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Subject:	Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

REGULATION (EU) 2020/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

(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 Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure[2],

[1] OJ C 62, 15.2.2019, p. 103.

[2] Position of the European Parliament of … (not yet published in the Official Journal) and position of the Council at first reading of … (not yet published in the Official Journal). Position of the European Parliament of … (not yet published in the Official Journal).

Whereas:

(1) Article 3(3) of the Treaty on European Union aims to establish an internal market that works for the sustainable development of Europe, based, among other things, on balanced economic growth and a high level of protection and the improvement of the quality of the environment.

(2) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development (the '2030 Agenda'). The 2030 Agenda has at its core the Sustainable Development Goals (SDGs) and covers the three dimensions of sustainability: economic, social and environmental. The Commission communication of 22 November 2016 on the next steps for a sustainable European future links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, both within the Union and globally, take the SDGs on board at the outset. In its conclusions of 20 June 2017 the Council confirmed the commitment of the Union and its Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner, in close cooperation with partners and other stakeholders. On 11 December 2019, the Commission published its communication on 'The European Green Deal'.

(3) The Paris Agreement adopted under the United Nations Framework Convention on Climate Change (the 'Paris Agreement') was approved by the Union on 5 October 2016[1]. Article 2(1)(c) of the Paris Agreement aims to strengthen the response to climate change by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, among other means. In that context, on 12 December 2019, the European Council adopted conclusions on climate change. In light thereof, this Regulation represents a key step towards the objective of achieving a climate-neutral Union by 2050.

(4) Sustainability and the transition to a safe, climate-neutral, climate-resilient, more resource-efficient and circular economy are crucial to ensuring the long-term competitiveness of the Union economy. Sustainability has long been central to the Union project, and the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) reflect its social and environmental dimensions.

(5) In December 2016, the Commission mandated a High-Level Expert Group to develop an overarching and comprehensive Union strategy on sustainable finance. The report of the High-Level Expert Group published on 31 January 2018 calls for the creation of a technically robust classification system at Union level to establish clarity on which activities qualify as 'green' or 'sustainable', starting with climate change mitigation.

[1] 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).

(6) In its communication of 8 March 2018, the Commission published its action plan on financing sustainable growth, launching an ambitious and comprehensive strategy on sustainable finance. One of the objectives set out in that action plan is to reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth. The establishment of a unified classification system for sustainable activities is the most important and urgent action envisaged by the action plan. The action plan recognises that the shift of capital flows towards more sustainable activities has to be underpinned by a shared, holistic understanding of the environmental sustainability of activities and investments. As a first step, clear guidance on activities that qualify as contributing to environmental objectives would help inform investors about the investments that fund environmentally sustainable economic activities. Further guidance on activities that contribute to other sustainability objectives, including social objectives, might be developed at a later stage.

(7) Given the systemic nature of global environmental challenges, there is a need for a systemic and forward-looking approach to environmental sustainability that addresses growing negative trends, such as climate change, the loss of biodiversity, the global overconsumption of resources, food scarcity, ozone depletion, ocean acidification, the deterioration of the fresh water system, and land system change as well as the appearance of new threats, such as hazardous chemicals and their combined effects.

(8) Decision No 1386/2013/EU of the European Parliament and of the Council[1] calls for an increase in private sector funding for environmental and climate-related expenditure, in particular by putting in place incentives and methodologies that stimulate companies to measure the environmental costs of their business and profits derived from using environmental services.

(9) Achieving the SDGs in the Union requires the channelling of capital flows towards sustainable investments. It is important to fully exploit the potential of the internal market to achieve those goals. In that context, it is crucial to remove obstacles to the efficient movement of capital into sustainable investments in the internal market and to prevent new obstacles from emerging.

(10) In view of the scale of the challenge and the costs associated with inaction or delayed action, the financial system should be gradually adapted in order to support the sustainable functioning of the economy. To that end, sustainable finance needs to become mainstream and consideration needs to be given to the sustainability impact of financial products and services.

[1] Decision No. 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354 28.12.2013, p. 171).

(11) Making available financial products which pursue environmentally sustainable objectives is an effective way of channelling private investments into sustainable activities. Requirements for marketing financial products or corporate bonds as environmentally sustainable investments, including requirements set by Member States and the Union to allow financial market participants and issuers to use national labels, aim to enhance investor confidence and awareness of the environmental impact of those financial products or corporate bonds, to create visibility and to address concerns about 'greenwashing'. In the context of this Regulation, greenwashing refers to the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met. Currently, a few Member States have labelling schemes in place. Those existing schemes build on different classification systems for environmentally sustainable economic activities. Given the political commitments under the Paris Agreement and at Union level, it is likely that more and more Member States will establish labelling schemes or impose other requirements on financial market participants or issuers in respect of promoting financial products or corporate bonds as environmentally sustainable. In such cases, Member States would use their own national classification systems for the purposes of determining which investments qualify as sustainable. If those national labelling schemes or requirements use different criteria to determine which economic activities qualify as environmentally sustainable, investors would be discouraged from investing across borders due to difficulties in comparing different investment opportunities. In addition, economic operators that wish to attract investment from across the Union would have to meet different criteria in different Member States in order for their activities to qualify as environmentally sustainable. The absence of uniform criteria would therefore increase costs and significantly disincentivise economic operators from accessing cross-border capital markets for the purposes of sustainable investment.

(12) The criteria for determining whether an economic activity qualifies as environmentally sustainable should be harmonised at Union level in order to remove barriers to the functioning of the internal market with regard to raising funds for sustainability projects, and to prevent the future emergence of barriers to such projects. With such harmonisation, economic operators would find it easier to raise funding across borders for their environmentally sustainable activities, as their economic activities could be compared against uniform criteria in order to be selected as underlying assets for environmentally sustainable investments. Such harmonisation would therefore facilitate cross-border sustainable investment in the Union.

(13) If financial market participants do not provide any explanation to investors about how the activities in which they invest contribute to environmental objectives, or if financial market participants use different concepts in their explanations of what an environmentally sustainable economic activity is, investors will find it disproportionately burdensome to check and compare different financial products. It has been found that such practices discourage investors from investing in environmentally sustainable financial products. Furthermore, a lack of investor confidence has a major detrimental impact on the market for sustainable investment. It has also been shown that national rules and market-based initiatives taken to tackle that issue within national borders lead to the fragmentation of the internal market. If financial market participants disclose how and to what extent the financial products that are made available as environmentally sustainable invest in activities that meet the criteria for environmentally sustainable economic activities under this Regulation, and if financial market participants use common criteria for such disclosures across the Union, that would help investors compare investment opportunities across borders and would incentivise investee companies to make their business models more environmentally sustainable. Additionally, investors would invest in environmentally sustainable financial products across the Union with higher confidence, thereby improving the functioning of the internal market.

(14) To address existing obstacles to the functioning of the internal market and to prevent the emergence of such obstacles in the future, Member States and the Union should be required to use a common concept of environmentally sustainable investment when introducing requirements at national and Union level regarding financial market participants or issuers for the purpose of labelling financial products or corporate bonds that are marketed as environmentally sustainable. To avoid market fragmentation and harm to the interests of consumers and investors as a result of diverging notions of environmentally sustainable economic activities, national requirements that financial market participants or issuers have to comply with in order to market financial products or corporate bonds as environmentally sustainable should build on the uniform criteria for environmentally sustainable economic activities. Such financial market participants and issuers include financial market participants that make available environmentally sustainable financial products and non-financial companies that issue environmentally sustainable corporate bonds.

(15) Establishing criteria for environmentally sustainable economic activities may encourage economic operators not covered by this Regulation, on a voluntary basis, to publish and disclose information on their websites regarding the environmentally sustainable economic activities they carry out. That information will not only help financial market participants and other relevant actors on the financial markets to easily identify which economic operators carry out environmentally sustainable economic activities, but will also make it easier for those economic operators to raise funding for their environmentally sustainable activities.

