Opinion of the European Economic and Social Committee on '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 — 2018/0179 (COD))

(2019/C 62/15)

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Section responsible	Economic and Monetary Union and Economic and Social Cohesion
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Outcome of vote (for/against/abstentions)	174/7/4

1. **Conclusions and recommendations**

1.1. Financial market participants help the European economy transition towards a greener, more resilient and circular system, by incorporating ESG ([1]) factors:

— into **advisory** activities to end investors, by asking about their sustainability preferences;

— into the **design** or selection of a portfolio of financial assets;

— into the **transparent disclosure** and **reliable explanation** of their **decision-making process**;

— into the pre-contractual ***ex-ante*** information on integrating **risks** and their expected impact;

— into the periodical reports by stating the overall sustainability-related impact of the financial product through the use of relevant sustainability indicators.

1.2. The Sustainable Development Goals (**SDGs**) ([2]), and the **Paris Agreement** on **climate change** make up the frontispiece of the pillars of shared sustainability, and the **European Commission's Action Plan on Financing Sustainable Growth** ([3]) will underpin this new architecture.

1.3. The starting point is to gradually define — using rigorous **scientific evidence** — which **activities are sustainable**, making use of a methodology for cost-benefit analysis throughout the life cycle of the project, evaluating environmental, social and economic externalities.

([1]) Environmental, social and governance.
([2]) The Sustainable Development Goals (SDGs) took shape at the United Nations Conference on Sustainable Development held in Rio de Janeiro in 2012.
([3]) COM(2018) 97 final.

1.4. Right from the outset, with the 'E' (in ESG criteria), the **social safeguards** agreed at international level ([4]) must be respected ([5]), as well as the European Pillar of Social Rights ([6]). For the EESC safeguards should continue right to the letter 'G', without neglecting good (corporate and institutional) fiscal governance.

1.5. The EESC welcomes the **design of the Action Plan**. This opinion focuses on measures linked to redirecting capital flows towards sustainable investments and, as such, goes to the very heart of the fiduciary obligations of capital market participants, whose weakest component — end investors — will be able to bring their sustainability preferences into line with their informed investment decisions. Both the proposed new Regulation and the revision of the Directive lend substance, consistency and effectiveness to the development of the Action Plan.

1.6. ***Momentum*** is often mentioned so as to make a virtue out of necessity: strengthening the 'Europe of values' by harnessing sustainability. In this regard, the EESC firmly believes in designing **sustainable pan-European financial products**, as it is convinced that they will enable Europe to do bigger and better things.

1.7. The EESC endorses the Commission's proposal to set up a **platform on sustainable finance**, comprising experts from both the public and private sectors. The EESC should be involved in this platform.

1.8. Lastly, the EESC highlights the need to ensure the involvement of civil society and the social partners at every stage of the process.

2. **Background**

2.1. *General framework — Action Plan: Financing Sustainable Growth*

2.1.1. As part of the long-term project to complete the financial union, the mid-term review of the capital markets union (CMU) has focused on mobilising European savings by promoting sustainable private investments. The Action Plan for financing sustainable growth, launched by the Commission on 8 March 2018, laid out a sensible and precise roadmap in order to fulfil this commitment.

2.1.2. The European Economic and Social Committee has warmly welcomed this initiative, which consists of 10 actions that set out a series of consistent and interconnected acts which should be adopted before the end of 2019.

2.1.3. The proposal to amend the regulatory framework — the subject of this opinion — ties in with the fiduciary role of financial market participants.

2.1.4. This is particularly linked to Action 7 of the Action Plan, in which the incorporation of sustainability into investment portfolios and proper disclosure has as its corollary Action 4, on the advice given to the end-investor. This also partly concerns Action 9, as it is a *sine qua non* that businesses carry out sound and harmonised extra-financial corporate reporting.

2.1.5. In parallel, as part of this first coherent round of measures under the Action Plan, the EESC adopts its view on the taxonomy (Action 1) and the sustainability benchmarks (Action 5) ([7]).

