BIPAR Update

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European Federation of Insurance Intermediaries

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1. Commission considers giving UCITS fund providers 6 more months to prepare for switch to PRIIPs KID

During a recent speech, Commissioner for Financial services, financial stability and Capital Markets Union, Mairead McGuinness addressed the ongoing PRIIPs review, and in particular the state of play of the new technical standards on the PRIIPs Key Information Document (KID).

She recalled that today, a retail investor can receive two different types of retail investment information sheet, depending on whether they are buying a fund product or another type of retail investment, such as life insurance. She added that this "*makes it harder for investors to compare products, especially about risks or costs. Thanks to the new technical standards adopted by the European Supervisory Authorities in February, the Commission is planning to replace today's UCITS KID and PRIIPs KID with one revised PRIIPs KID.*"

She continued that: "*We know that the adoption of the technical standards and the political scrutiny of these new rules by the European Parliament and the Council will take some time. This would leave a short period of time for the implementation of these new rules (initially planned in January 2022) by product manufacturers and* ***advisers****. That's why we are considering the merits in in* ***a short extension*** *of the current temporary exemption for retail investment funds from PRIIPs. We should propose to give providers of UCITS funds six additional months (****until July 2022****) to prepare for the switch to the PRIIPs KID. The broader review of the PRIIPs Regulation will be included in our retail investment strategy.*"

2. Non-financial reporting – Commission's proposal for a new Directive

On 21 April 2021, the Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD). To promote the market for green investments, investors need to know about the sustainability impact of the companies in which they invest. Sustainability information becomes more and more important throughout the financial system.

This Directive aims to amend the existing reporting requirements of the Non-Financial Reporting Directive (NFRD). Non-listed insurance and financial intermediaries are not covered by the scope of this proposal.

The proposal for a CSRD:

- extends the scope to **all large companies** (non-listed) **and all companies listed** on regulated markets (except listed micro-enterprises).
- extends the scope to **credit institutions and insurance companies that according to the NFRD/Accounting Directive are not limited liability companies** or are not deemed to have limited liability, including cooperative banks and mutual and cooperative insurance companies, provided they meet the relevant size criteria.
- requires the **audit** (assurance) of reported sustainability information to ensure that such information is accurate and reliable. For the time being, it is a "limited" assurance requirement, as opposed to "reasonable" assurance requirement based on standards. Member States have the option to open up the market for sustainability assurance services to so-called "independent assurance services providers".
- introduces **more detailed reporting requirements** for companies to provide information about their strategy, targets, the role of the board and management, the principal adverse impacts connected to the company and its value chain, intangibles, and how they have identified the information they report. **A reference to gender in the description of the diversity policy applied in relation to the company's administrative, management and supervisory bodies becomes mandatory.**
- Introduces requirement to **report within the management report** and **according to mandatory EU sustainability reporting standards.** The draft standards would be developed by the European Financial Reporting Advisory Group – EFRAG (see also the BIPAR update of 9 April 2021).
- requires companies to digitally 'tag' the reported sustainability information, so it is **machine readable and feeds into the European single access point** envisaged in the capital markets union action plan. The Commission will put forward a proposal for the EU single access point later this year.

SMEs with securities listed on regulated markets will be allowed to report according to standards that are simpler than the standards that will apply for large companies. Non-listed SMEs could choose to use the simple standards on a voluntary basis. The requirements for listed SMEs would apply only three years after they apply to other companies (January 2026).

The reporting requirements of the CSRD proposal would not apply to SMEs with transferable securities listed on SME growth markets or multilateral trading facilities (MTFs).

Exemption

All undertakings that are parent undertakings of large groups should prepare sustainability reporting at group level. The exemption regime for consolidated financial statements and consolidated management reports operates independently from the exemption regime for consolidated sustainability reporting. **This means that a company can be exempted from consolidated financial reporting requirements, but not from consolidated sustainability reporting requirements**. This is the case if the company's ultimate parent company prepares consolidated financial statements and consolidated management reports in accordance with EU law, or equivalent requirements if it is a non-EU country but does not prepare consolidated sustainability reports in accordance with EU law, or equivalent requirements if it is a non-EU country.

Background

The reporting rules introduced by the Non-Financial Reporting Directive (NFRD) established principles for certain large companies to report sustainability information on an annual basis. They introduced a ***"double materiality principle"****, meaning that companies have to report about 1) how sustainability issues affect their business and 2) about their own impact on people and the environment.*

The rules of the NFRD apply to so-called "public interest entities", meaning listed companies, banks, and insurance companies that are large with more than 500 employees.