(16) A classification of environmentally sustainable economic activities at Union level should enable the development of future Union policies in support of sustainable finance, including Union-wide standards for environmentally sustainable financial products and the eventual establishment of labels that formally recognise compliance with those standards across the Union. It could also serve as the basis for other economic and regulatory measures. Uniform legal requirements for determining the degree of environmental sustainability of investments, based on uniform criteria for environmentally sustainable economic activities, are necessary as a reference for future Union law that aims to facilitate the shift of investment towards environmentally sustainable economic activities.

(17) In the context of achieving the SDGs in the Union, policy choices such as the creation of a European Fund for Strategic Investment, have been effective in contributing to the channelling of private investment towards sustainable investments alongside public spending. Regulation (EU) 2015/1017 of the European Parliament and of the Council[1] specifies a 40 % climate investment target for infrastructure and innovation projects under the European Fund for Strategic Investment. Common criteria for determining whether economic activities qualify as sustainable, including their impact on the environment, could underpin future similar initiatives of the Union to mobilise investment that pursues climate-related or other environmental objectives.

[1] Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) 1316/2013 - the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

(18) To avoid harming investor interests, fund managers and institutional investors that make available financial products should disclose how and to what extent they use the criteria for environmentally sustainable economic activities to determine the environmental sustainability of their investments. The information disclosed should enable investors to understand the proportion of the investments underlying the financial product in environmentally sustainable economic activities as a percentage of all investments underlying that financial product, thereby enabling investors to understand the degree of environmental sustainability of the investment. Where the investments underlying the financial product are in economic activities that contribute to an environmental objective, the information to be disclosed should specify the environmental objective or objectives to which the investment underlying the financial product contributes, as well as how and to what extent the investments underlying the financial product fund environmentally sustainable economic activities, and should include details on the respective proportions of enabling and transitional activities. The Commission should specify the information that needs to be disclosed in that regard. That information should enable national competent authorities to easily verify compliance with that disclosure obligation, and to enforce such compliance in accordance with applicable national law. Where financial market participants do not take the criteria for environmentally sustainable investments into account, they should provide a statement to that end. To avoid the circumvention of the disclosure obligation, that obligation should also apply where financial products are marketed as promoting environmental characteristics, including financial products that have as their objective environmental protection in a broad sense.

(19) The disclosure obligations laid down in this Regulation supplement the rules on sustainability-related disclosures laid down in Regulation (EU) 2019/2088 of the European Parliament and of the Council[1]. To enhance transparency and to provide an objective point of comparison by financial market participants to end investors on the proportion of investments that fund environmentally sustainable economic activities, this Regulation supplements the rules on transparency in pre-contractual disclosures and in periodic reports laid down in Regulation (EU) 2019/2088. The definition of 'sustainable investment' in Regulation (EU) 2019/2088 includes investments in economic activities that contribute to an environmental objective which, amongst others, should include investments into 'environmentally sustainable economic activities' within the meaning of this Regulation. Moreover, Regulation (EU) 2019/2088 only considers an investment to be a sustainable investment if it does not significantly harm any environmental or social objective as set out in that Regulation.

(20) To ensure the reliability, consistency and comparability of sustainability-related disclosures in the financial services sector, disclosures pursuant to this Regulation should use existing sustainability indicators to the extent feasible as proposed by the European Parliament in its resolution of 29 May 2018 on sustainable finance[2]. In that context, the technical screening criteria should, to the extent feasible, be based on the sustainability indicators referred to in Regulation (EU) 2019/2088.

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1 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

2 [Not yet published in the Official Journal].

(21) Regarding economic activities carried out by undertakings that are not required to disclose information under this Regulation, there could be exceptional cases where financial market participants cannot reasonably obtain the relevant information to reliably determine the alignment with the technical screening criteria established pursuant to this Regulation. In such exceptional cases and only for those economic activities for which complete, reliable and timely information could not be obtained, financial market participants should be allowed to make complementary assessments and estimates on the basis of information from other sources. Such assessments and estimates should only compensate for limited and specific parts of the desired data elements, and produce a prudent outcome. In order to ensure that the disclosure to investors is clear and not misleading, financial market participants should clearly explain the basis for their conclusions as well as the reasons for having to make such complementary assessments and estimates for the purposes of disclosure to end investors.

(22) In its communication of 20 June 2019 on 'Guidelines on non-financial reporting: Supplement on reporting climate-related information', the Commission recommends that certain large companies report on certain climate-related key performance indicators (KPIs) that are based on the framework established by this Regulation. In particular, information on the proportion of the turnover, capital expenditure (CapEx) or operating expenditure (OpEx) of such large non-financial companies that is associated with environmentally sustainable economic activities, as well as KPIs that are tailored for large financial companies, is useful to investors who are interested in companies whose products and services contribute substantially to any one of the environmental objectives set out in this Regulation. It is therefore appropriate to require the annual publication of such KPIs by such large companies and to further define that requirement in delegated acts, in particular with regard to large financial companies. While it would be disproportionately burdensome to extend such a requirement to smaller companies, smaller companies may voluntarily decide to publish such information.

(23) For the purpose of determining the environmental sustainability of a given economic activity, an exhaustive list of environmental objectives should be laid down. The six environmental objectives that this Regulation should cover are: climate change mitigation; climate change adaptation; the sustainable use and protection of water and marine resources; the transition to a circular economy; pollution prevention and control; and the protection and restoration of biodiversity and ecosystems.

(24) An economic activity that pursues the environmental objective of climate change mitigation should contribute substantially to the stabilisation of greenhouse gas emissions by avoiding or reducing them or by enhancing greenhouse gas removals. The economic activity should be consistent with the long-term temperature goal of the Paris Agreement. That environmental objective should be interpreted in accordance with relevant Union law, including Directive 2009/31/EC of the European Parliament and of the Council[1].

(25) An economic activity that pursues the environmental objective of climate change adaptation should contribute substantially to reducing or preventing the adverse impact of the current or expected future climate, or the risks of such adverse impact, whether on that activity itself or on people, nature or assets. That environmental objective should be interpreted in accordance with relevant Union law and the Sendai Framework for Disaster Risk Reduction 2015-2030.

[1] Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114).

(26) The environmental objective of the sustainable use and protection of water and marine resources should be interpreted in accordance with relevant Union law, including Regulation (EU) No 1380/2013 of the European Parliament and of the Council[1] and Directives 2000/60/EC[2], 2006/7/EC[3], 2006/118/EC[4], 2008/56/EC[5] and 2008/105/EC[6] of the European Parliament and of the Council, Council Directives 91/271/EEC[7], 91/676/EEC[8] and 98/83/EC[9] and Commission Decision (EU) 2017/848[10], and with the communications of the Commission of 18 July 2007 on 'Addressing the challenge of water scarcity and droughts in the European Union', of 14 November 2012 on 'A Blueprint to Safeguard Europe's Water Resources' and of 11 March 2019 on 'European Union Strategic Approach to Pharmaceuticals in the Environment'.

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1 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

2 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

3 Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC (OJ L 64, 4.3.2006, p. 37).

4 Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19).

5 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

6 Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84).

7 Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ L 135, 30.5.1991, p. 40).

8 Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1).

9 Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330, 5.12.1998, p. 32).

10 Commission Decision (EU) 2017/848 of 17 May 2017 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment, and repealing Decision 2010/477/EU (OJ L 125, 18.5.2017, p. 43).

(27) The environmental objective of the transition to a circular economy should be interpreted in accordance with relevant Union law in the areas of the circular economy, waste and chemicals, including Regulations (EC) No 1013/2006[1], (EC) No 1907/2006[2] and (EU) 2019/1021[3] of the European Parliament and of the Council and Directives 94/62/EC[4], 2000/53/EC[5], 2006/66/EC[6], 2008/98/EC[7], 2010/75/EU[8], 2011/65/EU[9], 2012/19/EU[10], (EU) 2019/883[11] and (EU) 2019/904[12] of the European Parliament and of the Council, Council Directive 1999/31/EC[13], Commission Regulation (EU) No 1357/2014[14] and Commission Decisions 2000/532/EC[15] and 2014/955/EU[16], and with the communications of the Commission of 2 December 2015 on 'Closing the loop - An EU action plan for the Circular Economy' and of 16 January 2018 on 'A European Strategy for Plastics in a Circular Economy'.