2.2. *Institutional investors' and asset managers' duties regarding sustainability*

2.2.1. A **Regulation** is being proposed on integrating sustainability considerations into the decision-making process and on disclosures relating to sustainable investments and sustainability risks. This is accompanied by an **amendment of Directive (EU) 2016/2341** on the activities and supervision of institutions for occupational retirement provision (IORPs), as well as of the **delegated acts** of the European Commission to adapt the MiFID II and IDD directives accordingly, with the assistance of the supervisory authorities.

2.2.2. The aim is to ensure that asset managers, institutional investors, insurance distributors and investment advisors incorporate **environmental, social and governance (ESG) factors** into their investment decisions (Action 7) and advice (Action 4) as part of their duty to act in the best interest of investors or beneficiaries.

([4]) In particular, the UN Guiding Principles on Business and Human Rights, the EU Charter of Fundamental Rights and the ILO labour standards.
([5]) Joint commitment under the dialogue between the European Parliament, the Council and the Commission (i.e. 'trilogue').
([6]) See EESC opinion 'European Pillar of Social Rights' (OJ C 125, 21.4.2017, p. 10).
([7]) EESC opinion ECO/467 — 'Sustainable finance: taxonomy and benchmarks'. See page 103 of this Official Journal.

2.2.3. Asset managers and institutional investors would have to disclose how their investments are in line with these sustainability objectives and periodically account for investments' non-financial performance by means of ad hoc impact indicators. This means more **transparency** for **end-investors**, who will be able to take fully informed decisions among **comparable** products that are free of 'greenwashing' and/or 'socialwashing'.

2.2.4. The proposed Regulation will apply to asset managers ([8]), institutional investors (insurance undertakings regulated under Solvency II and institutions for occupational retirement provision governed by IORP II), insurance distributors regulated under the Insurance Distribution Directive (IDD), and investment advisors and managers of individual portfolios regulated under MiFID II.

2.2.5. The proposed rules cover all financial products offered and services (management of and advice on portfolios) rendered by the abovementioned entities, regardless of whether they are pursuing sustainable investment objectives or not.

2.2.6. A low EU carbon benchmark or a positive carbon impact benchmark would only be used for products/services that are aiming at low carbon emissions, just as other benchmarks will be used for products/services that are aiming to have an environmental and/or social impact.

2.2.7. Thus investors will take coverage of their sustainability risks into account when assessing the performance of their long-term investments and will satisfy their 'fiduciary duties' in the best interest of their end-investors/beneficiaries.

2.2.8. Similarly, the financial sector will play an essential role in recalibrating to the risks of climate change and environmental, social and governance-related challenges, gradually shifting private capital flows towards sustainable investments by choosing suitable activities, projects and companies.

2.2.9. For its part, the EU will strengthen public funds to attract more private investments. In particular, the expanded and strengthened European Fund for Strategic Investments (EFSI 2.0), in force since 31 December 2017, proposes a 40 % target for smart climate investment, and will continue to grow in the 2021-2027 multiannual financial framework (MFF).

3. **General comments**

3.1. In the transition towards more sustainable and inclusive economies, a balanced approach to ESG risks and a proper alignment of the participants in the financial system will help to achieve system-wide financial stability.

3.2. In connection with the European Commission's Action Plan, the EESC gave its view ([9]), in general terms, on institutional investors and asset managers' fiduciary duties in terms of sustainability.

3.3. More specifically, the EESC advocates including financial products linked to pensions in the new taxonomy and benchmarks — they will be able to play a part in the long-term investments under the EFSI 2.0 and the future 'InvestEU' fund planned for the 2021-2027 MFF.

3.4. Thus the future pan-European personal pension products (**PEPPs**) could become a **flagship sustainable product**, given the significant value of ensuring a long-term flow of financial resources that also enable a variety of challenges facing European society to be tackled — in short, ensuring people's future well-being while also financing strong and sustainable infrastructure. In the EESC's view, this would be the default investment option and should enable PEPP savers to recover invested capital, including by means of subsidiary institutional support from the European Union ([10]).