Interaction with SFDR and Taxonomy

The CSDR aims ultimately to ensure that companies report the information that investors and other financial market participants subject to the SFDR need to comply with their disclosure requirements. Specifically, that means that the reporting standards would include indicators that correspond to the indicators contained in the SFDR.

Article 8 of the Taxonomy Regulation requires companies falling within the scope of the existing NFRD – and the additional companies brought under the scope of the proposed CSRD, if approved by the co-legislators – to report on the extent to which their activities are taxonomy-aligned. The indicators for this will be specified in a separate Commission Delegated Act on key performance indicators to be adopted by June 2021. Companies will have to report these indicators on taxonomy-aligned activities alongside other sustainability information mandated by the proposed CSRD.

The next step is for the European Parliament and the Member States in the Council of the EU to negotiate a final legislative text on the basis of the Commission's proposal. In parallel, EFRAG will start work on a first set of draft sustainability reporting standards which should be ready by October 2022. Sustainability reporting standards for SMEs should be ready by October 2023.

Depending on the progress of the interinstitutional negotiations, companies would apply the standards for the first time to reports published in 2024, covering financial year 2023.

3. Taxonomy – Commission published Delegated Act on screening criteria

The Commission has published its first Delegated Act **(level 2 text) to the Taxonomy Regulation** which defines the technical screening criteria for **economic activities that can make a substantial contribution to** climate change mitigation **and** climate change adaptation. The Delegated Act is expected to be formally adopted by the Commission at the end of May. It will then be under scrutiny by the European Parliament and the Council of the EU (period of four months that can be extended by another two months). Once approved it will enter into force and it will apply from 1 January 2022.

The EU Taxonomy aims to provide incentives to investors to finance transition projects and encourage companies to launch new projects, or upgrade existing ones, to meet these criteria. Financial market participants can, if they wish, use the EU Taxonomy as a guide to design green financial products and make investment decisions. Taxonomy does not prohibit investment in any activity. There is no obligation for companies to be Taxonomy-aligned and investors are free to choose what to invest in.

According to the Commission press release, the Taxonomy Delegated Act would cover the economic activities of roughly 40% of listed companies, in sectors which are responsible for almost 80% of direct greenhouse gas emissions in Europe. It includes sectors such as energy, forestry, manufacturing, transport and buildings. Particularly, it covers, among others, the activities of bioenergy, hydropower, hydrogen, etc. The Taxonomy's "do no significant harm criteria" excludes power generation where direct emissions exceed 270 grams of CO2 per kilowatt-hour. Solid fossil fuels are excluded.

Mairead McGuinness, Commissioner responsible for financial services, financial stability and the Capital Markets Union, said: *"Today's new rules are a game changer in finance. We are stepping up our sustainable finance ambition to help make Europe the first climate-neutral continent by 2050. Now is the time to put words into action and invest in a sustainable way."*

Reactions from experts

Following the publication of the Taxonomy Delegated Act, five NGOs - members of the Commission Platform on Sustainable Finance made an announcement with a request to open a negotiation with the Commission to establish rules of governance in the Platform. The announcement says "o*fficial talks are needed to make sure political and individual interests do not overrule the scientific integrity of the EU taxonomy criteria*".

According to the Commission, the Taxonomy Delegated Act establishing criteria for climate change mitigation and climate change adaptation is a living document and will continue to evolve over time, with more activities being added to its scope by means of amendments. A complementary Delegated Act is expected to be adopted later in 2021 on agriculture and certain energy sectors (i.e. natural gas) not yet included in the Delegated Act published. Nuclear power will be added if the Commission experts conclude to a positive assessment on the environmental impacts in summer 2021.

In the future, another Taxonomy Delegated Act will focus on criteria for activities making a substantial contribution to the other four environmental objectives laid down in the Taxonomy Regulation.

In addition, the Commission will consider specific legislation covering the gas activities that contribute to reduce greenhouse gas emissions but cannot be covered within the EU Taxonomy as they do not meet the screening criteria.

You can also find some Frequently Asked Questions (FAQs) regarding Taxonomy here.

4. EIOPA podcast on Covid-19, consumers and insurance

On 21 April, EIOPA published a podcast on "Coronavirus, consumers and insurance". In an interview format, EIOPA representatives Irina Popa and Marco Traversa discuss how Covid-19 has impacted policyholders and what this means for industry, supervisors and EIOPA's work.