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1 Regulation (EC) No 1013/2006 of the European Parliament and of the council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

2 Regulation (EC) No 1907/2006 of the European Parliament and of the council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

3 Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

4 European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

5 Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ L 269, 21.10.2000, p. 34).

6 Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1).

7 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

8 Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

9 Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88).

10 Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p. 38).

11 Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on port reception facilities for the delivery of waste from ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC (OJ L 151, 7.6.2019, p. 116).

12 Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (OJ L 155, 12.6.2019, p. 1).

13 Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).

14 Commission Regulation (EU) No 1357/2014 of 18 December 2014 replacing Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives (OJ L 365, 19.12.2014, p. 89).

15 Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3).

16 Commission Decision 2014/955/EU of 18 December 2014 amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council (OJ L 370, 30.12.2014, p. 44).

(28) An economic activity can contribute substantially to the environmental objective of transitioning to a circular economy in several ways. It can, for example, increase the durability, reparability, upgradability and reusability of products, or can reduce the use of resources through the design and choice of materials, facilitating repurposing, disassembly and deconstruction in the buildings and construction sector, in particular to reduce the use of building materials and promote the reuse of building materials. It can also contribute substantially to the environmental objective of transitioning to a circular economy by developing 'product-as-a-service' business models and circular value chains, with the aim of keeping products, components and materials at their highest utility and value for as long as possible. Any reduction in the content of hazardous substances in materials and products throughout the life cycle, including by replacing them with safer alternatives, should, as a minimum, be in accordance with Union law. An economic activity can also contribute substantially to the environmental objective of transitioning to a circular economy by reducing food waste in the production, processing, manufacturing or distribution of food.

(29) The environmental objective of pollution prevention and control should be interpreted in accordance with relevant Union law, including Directives 2000/60/EC, 2004/35/EC[1], 2004/107/EC[2], 2006/118/EC, 2008/50/EC[3], 2008/105/EC, 2010/75/EU, (EU) 2016/802[4] and (EU) 2016/2284[5] of the European Parliament and of the Council.

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1 Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

2 Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3).

3 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1).

4 Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ L 132, 21.5.2016, p. 58).

5 Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ L 344, 17.12.2016, p. 1).

(30) The environmental objective of the protection and restoration of biodiversity and ecosystems should be interpreted in accordance with relevant Union law, including Regulations (EU) No 995/2010[1], (EU) No 511/2014[2] and (EU) No 1143/2014[3] of the European Parliament and of the Council, Directive 2009/147/EC of the European Parliament and of the Council[4], Council Regulation (EC) No 338/97[5], Council Directives 91/676/EEC and 92/43/EEC[6], and with the communications of the Commission of 21 May 2003 on 'Forest Law Enforcement, Governance and Trade (FLEGT)', of 3 May 2011 on 'Our life insurance, our natural capital: an EU biodiversity strategy to 2020', of 6 May 2013 on 'Green Infrastructure (GI) – Enhancing Europe's natural Capital', of 26 February 2016 on 'EU Action Plan against Wildlife Trafficking' and of 23 July 2019 on 'Stepping up EU Action to Protect and Restore the World's Forests'.

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1 Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295, 12.11.2010, p. 23).

2 Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union (OJ L 150, 20.5.2014, p. 59).

3 Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35).

4 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

5 Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1).

6 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

(31) An economic activity can contribute substantially to the environmental objective of the protection and restoration of biodiversity and ecosystems, in several ways, including by protecting, conserving or restoring biodiversity and ecosystems, and thereby enhancing ecosystem services. Such services are grouped into four categories, namely provisioning services, such as the provisioning of food and water; regulating services, such as the control of climate and disease; supporting services, such as nutrient cycles and oxygen production; and cultural services, such as providing spiritual and recreational benefits.

(32) For the purposes of this Regulation, the term ‘sustainable forest management’ should be construed by taking into account practices and uses of forests and forest land that contribute to enhancing biodiversity or to halting or preventing the degradation of ecosystems, deforestation and habitat loss, by taking into account the stewardship and use of forests and forest land in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems, as set out in Resolution H1 of the Second Ministerial Conference on the Protection of Forests in Europe of 16-17 June 1993 in Helsinki on General Guidelines for the Sustainable Management of Forests in Europe as well as by taking into account Regulations (EU) No 995/2010 and (EU) 2018/841[1] of the European Parliament and of the Council and Directive (EU) 2018/2001[2] of the European Parliament and of the Council and the communication of the Commission of 20 September 2013 on ‘A new EU Forest Strategy: for forests and the forest-based sector’.

[1] Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ L 156, 19.6.2018, p. 1).

[2] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

(33) For the purposes of this Regulation, the term 'energy efficiency' is used in a broad sense and should be construed by taking into account relevant Union law, including Regulation (EU) 2017/1369 of the European Parliament and of the Council[1] and Directives 2012/27/EU[2] and (EU) 2018/844[3] of the European Parliament and of the Council, as well as the implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council[4].

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1 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

2 Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC(OJ L 315, 14.11.2012, p. 1).

3 Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency (OJ L 156, 19.6.2018, p. 75).

4 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10).

(34) For each environmental objective, uniform criteria for determining whether economic activities contribute substantially to that objective should be laid down. One element of the uniform criteria should be to avoid significant harm to any of the environmental objectives set out in this Regulation. This is in order to avoid that investments qualify as environmentally sustainable in cases where the economic activities benefitting from those investments cause harm to the environment to an extent that outweighs their contribution to an environmental objective. Such criteria should take into account the life cycle of the products and services provided by that economic activity in addition to the environmental impact of the economic activity itself, including taking into account evidence from existing life-cycle assessments, in particular by considering their production, use and end of life.

(35) Recalling the joint commitment of the European Parliament, the Council and the Commission to pursuing the principles enshrined in the European Pillar of Social Rights in support of sustainable and inclusive growth, and recognising the relevance of international minimum human and labour rights and standards, compliance with minimum safeguards should be a condition for economic activities to qualify as environmentally sustainable. For that reason, economic activities should only qualify as environmentally sustainable where they are carried out in alignment with the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights, including the declaration on Fundamental Principles and Rights at Work of the International Labour Organisation (ILO), the eight fundamental conventions of the ILO and the International Bill of Human Rights. The fundamental conventions of the ILO define human and labour rights that undertakings should respect. Several of those international standards are enshrined the Charter of Fundamental Rights of the European Union, in particular the prohibition of slavery and forced labour and the principle of non-discrimination. Those minimum safeguards are without prejudice to the application of more stringent requirements related to the environment, health, safety and social sustainability set out in Union law, where applicable. When complying with those minimum safeguards, undertakings should adhere to the principle of 'do no significant harm' referred to in Regulation (EU) 2019/2088, and take into account the regulatory technical standards adopted pursuant to that Regulation that further specify that principle.

(36) In order to ensure consistency between this Regulation and Regulation (EU) 2019/2088, this Regulation should amend Regulation (EU) 2019/2088 to mandate the European Supervisory Authorities established by Regulations (EU) No 1093/2010[1], (EU) No 1094/2010[2] and (EU) No 1095/2010[3] of the European Parliament and of the Council (collectively, the 'ESAs') to jointly develop regulatory technical standards to further specify the details of the content and presentation of the information in relation to the principle of 'do no significant harm'. Those regulatory technical standards should be consistent with the content, methodologies, and presentation of the sustainability indicators in relation to adverse impacts as referred to in Regulation (EU) 2019/2088. They should also be consistent with the principles enshrined in the European Pillar of Social Rights, the OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights, including the ILO Declaration on Fundamental Principles and Rights at Work, the eight fundamental conventions of the ILO and the International Bill of Human Rights.

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1 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).

2 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).

3 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).

(37) Regulation (EU) 2019/2088 should further be amended to mandate the ESAs to develop, through the Joint Committee, draft regulatory technical standards to supplement the rules on transparency of the promotion of environmental characteristics and of environmentally sustainable investments in pre-contractual disclosures and in periodic reports.