3.5. In addition to mobilising domestic savings, more investment into Europe needs to be attracted. Beyond incentives associated with sustainable investment, numerous studies demonstrate that investors seek access to larger capital markets as they can typically obtain better returns on investment.

([8]) Regulated under the Directive on undertakings for collective investment in transferable securities (UCITS), the Directive on Alternative Investment Fund Managers (AIFM), the Regulation on European venture capital funds (EuVECA), and the Regulation on European social entrepreneurship funds (EuSEF).

([9]) EESC opinion ECO/456 — 'Sustainable finance (communication)'. See page 73 of this Official Journal.

([10]) To this end, the commission received by PEPP producers and intermediaries will need to be limited, and minimum standards for fiscal harmonisation drawn up.

3.6. Capital market integration should also consider reforms and incentives promoting **individual and collective sustainable pan-European pension plans**, under the premise of ensuring at the same time a solid public pensions system, expanding the current pool of people affiliated to social security schemes. Public pensions systems should be encouraged to also make sustainable investments from their reserve funds, where these exist.

3.7. Moreover, the EESC has emphasised that financial intermediation services should, as an essential component of their legal duties, proactively liaise with customers to provide them with clear information on the possible financial risks and the benefits of including ESG factors. Where retail investors are involved, it must be ensured that they have clearly understood all the information provided.

3.8. The EESC therefore also supports amending the MiFID II and IDD directives, and is in favour of the European Securities and Markets Authority (ESMA) subsequently including sustainability preferences in its suitability assessment guidelines. In particular, and without compromising the objectives of these directives to ensure the protection of investors, it is necessary to examine how investors' sustainability preferences can be included in this legislation in order for financial advisors to be able to issue appropriate recommendations on financial products that respect as much as possible clients' preferences and suitability.

3.9. In short, the EESC welcomes the simultaneous and coherent review of the **European System of Financial Supervision** that aims to integrate financially material sustainability ([11]) risks into micro-prudential supervision tasks, and understands that current capital and liquidity requirements will have to be carefully weighed up with regard to these new factors.

3.10. Finally, the EESC must once again express its sincere regret that even the most advanced countries have failed to close the **gender gap**. **Sustainable finance** offers effective answers here: 'gender lens investing' ([12]) can include financing women-owned businesses, companies with a strong record of female employment, or firms that improve the lives of girls and women via their products and services.

3.11. Moreover, according to the Boston Consulting Group, both millennials and women are increasingly seeking to align their financial and investment targets with their values, without lowering their expected returns. In other words, they are looking for certain amount of added value, beyond the financial return.

4. **Specific comments**

4.1. The EESC finds it appropriate that Article 114 TFEU is the legal basis for this Regulation, as it aims to preserve a **level playing field** between the various financial market participants while ensuring a high level of consumer protection (end-investors).

4.2. *Proposal for a Regulation*

4.2.1. The EESC is in favour of using this Regulation to harmonise the rules to be followed by institutional investors and asset managers during the investment process, taking into account risk and sustainability factors as well as transparency requirements to enable an objective comparison between sustainable financial products. The Committee also emphasises the important role that supervisory authorities will play in designing the technical standards for the process of elaborating and disclosing information; they need to have access to specialised technical advice in this area.

4.2.2. The EESC welcomes the comprehensive definitions set out in Article 2, and is pleased to see that the environmental, social and governance aspects are considered together; they will be reflected in the creation of the new taxonomy. This regulatory approach can be seen in paragraph (o), given that sustainable investments must not only be

([11]) A materiality framework analyses those factors that are most relevant to the companies' financial performance, comprising financially material sustainability factors.

([12]) On this topic, Sarah Kaplan and Jackie VanderBrug from U.S. Trust wrote that 'women launching and expanding ventures around the world have an estimated collective credit gap of $320 billion'.

based on the environmental objectives set out in subparagraph (i) referring to Article 2 of the proposal for a Regulation on the new taxonomy ([13]), but must also comply with subparagraphs (ii) and (iii) which concern the social and governance dimensions. These provisions have been designed so as to facilitate the reporting requirement that will apply to those market players who already integrate social and governance factors into their investment portfolios, and the EESC thinks that they should be drafted specifically so as to act as safeguards for the 'green taxonomy'.

