.

The report shall be accompanied, if appropriate, by legislative proposals.

Article 12

Entry into force and application

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

It shall apply from ... [PO: Please insert 15 months following the date of publication in the Official Journal of the European Union].

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

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President