(38) Given the specific technical details needed to assess the environmental impact of an economic activity and the fast-changing nature of both science and technology, the criteria for environmentally sustainable economic activities should be adapted regularly to reflect such changes. For the criteria to be up to date, based on scientific evidence and input from experts as well as relevant stakeholders, the conditions for 'substantial contribution' and 'significant harm' should be specified with more granularity for different economic activities and should be updated regularly. For that purpose, granular and calibrated technical screening criteria for the different economic activities should be established by the Commission on the basis of technical input from a multi-stakeholder platform on sustainable finance.

(39) Some economic activities have a negative impact on the environment, and reducing such negative impact can make a substantial contribution to one or more environmental objectives. For those economic activities, it is appropriate to establish technical screening criteria that require a substantial improvement in environmental performance compared with, inter alia, the industry average, but at the same time avoid environmentally harmful lock-in effects, including carbon-intensive lock-in effects, during the economic lifetime of the funded economic activity. Those criteria should also consider the long-term impact of a specific economic activity.

(40) An economic activity should not qualify as environmentally sustainable if it causes more harm to the environment than the benefits it brings. The technical screening criteria should identify the minimum requirements necessary to avoid significant harm to other objectives, including by building on any minimum requirements laid down pursuant to Union law. When establishing and updating the technical screening criteria, the Commission should ensure that those criteria are based on available scientific evidence, are developed by taking into account life-cycle considerations, including existing life-cycle assessments, and are updated regularly. Where scientific evaluation does not allow for a risk to be determined with sufficient certainty, the precautionary principle should apply in accordance with Article 191 TFEU.

(41) In establishing and updating the technical screening criteria for the environmental objective of climate change mitigation, the Commission should take into account and provide incentives for the ongoing and necessary transition towards a climate-neutral economy in accordance with Article 10(2) of this Regulation. In addition to the use of climate-neutral energy and more investments in already low-carbon economic activities and sectors, the transition requires substantial reductions in greenhouse gas emissions in other economic activities and sectors for which there are no technologically and economically feasible low-carbon alternatives. Those transitional economic activities should qualify as contributing substantially to climate change mitigation if their greenhouse gas emissions are substantially lower than the sector or industry average, they do not hamper the development and deployment of low-carbon alternatives and they do not lead to a lock-in of assets incompatible with the objective of climate-neutrality, considering the economic lifetime of those assets. The technical screening criteria for such transitional economic activities should ensure that those transitional activities have a credible path towards climate-neutrality, and should be adjusted accordingly at regular intervals.

(42) An economic activity should qualify as contributing substantially to one or more of the environmental objectives set out in this Regulation where it directly enables other activities to make a substantial contribution to one or more of those objectives. Such enabling activities should not lead to a lock-in of assets that undermine long-term environmental goals, considering the economic lifetime of those assets, and should have a substantial positive environmental impact, on the basis of life-cycle considerations.

(43) When establishing and updating the technical screening criteria the Commission should take into account relevant Union law, including Regulations (EC) No 1221/2009[1] and (EC) 66/2010[2] of the European Parliament and of the Council, as well as Commission Recommendation 2013/179/EU[3] and the communication of the Commission of 16 July 2018 on 'Public procurement for a better environment'. To avoid unnecessary inconsistencies with classifications of economic activities that already exist for other purposes, the Commission should also take into account the statistical classifications relating to the environmental goods and services sector, namely the classification of environmental protection activities (CEPA) and the classification of resource management activities (CReMA) of Regulation (EU) No 538/2014 of the European Parliament and of the Council[4]. When establishing and updating the technical screening criteria, the Commission should take into account existing environmental indicators and reporting frameworks, developed by, amongst others, the Commission and the European Environment Agency, and existing international standards, such as those developed by, amongst others, the OECD.

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1 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

2 Regulation (EC) 66/2010 of the European Parliament and the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

3 Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

4 Regulation (EU) No 538/2014 of the European Parliament and of the Council of 16 April 2014 amending Regulation (EU) No 691/2011 on European environmental economic accounts (OJ L 158, 27.5.2014, p. 113).

(44) When establishing and updating the technical screening criteria, the Commission should also take into account the specificities of the infrastructure sector and should take into account environmental, social and economic externalities within a cost-benefit analysis. In that regard, the Commission should take into account relevant Union law, including Directives 2001/42/EC[1], 2011/92/EU[2], 2014/23/EU[3], 2014/24/EU[4] and 2014/25/EU[5] of the European Parliament and of the Council, standards and current methodology, as well as the work of international organisations, such as the OECD. In that context, the technical screening criteria should promote appropriate governance frameworks integrating environmental, social and governance factors as referred to in the United Nations-supported Principles for Responsible Investment at all stages of a project's life cycle.

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1 Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

2 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).

3 Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

4 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

5 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

(45) The technical screening criteria should ensure that relevant economic activities within a specific sector can qualify as environmentally sustainable and are treated equally if they contribute equally to one or more of the environmental objectives laid down in this Regulation. The potential capacity to contribute to those environmental objectives can vary across sectors, which should be reflected in those criteria. However, within each sector, those criteria should not unfairly disadvantage certain economic activities over others if the former contribute to the environmental objectives to the same extent as the latter.

(46) When establishing and updating technical screening criteria for environmentally sustainable activities, the Commission should assess whether the establishment of those criteria would give rise to stranded assets or would result in inconsistent incentives, or would have any other adverse impact on financial markets.

(47) To avoid overly burdensome compliance costs on economic operators, the Commission should establish technical screening criteria that provide for sufficient legal clarity, that are practicable and easy to apply, and for which compliance can be verified within reasonable cost-of-compliance boundaries, thereby avoiding unnecessary administrative burden. Technical screening criteria could require carrying out a life-cycle assessment where sufficiently practicable and where necessary.

(48) To ensure that investments are channelled towards economic activities that make the greatest positive impact on the environmental objectives, the Commission should give priority to the establishment of technical screening criteria for the economic activities that potentially contribute most to the environmental objectives.

(49) Appropriate technical screening criteria should be established for the transport sector, including for mobile assets. Those screening criteria should take into account the fact that the transport sector, including international shipping, contributes close to 26 % of total greenhouse gas emissions in the Union. As stated in the Action Plan on Financing Sustainable Growth the transport sector represents about 30 % of the additional annual investment needed for sustainable development in the Union, for example to increase electrification or to support the transition to cleaner modes of transport by promoting modal shift and better traffic management.

(50) When developing the technical screening criteria, it is of particular importance that the Commission carry out appropriate consultations in line with the Better Regulation Agenda. The process for the establishment and update of the technical screening criteria should involve relevant stakeholders and should build on the advice of experts who have proven knowledge and experience in the relevant areas. For that purpose, the Commission should set up a Platform on Sustainable Finance (the 'Platform'). The Platform should be composed of experts representing both the public and private sectors. Public-sector experts should include representatives of the European Environmental Agency, the ESAs, the European Investment Bank and the European Union Agency for Fundamental Rights. Private sector experts should include representatives of financial and non-financial market participants and business sectors, representing relevant industries, and persons with accounting and reporting expertise. The Platform should also include experts representing civil society, including experts in the field of environmental, social, labour and governance issues. Financial market participants should be encouraged to inform the Commission if they consider that an economic activity that does not meet the technical screening criteria, or for which such criteria have not yet been established, should qualify as environmentally sustainable, in order to help the Commission in evaluating the appropriateness of complementing or updating the technical screening criteria.

(51) The Platform should be constituted in accordance with the applicable horizontal rules on the creation and operation of Commission expert groups, including with regard to the selection process. The selection process should aim to ensure a high level of expertise, geographical and gender balance, as well as a balanced representation of relevant know-how, taking into account the specific tasks of the Platform. During the selection process, the Commission should perform an assessment in accordance with those horizontal rules to determine whether potential conflicts of interest exist and should take appropriate measures to resolve any such conflicts.

(52) The Platform should advise the Commission on the development, analysis and review of technical screening criteria, including the potential impact of such criteria on the valuation of assets that qualify as environmentally sustainable assets under existing market practices. The Platform should also advise the Commission on whether the technical screening criteria are suitable for use in future Union policy initiatives aimed at facilitating sustainable investment and on the possible role of sustainability accounting and reporting standards in supporting the application of the technical screening criteria. The Platform should advise the Commission on developing further measures to improve data availability and quality, taking into account the objective of avoiding undue administrative burden, on addressing other sustainability objectives, including social objectives, and on the functioning of minimum safeguards and the possible need to supplement them.