4.2.3. The EESC is in favour of all participants posting their policies regarding the integration of financially material sustainability factors ([14]) alongside the financial risks in their range of products on the internet. However, this will only be of use if the information is as much as possible standardised and simultaneously updated by all participants in the investment chain.

4.2.4. Pre-contractual information is extremely important and should be clear, pertinent, objective and comparable. It is important to lay down the specific information to be provided in relation to each product family; the reference impact indicators and/or benchmarks — including the calculation method — also need to be clearly indicated.

4.2.5. Finally, the EESC supports the rules on informing end-investors about the impact of their investments. It also urges the competent European supervisory authority for each case to closely monitor whether information is provided frequently enough, is sufficiently up to date and is objective, ensuring consistency with the marketing strategies for each product.

4.3. *Proposed amendments to Directive (EU) 2016/2341*

4.3.1. The EESC supports all delegated acts to integrate ESG factors into the directives affecting institutional investors and asset managers being rooted in the 'prudent person' rule and therefore offering a safe and reliable framework for investment policies that balance competition conditions between participants and ensure a high level of consumer protection.

4.3.2. The Committee therefore endorses the revision of this Directive to bring it into line with the other directives and funds affected by this Regulation.

4.4. *Delegated acts (MiFID II and Insurance Distribution Directive)*

4.4.1. These relate to Action 4 of the Action Plan and aim to align with Action 7, in a stepwise process of regulatory consistency. The EESC endorses the planned amendments relating to previous delegated acts, in order to ensure that end-investors will be sufficiently queried about their sustainability preferences, which must in turn be clearly reflected in the advisor's recommendations.

4.5. Beyond supporting the first steps that the Commission is taking in the roadmap linked to the Action Plan for financing sustainable development, the EESC would like to make the following observations:

4.5.1. It is essential to draw on the experience and empirical evidence of financial market participants who already engage in securities banking, and the European Commission should therefore ensure that market practices contribute in an orderly and systematic way, as this is a key factor in making sure the new taxonomy is put together correctly.

4.5.2. As part of the new **'better regulation'** processes, there will need to be more interaction between the European Commission and the main stakeholders: in-person or virtual meetings, specialist workshops, new tools, etc. None of this must compromise the tasks that Commission delegated acts have assigned to the technical expert group on sustainable finance and other ad hoc groups, or the current consultation procedure, the scope of which remains limited.

4.5.3. In the effort to complete the **capital markets union**, it is crucial to stimulate the interaction of public and private resources, creating different channels to redirect capital flows and to combine various sources in order to generate **sustainable co-investment** (foundations, associations, donors, equity crowdfunding, etc.), applying the principle of non-discrimination, removing cross-border barriers and administrative obstacles according to Member State legislation, and harmonising tax treatment.

4.5.4. In the EESC's view, the costs of mainstreaming sustainability into asset management portfolios are affordable, even for smaller participants, which can easily offset these costs by generating more business thanks to a prestigious reputation.

([13]) COM(2018) 353 final.

([14]) A materiality framework analyses those factors that are most relevant to the companies' financial performance, comprising financially material sustainability factors.

4.5.5. Action 9 of the Plan (strengthening sustainability disclosure) should serve as a lever to make it easier for SMEs to provide high-quality information on sustainability and consequently increase their share of sustainable financing.

4.5.6. The main concern relates to **compliance** measures, which are generally very technocratic and onerous for entities that have fewer resources at their disposal. Supervisory authorities (in particular the ESMA and EIOPA) should only request relevant information, thus facilitating the communication of evidence and justification.

4.5.7. The EESC endorses the 12-month deadline for the regulation to enter into force, since in the case of packaged retail and insurance-based investment products ([15]), entry into force was possible in only six months.

4.5.8. Lastly, in light of the experience of the **'better regulation'** initiative, the EESC wonders whether a period of 60 months as a maximum timescale for reviewing the implementation of this Regulation might not be excessive.

Brussels, 17 October 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

([15]) Key information documents for packaged retail and insurance-based investment products.