They touch upon:

- The EIOPA 2020 Consumer trends report which focused on the Covid-19 crisis (business continuity/contract exclusions/…)
- Concerns about unit-linked products
- Concerns about travel insurance (2019 thematic review/EIOPA statements regarding Covid/NCA questionnaire/consumer study on impact of Covid on travel insurance)
- EIOPA 2020 supervisory expectations on Product Oversight and Governance requirements amidst the COVID-19 situation
- EIOPA thematic review "consumer protection issues with mortgage life and other credit protection insurance sold through banks" (data collection exercise to be launched before summer, looking amongst others into whether the products are fit for consumer needs/product design/manufacturing process/distribution strategy/sales models/commission levels/value for money/can consumers shop around).
- Conduct of business supervision
- Digital technology (advantages but also risks: cyber/exclusion/digital ethics/…)

You can listen to the podcast here.

5. Swedish Covid Business Interruption ruling in favour of insurer

The Stockholm District Court has recently ruled in favour of an insurance company (Gjensidige) in a dispute concerning the right to insurance compensation after a restaurant/nightclub (Sturecompagniet) closed down its business due to regulations from the Swedish Public Health Agency to prevent the spread of Covid-19.

The restaurant had claimed compensation, referring to the epidemic interruption insurance taken out with the insurance company and following last year's Public Health Agency decision that restaurants cannot be crowded and that visitors may only eat and drink while seated at a table or have takeaway food. The restaurant found itself forced to close down completely, as running a nightclub int these circumstances did not seem reasonable.

The court stated in its ruling that the insurance conditions do indeed cover damage caused by a decision directed against the business in the individual case - but that the conditions do not cover damage caused by the Public Health Agency's general regulations. If there had been a more specific provision concerning Sturecompagniet, it could have been covered by the insurance terms and conditions. But since it is a more general decree, it is not covered by the wording "intervention by the authorities" in the conditions. The Court also referred to previous decisions on interpretations of insurance terms and conditions taken by the High Court, where the *wording* of the insurance terms and conditions, but also the *context* and *purpose* of the terms and conditions, needs to be taken into account. This could affect the possibilities for the plaintiff to be accepted for appeal in the High Court going forward.

Sturecompagniet sent its appeal to the Court on 27 April and the plaintiff asked to file additional agruments by 19 May.

6. EIOPA Cross-Border Cooperation Platform: Statement from the Slovakian national supervisory authority regarding its decision on investment infringement against Novis Insurance

The following information was published on the EIOPA website on 18 April 2021. It is of interest to intermediaries distributing products of NOVIS (Slovak Life insurance company) and its policyholders. Besides its home market, NOVIS pursues life insurance activity through freedom of establishment in Austria, the Czech Republic and Germany and through freedom to provide services in Finland, Hungary, Iceland, Italy, Lithuania, Poland and Sweden.

"The Slovakian national supervisory authority (NBS) has issued today a statement regarding the decision on investment infringement identified in the onsite inspection against NOVIS Insurance Company, NOVIS Versicherungsgesellschaft, NOVIS Compagnia di Assicurazioni, NOVIS Poisťovňa a.s. (NOVIS).

The onsite inspection ***determined that NOVIS breached its duty to act prudently because it had invested premiums received from clients to a lesser extent than it had committed itself to in its insurance contracts****. Therefore, in the decision NBS imposes on NOVIS, among other measures,* ***the obligation to invest all premiums in accordance with the insurance contracts****.*

In order to ensure the adequate protection of policyholders throughout the European Economic Area, EIOPA has been working closely with NBS and the other national competent authorities through its cooperation platform to address the operations of NOVIS, from both prudential and conduct of business perspective".

The full text of the press release and the measure taken by NBS can be found here.

7. Geneva Association's report on Public-Private Solutions to Pandemic Risk

The Geneva Association published a second report on pandemics and insurance: "Public-Private Solutions to Pandemic Risk - Opportunities, challenges and trade-offs". The report explores four exemplary and generic types of public-private pandemic risk solutions – direct insurance, reinsurance, social insurance and post-event protection – and compares the benefits of each against seven public policy objectives.

The report can be found here and a brief of the report here.

The report will be presented in a webinar, entitled: "How Much 'Skin in the Game'? Public-Private Solutions to Pandemic Risk" on 12 May (14:00-15:00): Webinar Registration - Zoom