(53) The Commission should continue the existing Member State Expert Group on Sustainable Finance and provide it with a formal status. The tasks of that expert group will, inter alia, consist of advising the Commission on the appropriateness of the technical screening criteria and the approach taken by the Platform with regard to developing those criteria. For that purpose, the Commission should keep the Member States informed through regular meetings of the Member State Expert Group on Sustainable Finance.

(54) In order to specify the requirements set out in this Regulation, and in particular to establish and update for different economic activities granular and calibrated technical screening criteria for what constitutes 'substantial contribution' and 'significant harm' to the environmental objectives, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the information required to comply with the disclosure obligations pursuant to this Regulation, and in respect of the technical screening criteria. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, such as through the Platform and the Member State Expert Group on Sustainable Finance, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[1]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

[1] OJ L 123, 12.5.2016, p. 1.

(55) This Regulation supplements the disclosure requirements laid down in Regulation (EU) 2019/2088. To ensure the orderly and effective monitoring of compliance by financial market participants with this Regulation, Member States should rely on the competent authorities designated in accordance with Regulation (EU) 2019/2088. To enforce compliance, Member States should in addition lay down rules on measures and penalties, which should be effective, proportionate and dissuasive. National competent authorities and the ESAs should exercise the product intervention powers laid down in Regulations (EU) No 600/2014[1], (EU) No 1286/2014[2] and (EU) 2019/1238[3] of the European Parliament and of the Council also with respect to mis-selling practices or misleading disclosures of sustainability-related information, including the information required under this Regulation.

(56) In order to ensure the efficient and sustainable organisation of the work and meeting practices of both the Platform and the Member State Expert Group on Sustainable Finance, and in order to enable broad participation and efficient interaction within the groups, their subgroups, the Commission and stakeholders, the increased use of digital, including virtual, technologies should be considered, where appropriate.

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1 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

2 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).

3 Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1).

(57) To give sufficient time to the relevant actors to familiarise themselves with the criteria for qualification as environmentally sustainable economic activities set out in this Regulation and to prepare for their application, the obligations set out in this Regulation should become applicable, for each environmental objective, twelve months after the relevant technical screening criteria have been established.

(58) The provision in this Regulation referring to certificate-based tax incentive schemes that exist prior to the entry into force of this Regulation is without prejudice to the respective competences of the Union and the Member States with respect to tax provisions, as set out by the Treaties.

(59) The application of this Regulation should be reviewed regularly in order to assess, inter alia: the progress with regard to the development of technical screening criteria for environmentally sustainable economic activities; the possible need to revise and complement those criteria for determining whether an economic activity qualifies as environmentally sustainable; the effectiveness of the classification system for environmentally sustainable economic activities in channelling private investment into such activities and in particular as regards the flow of capital into private enterprises and other legal entities; and the further development of that classification system, including by expanding its scope beyond environmentally sustainable economic activities, in order to cover activities that significantly harm the environment, as well as other sustainability objectives, including social objectives.

(60) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can rather, by reason of the need to introduce at Union level uniform criteria for environmentally sustainable economic activities, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on 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:

Chapter I

Subject matter, scope and definitions

Article 1

Subject matter and scope

1. This Regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable.

2. This Regulation applies to:

   (a) measures adopted by Member States or by the Union that set out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable;

   (b) financial market participants that make available financial products;

   (c) undertakings which are subject to the obligation to publish a non-financial statement or a consolidated non-financial statement pursuant to Article 19a or Article 29a of Directive 2013/34/EU of the European Parliament and of the Council[1], respectively.

[1] 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).

Article 2

Definitions

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

(1) ‘environmentally sustainable investment’ means an investment in one or several economic activities that qualify as environmentally sustainable under this Regulation;

(2) ‘financial market participant’ means a financial market participant as defined in point (1) of Article 2 of Regulation (EU) 2019/2088 and includes a manufacturer of a pension product to which a Member State has decided to apply that Regulation in accordance with Article 16 of that Regulation;

(3) ‘financial product’ means a financial product as defined in point (12) of Article 2 of Regulation (EU) 2019/2088;

(4) ‘issuer’ means an issuer as defined in point (h) of Article 2 of Regulation (EU) 2017/1129 of the European Parliament and of the Council[1];

(5) ‘climate change mitigation’ means the process of holding the increase in the global average temperature to well below 2 °C and pursuing efforts to limit it to 1,5 °C above pre-industrial levels, as laid down in the Paris Agreement;

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

(6) ‘climate change adaptation’ means the process of adjustment to actual and expected climate change and its impacts;

(7) ‘greenhouse gas’ means a greenhouse gas listed in Annex I to Regulation (EU) No 525/2013 of the European Parliament and of the Council[1];

(8) ‘waste hierarchy’ means the waste hierarchy as laid down in Article 4 of Directive 2008/98/EC;

(9) ‘circular economy’ means an economic system whereby the value of products, materials and other resources in the economy is maintained for as long as possible, enhancing their efficient use in production and consumption, thereby reducing the environmental impact of their use, minimising waste and the release of hazardous substances at all stages of their life cycle, including through the application of the waste hierarchy;

(10) ‘pollutant’ means a substance, vibration, heat, noise, light or other contaminant present in air, water or land which may be harmful to human health or the environment, which may result in damage to material property, or which may impair or interfere with amenities and other legitimate uses of the environment;

[1] Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

(11) ‘soil’ means the top layer of the Earth’s crust situated between the bedrock and the surface, which is composed of mineral particles, organic matter, water, air and living organisms;

(12) ‘pollution’ means:

(a) the direct or indirect introduction of pollutants into air, water or land as a result of human activity;

(b) in the context of the marine environment, pollution as defined in point 8 of Article 3 of Directive 2008/56/EC;

(c) in the context of the water environment, pollution as defined in point 33 of Article 2 of Directive 2000/60/EC;

(13) ‘ecosystem’ means a dynamic complex of plant, animal, and micro-organism communities and their non-living environment interacting as a functional unit;

(14) ‘ecosystem services’ means the direct and indirect contributions of ecosystems to the economic, social, cultural and other benefits that people derive from those ecosystems;

(15) ‘biodiversity’ means the variability among living organisms arising from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and includes diversity within species, between species and of ecosystems;

(16) ‘good condition’ means, in relation to an ecosystem, that the ecosystem is in good physical, chemical and biological condition or of a good physical, chemical and biological quality with self-reproduction or self-restoration capability, in which species composition, ecosystem structure and ecological functions are not impaired;

(17) 'energy efficiency' means the more efficient use of energy at all the stages of the energy chain from production to final consumption;

(18) ‘marine waters’ means marine waters as defined in point 1 of Article 3 of Directive 2008/56/EC;

(19) ‘surface water’ means surface water as defined in point 1 of Article 2 of Directive 2000/60/EC;

(20) ‘groundwater’ means groundwater as defined in point 2 of Article 2 of Directive 2000/60/EC;

(21) ‘good environmental status’ means good environmental status as defined in point 5 of Article 3 of Directive 2008/56/EC;

(22) ‘good status’ means:

(a) for surface water, having both ‘good ecological status’ as defined in point 22 of Article 2 of Directive 2000/60/EC and ‘good surface water chemical status’ as defined in point 24 of Article 2 of that Directive;

(b) for groundwater, having both ‘good groundwater chemical status’ as defined in point 25 of Article 2 of Directive 2000/60/EC and ‘good quantitative status’ as defined in point 28 of Article 2 of that Directive;

(23) ‘good ecological potential’ means good ecological potential as defined in point 23 of Article 2 of Directive 2000/60/EC.

Chapter II

Environmentally sustainable economic activities

Article 3

Criteria for environmentally sustainable economic activities

For the purposes of establishing the degree to which an investment is environmentally sustainable, an economic activity shall qualify as environmentally sustainable where that economic activity:

(a) contributes substantially to one or more of the environmental objectives set out in Article 9 in accordance with Articles 10 to 16;

(b) does not significantly harm any of the environmental objectives set out in Article 9 in accordance with Article 17;

(c) is carried out in compliance with the minimum safeguards laid down in Article 18; and

(d) complies with technical screening criteria that have been established by the Commission in accordance with Article 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2).

Article 4

Use of the criteria for environmentally sustainable economic activities in public measures, in standards and in labels

Member States and the Union shall apply the criteria set out in Article 3 to determine whether an economic activity qualifies as environmentally sustainable for the purposes of any measure setting out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable.

Article 5

Transparency of environmentally sustainable investments in pre-contractual disclosures and in periodic reports

Where a financial product as referred to in Article 9(1), (2) or (3) of Regulation (EU) 2019/2088 invests in an economic activity that contributes to an environmental objective within the meaning of point (17) of Article 2 of that Regulation, the information to be disclosed in accordance with Articles 6(3) and 11(2) of that Regulation shall include the following:

(a) the information on the environmental objective or environmental objectives set out in Article 9 of this Regulation to which the investment underlying the financial product contributes; and

(b) a description of how and to what extent the investments underlying the financial product are in economic activities that qualify as environmentally sustainable under Article 3 of this Regulation.

The description referred to in point (b) of the first subparagraph of this Article shall specify the proportion of investments in environmentally sustainable economic activities selected for the financial product, including details on the proportions of enabling and transitional activities referred to in Article 16 and Article 10(2), respectively, as a percentage of all investments selected for the financial product.

Article 6

Transparency of financial products that promote environmental characteristics in pre-contractual disclosures and in periodic reports

Where a financial product as referred to in Article 8(1) of Regulation (EU) 2019/2088 promotes environmental characteristics, Article 5 of this Regulation shall apply *mutatis mutandis*.

The information to be disclosed in accordance with Articles 6(3) and 11(2) of Regulation (EU) 2019/2088 shall be accompanied by the following statement:

'The "do no significant harm" principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities.

The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.'.

Article 7

Transparency of other financial products

in pre-contractual disclosures and in periodic reports

Where a financial product is not subject to Article 8(1) or to Article 9(1), (2) or (3) of Regulation (EU) 2019/2088, the information to be disclosed in accordance with the provisions of sectoral legislation referred to in Articles 6(3) and 11(2) of that Regulation shall be accompanied by the following statement:

'The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities.'.

Article 8

Transparency of undertakings in non-financial statements

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

2. In particular, non-financial undertakings shall disclose the following:

   (a) the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9; and

(b) the proportion of their capital expenditure and the proportion of their operating expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9.

3. If an undertaking publishes non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU in a separate report in accordance with Article 19a(4) or Article 29a(4) of that Directive, the information referred to in paragraphs 1 and 2 of this Article shall be published in that separate report.

4. The Commission shall adopt a delegated act in accordance with Article 23 to supplement paragraphs 1 and 2 of this Article to specify the content and presentation of the information to be disclosed pursuant to those paragraphs, including the methodology to be used in order to comply with them, taking into account the specificities of both financial and non-financial undertakings and the technical screening criteria established pursuant to this Regulation. The Commission shall adopt that delegated act by 1 June 2021.

Article 9

Environmental objectives

For the purposes of this Regulation, the following shall be environmental objectives:

(a) climate change mitigation;

(b) climate change adaptation;

(c) the sustainable use and protection of water and marine resources;

(d) the transition to a circular economy;

(e) pollution prevention and control;

(f) the protection and restoration of biodiversity and ecosystems.

Article 10

Substantial contribution to climate change mitigation

1. An economic activity shall qualify as contributing substantially to climate change mitigation where that activity contributes substantially to the stabilisation of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system consistent with the long-term temperature goal of the Paris Agreement through the avoidance or reduction of greenhouse gas emissions or the increase of greenhouse gas removals, including through process innovations or product innovations, by:

   (a) generating, transmitting, storing, distributing or using renewable energy in line with Directive (EU) 2018/2001, including through using innovative technology with a potential for significant future savings or through necessary reinforcement or extension of the grid;

   (b) improving energy efficiency, except for power generation activities as referred to in Article 19(3);

   (c) increasing clean or climate-neutral mobility;

   (d) switching to the use of sustainably sourced renewable materials;

   (e) increasing the use of environmentally safe carbon capture and utilisation (CCU) and carbon capture and storage (CCS) technologies that deliver a net reduction in greenhouse gas emissions;

(f) strengthening land carbon sinks, including through avoiding deforestation and forest degradation, restoration of forests, sustainable management and restoration of croplands, grasslands and wetlands, afforestation, and regenerative agriculture;

(g) establishing energy infrastructure required for enabling the decarbonisation of energy systems;

(h) producing clean and efficient fuels from renewable or carbon-neutral sources; or

(i) enabling any of the activities listed in points (a) to (h) of this paragraph in accordance with Article 16.

2. For the purposes of paragraph 1, an economic activity for which there is no technologically and economically feasible low-carbon alternative shall qualify as contributing substantially to climate change mitigation where it supports the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1,5 ° C above pre-industrial levels, including by phasing out greenhouse gas emissions, in particular emissions from solid fossil fuels, and where that activity:

(a) has greenhouse gas emission levels that correspond to the best performance in the sector or industry;

(b) does not hamper the development and deployment of low-carbon alternatives; and

(c) does not lead to a lock-in of carbon-intensive assets, considering the economic lifetime of those assets.

For the purpose of this paragraph and the establishment of technical screening criteria pursuant to Article 19, the Commission shall assess the potential contribution and feasibility of all relevant existing technologies.

3. The Commission shall adopt a delegated act in accordance with Article 23 to:

(a) supplement paragraphs 1 and 2 of this Article by establishing technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation; and

(b) supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which technical screening criteria have been established pursuant to point (a) of this paragraph causes significant harm to one or more of those objectives.

4. Prior to adopting the delegated act referred to in paragraph 3 of this Article, the Commission shall consult the Platform referred to in Article 20 regarding the technical screening criteria referred to in paragraph 3 of this Article.

5. The Commission shall establish the technical screening criteria referred to in paragraph 3 of this Article in one delegated act, taking into account the requirements of Article 19.

6. The Commission shall adopt the delegated act referred to in paragraph 3 by 31 December 2020, with a view to ensuring its application from 1 January 2022.

Article 11

Substantial contribution to climate change adaptation

1. An economic activity shall qualify as contributing substantially to climate change adaptation where that activity:

   (a) includes adaptation solutions that either substantially reduce the risk of the adverse impact of the current climate and the expected future climate on that economic activity or substantially reduce that adverse impact, without increasing the risk of an adverse impact on people, nature or assets; or

   (b) provides adaptation solutions that, in addition to satisfying the conditions set out in Article 16, contribute substantially to preventing or reducing the risk of the adverse impact of the current climate and the expected future climate on people, nature or assets, without increasing the risk of an adverse impact on other people, nature or assets.

2. The adaptation solutions referred to in point (a) of paragraph 1 shall be assessed and ranked in order of priority using the best available climate projections and shall, at a minimum, prevent or reduce:

   (a) the location-specific and context-specific adverse impact of climate change on the economic activity; or

   (b) the potential adverse impact of climate change on the environment within which the economic activity takes place.

3. The Commission shall adopt a delegated act in accordance with Article 23 to:

(a) supplement paragraphs 1 and 2 of this Article by establishing technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change adaptation; and

(b) supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which technical screening criteria have been established pursuant to point (a) of this paragraph causes significant harm to one or more of those objectives.

4. Prior to adopting the delegated act referred to in paragraph 3 of this Article, the Commission shall consult the Platform referred to in Article 20 regarding the technical screening criteria referred to in paragraph 3 of this Article.

5. The Commission shall establish the technical screening criteria referred to in paragraph 3 of this Article in one delegated act, taking into account the requirements of Article 19.

6. The Commission shall adopt the delegated act referred to in paragraph 3 by 31 December 2020, with a view to ensuring its application from 1 January 2022.

Article 12

Substantial contribution to the sustainable use and protection of water and marine resources

1. An economic activity shall qualify as contributing substantially to the sustainable use and protection of water and marine resources where that activity either contributes substantially to achieving the good status of bodies of water, including bodies of surface water and groundwater or to preventing the deterioration of bodies of water that already have good status, or contributes substantially to achieving the good environmental status of marine waters or to preventing the deterioration of marine waters that are already in good environmental status, by:

   (a) protecting the environment from the adverse effects of urban and industrial waste water discharges, including from contaminants of emerging concern such as pharmaceuticals and microplastics, for example by ensuring the adequate collection, treatment and discharge of urban and industrial waste waters;

   (b) protecting human health from the adverse impact of any contamination of water intended for human consumption by ensuring that it is free from any micro-organisms, parasites and substances that constitute a potential danger to human health as well as increasing people's access to clean drinking water;

(c) improving water management and efficiency, including by protecting and enhancing the status of aquatic ecosystems, by promoting the sustainable use of water through the long-term protection of available water resources, inter alia through measures such as water reuse, by ensuring the progressive reduction of pollutant emissions into surface water and groundwater, by contributing to mitigating the effects of floods and droughts, or through any other activity that protects or improves the qualitative and quantitative status of water bodies;

(d) ensuring the sustainable use of marine ecosystem services or contributing to the good environmental status of marine waters, including by protecting, preserving or restoring the marine environment and by preventing or reducing inputs in the marine environment; or

(e) enabling any of the activities listed in points (a) to (d) of this paragraph in accordance with Article 16.

2. The Commission shall adopt a delegated act in accordance with Article 23 to:

(a) supplement paragraph 1 of this Article by establishing technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to sustainable use and protection of water and marine resources; and

(b) supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria, for determining whether an economic activity in respect of which technical screening criteria have been established pursuant to point (a) of this paragraph causes significant harm to one or more of those objectives.

3. Prior to adopting the delegated act referred to in paragraph 2 of this Article, the Commission shall consult the Platform referred to in Article 20 regarding the technical screening criteria referred to in paragraph 2 of this Article.

4. The Commission shall establish the technical screening criteria referred to in paragraph 2 of this Article in one delegated act, taking into account the requirements of Article 19.

5. The Commission shall adopt the delegated act referred to in paragraph 2 by 31 December 2021, with a view to ensuring its application from 1 January 2023.

Article 13

Substantial contribution to the transition to a circular economy

1. An economic activity shall qualify as contributing substantially to the transition to a circular economy, including waste prevention, re-use and recycling, where that activity:

(a) uses natural resources, including sustainably sourced bio-based and other raw materials, in production more efficiently, including by:

(i) reducing the use of primary raw materials or increasing the use of by-products and secondary raw materials, or

(ii) resource and energy efficiency measures;

(b) increases the durability, reparability, upgradability or reusability of products, in particular in designing and manufacturing activities;

(c) increases the recyclability of products, including the recyclability of individual materials contained in those products, inter alia by substitution or reduced use of products and materials that are not recyclable, in particular in designing and manufacturing activities;

(d) substantially reduces the content of hazardous substances and substitutes substances of very high concern in materials and products throughout their life cycle, in line with the objectives set out in Union law, including by replacing such substances with safer alternatives and ensuring traceability;

(e) prolongs the use of products, including through reuse, design for longevity, repurposing, disassembly, remanufacturing, upgrades and repair, and sharing products;

(f) increases the use of secondary raw materials and their quality, including by high-quality recycling of waste;

(g) prevents or reduces waste generation, including the generation of waste from the extraction of minerals and waste from the construction and demolition of buildings;

(h) increases preparing for the re-use and recycling of waste;

(i) increases the development of the waste management infrastructure needed for prevention, for preparing for re-use and for recycling, while ensuring that the recovered materials are recycled as high-quality secondary raw material input in production, thereby avoiding downcycling;

(j) minimises the incineration of waste and avoids the disposal of waste, including landfilling, in accordance with the principles of the waste hierarchy;

(k) avoids and reduces litter; or

(l) enables any of the activities listed in points (a) to (k) of this paragraph in accordance with Article 16.

2. The Commission shall adopt a delegated act in accordance with Article 23 to:

(a) supplement paragraph 1 of this Article by establishing technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to the transition to a circular economy; and

(b) supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which technical screening criteria have established pursuant to point (a) of this paragraph causes significant harm to one or more of those objectives.

3. Prior to adopting the delegated act referred to in paragraph 2 of this Article, the Commission shall consult the Platform referred to in Article 20 regarding the technical screening criteria referred to in paragraph 2 of this Article.

4. The Commission shall establish the technical screening criteria referred to in paragraph 2 of this Article in one delegated act, taking into account the requirements of Article 19.

5. The Commission shall adopt the delegated act referred to in paragraph 2 by 31 December 2021, with a view to ensuring its application from 1 January 2023.

Article 14

Substantial contribution to pollution prevention and control

1. An economic activity shall qualify as contributing substantially to pollution prevention and control where that activity contributes substantially to environmental protection from pollution by:

(a) preventing or, where that is not practicable, reducing pollutant emissions into air, water or land, other than greenhouse gasses;

(b) improving levels of air, water or soil quality in the areas in which the economic activity takes place whilst minimising any adverse impact on, human health and the environment or the risk thereof;

(c) preventing or minimising any adverse impact on human health and the environment of the production, use or disposal of chemicals;

(d) cleaning-up litter and other pollution; or

(e) enabling any of the activities listed in points (a) to (d) of this paragraph in accordance with Article 16.

2. The Commission shall adopt a delegated act in accordance with Article 23 to:

(a) supplement paragraph 1 of this Article by establishing technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to pollution prevention and control; and

(b) supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which technical screening criteria have been established pursuant to point (a) of this paragraph causes significant harm to one or more of those objectives.

3. Prior to adopting the delegated act referred to in paragraph 2 of this Article, the Commission shall consult the Platform referred to in Article 20 regarding the technical screening criteria referred to in paragraph 2 of this Article.

4. The Commission shall establish the technical screening criteria referred to in paragraph 2 of this Article in one delegated act, taking into account the requirements of Article 19.

5. The Commission shall adopt the delegated act referred to in paragraph 2 by 31 December 2021, with a view to ensuring its application from 1 January 2023.

Article 15

Substantial contribution to the protection and restoration of biodiversity and ecosystems

1. An economic activity shall qualify as contributing substantially to the protection and restoration of biodiversity and ecosystems where that activity contributes substantially to protecting, conserving or restoring biodiversity or to achieving the good condition of ecosystems, or to protecting ecosystems that are already in good condition, through:

(a) nature and biodiversity conservation, including achieving favourable conservation status of natural and semi-natural habitats and species, or preventing their deterioration where they already have favourable conservation status, and protecting and restoring terrestrial, marine and other aquatic ecosystems in order to improve their condition and enhance their capacity to provide ecosystem services;

(b) sustainable land use and management, including adequate protection of soil biodiversity, land degradation neutrality and the remediation of contaminated sites;

(c) sustainable agricultural practices, including those that contribute to enhancing biodiversity or to halting or preventing the degradation of soils and other ecosystems, deforestation and habitat loss;

(d) sustainable forest management, including practices and uses of forests and forest land that contribute to enhancing biodiversity or to halting or preventing degradation of ecosystems, deforestation and habitat loss; or

(e) enabling any of the activities listed in points (a) to (d) of this paragraph in accordance with Article 16.

2. The Commission shall adopt a delegated act in accordance with Article 23 to:

(a) supplement paragraph 1 of this Article by establishing technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to the protection and restoration of biodiversity and ecosystems; and

(b) supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which technical screening criteria have been established pursuant to point (a) of this paragraph causes significant harm to one or more of those objectives.

3. Prior to adopting the delegated act referred to in paragraph 2 of this Article, the Commission shall consult the Platform referred to in Article 20 regarding the technical screening criteria referred to in paragraph 2 of this Article.

4. The Commission shall establish the technical screening criteria referred to in paragraph 2 of this Article in one delegated act, taking into account the requirements of Article 19.

5. The Commission shall adopt the delegated act referred to in paragraph 2 by 31 December 2021, with a view to ensuring its application from 1 January 2023.

Article 16

Enabling activities

An economic activity shall qualify as contributing substantially to one or more of the environmental objectives set out in Article 9 by directly enabling other activities to make a substantial contribution to one or more of those objectives, provided that such economic activity:

(a) does not lead to a lock-in of assets that undermine long-term environmental goals, considering the economic lifetime of those assets; and

(b) has a substantial positive environmental impact, on the basis of life-cycle considerations.

Article 17

Significant harm to environmental objectives

1. For the purposes of point (b) of Article 3, taking into account the life cycle of the products and services provided by an economic activity, including evidence from existing life-cycle assessments, that economic activity shall be considered to significantly harm:

   (a) climate change mitigation, where that activity leads to significant greenhouse gas emissions;

   (b) climate change adaptation, where that activity leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets;

(c) the sustainable use and protection of water and marine resources, where that activity is detrimental:

(i) to the good status or the good ecological potential of bodies of water, including surface water and groundwater, or

(ii) to the good environmental status of marine waters;

(d) the circular economy, including waste prevention and recycling, where:

(i) that activity leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources such as non-renewable energy sources, raw materials, water and land at one or more stages of the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products;

(ii) that activity leads to a significant increase in the generation, incineration or disposal of waste, with the exception of the incineration of non-recyclable hazardous waste; or

(iii) the long-term disposal of waste may cause significant and long-term harm to the environment;

(e) pollution prevention and control, where that activity leads to a significant increase in the emissions of pollutants into air, water or land, as compared with the situation before the activity started; or

(f) the protection and restoration of biodiversity and ecosystems, where that activity is:

(i) significantly detrimental to the good condition and resilience of ecosystems; or

(ii) detrimental to the conservation status of habitats and species, including those of Union interest.

2. When assessing an economic activity against the criteria set out in paragraph 1, both the environmental impact of the activity itself and the environmental impact of the products and services provided by that activity throughout their life cycle shall be taken into account, in particular by considering the production, use and end of life of those products and services.

Article 18

Minimum safeguards

1. The minimum safeguards referred to in point (c) of Article 3 shall be procedures implemented by an undertaking that is carrying out an economic activity to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.

2. When implementing the procedures referred to in paragraph 1 of this Article, undertakings shall adhere to the principle of 'do no significant harm' referred to in point (17) of Article 2 of Regulation (EU) 2019/2088.

Article 19

Requirements for technical screening criteria

1. The technical screening criteria established pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) shall:

(a) identify the most relevant potential contributions to the given environmental objective while respecting the principle of technological neutrality, considering both the short- and long-term impact of a given economic activity;

(b) specify the minimum requirements that need to be met to avoid significant harm to any of the relevant environmental objectives, considering both the short- and long-term impact of a given economic activity;

(c) be quantitative and contain thresholds to the extent possible, and otherwise be qualitative;

(d) where appropriate, build upon Union labelling and certification schemes, Union methodologies for assessing environmental footprint, and Union statistical classification systems, and take into account any relevant existing Union legislation;

(e) where feasible, use sustainability indicators as referred to in Article 4(6) of Regulation (EU) 2019/2088;

(f) be based on conclusive scientific evidence and the precautionary principle enshrined in Article 191 TFEU;

(g) take into account the life cycle, including evidence from existing life-cycle assessments, by considering both the environmental impact of the economic activity itself and the environmental impact of the products and services provided by that economic activity, in particular by considering the production, use and end of life of those products and services;

(h) take into account the nature and the scale of the economic activity, including:

(i) whether it is an enabling activity as referred to in Article 16; or

(ii) whether it is a transitional activity as referred to in Article 10(2);

(i) take into account the potential market impact of the transition to a more sustainable economy, including the risk of certain assets becoming stranded as a result of such transition, as well as the risk of creating inconsistent incentives for investing sustainably;

(j) cover all relevant economic activities within a specific sector and ensure that those activities are treated equally if they contribute equally towards the environmental objectives set out in Article 9 of this Regulation, to avoid distorting competition in the market; and

(k) be easy to use and be set in a manner that facilitates the verification of their compliance.

Where the economic activity belongs to one of the categories referred to in point (h), the technical screening criteria shall clearly indicate that fact.

2. The technical screening criteria referred to in paragraph 1 shall also include criteria for activities related to the clean energy transition consistent with a pathway to limit the temperature increase to 1,5 ºC above pre-industrial levels, in particular energy efficiency and renewable energy, to the extent that those activities substantially contribute to any of the environmental objectives.

3. The technical screening criteria referred to in paragraph 1 shall ensure that power generation activities that use solid fossil fuels do not qualify as environmentally sustainable economic activities.

4. The technical screening criteria referred to in paragraph 1 shall also include criteria for activities related to the switch to clean or climate-neutral mobility, including through modal shift, efficiency measures and alternative fuels, to the extent that those are substantially contributing to any of the environmental objectives.

5. The Commission shall regularly review the technical screening criteria referred to in paragraph 1 and, where appropriate, amend the delegated acts adopted in accordance with this Regulation in line with scientific and technological developments.

In that context, before amending or replacing a delegated act, the Commission shall assess the implementation of those criteria taking into account the outcome of their application by financial market participants and their impact on capital markets, including on the channelling of investment into environmentally sustainable economic activities.

To ensure that economic activities as referred to in Article 10(2) remain on a credible transition pathway consistent with a climate-neutral economy, the Commission shall review the technical screening criteria for those activities at least every three years and, where appropriate, amend the delegated act referred to in Article 10(3) in line with scientific and technological developments.

Article 20

Platform on Sustainable Finance

1. The Commission shall establish a Platform on Sustainable Finance (the 'Platform'). It shall be composed in a balanced manner of the following groups:

(a) representatives of:

(i) the European Environment Agency;

(ii) the ESAs;

(iii) the European Investment Bank and the European Investment Fund; and

(iv) the European Union Agency for Fundamental Rights;

(b) experts representing relevant private stakeholders, including financial and non-financial market participants and business sectors, representing relevant industries, and persons with accounting and reporting expertise;

(c) experts representing civil society, including persons with expertise in the field of environmental, social, labour and governance issues;

(d) experts appointed in a personal capacity, who have proven knowledge and experience in the areas covered by this Regulation;

(e) experts representing academia, including universities, research institutes and other scientific organisations, including persons with global expertise.

2. The Platform shall:

(a) advise the Commission on the technical screening criteria referred to in Article 19, as well as on the possible need to update those criteria;

(b) analyse the impact of the technical screening criteria in terms of potential costs and benefits of their application;

(c) assist the Commission in analysing requests from stakeholders to develop or revise technical screening criteria for a given economic activity;

(d) advise the Commission, where appropriate, on the possible role of sustainability accounting and reporting standards in supporting the application of the technical screening criteria;

(e) monitor and regularly report to the Commission on trends at Union and Member State level regarding capital flows into sustainable investment;

(f) advise the Commission on the possible need to develop further measures to improve data availability and quality;

(g) advise the Commission on the usability of the technical screening criteria, taking into account the need to avoid undue administrative burdens;

(h) advise the Commission on the possible need to amend this Regulation;

(i) advise the Commission on the evaluation and development of sustainable finance policies, including with regard to policy coherence issues;

(j) advise the Commission on addressing other sustainability objectives, including social objectives;

(k) advise the Commission on the application of Article 18 and the possible need to supplement the requirements thereof.

3. The Platform shall take into account the views of a wide range of stakeholders.

4. The Platform shall be chaired by the Commission and constituted in accordance with the horizontal rules on the creation and operation of Commission expert groups. In that context the Commission may invite experts with specific expertise on an *ad hoc* basis.

5. The Platform shall carry out its tasks in accordance with the principle of transparency. The Commission shall publish the minutes of the meetings of the Platform and other relevant documents on the Commission website.

6. Where financial market participants consider that an economic activity which does not comply with the technical screening criteria established pursuant to this Regulation, or for which such technical screening criteria have not yet been established, should qualify as environmentally sustainable, they may inform the Platform thereof.

Article 21

Competent authorities

1. Member States shall ensure that the competent authorities referred to in Article 14(1) of Regulation (EU) 2019/2088 monitor the compliance of financial market participants with the requirements laid down in Articles 5, 6 and 7 of this Regulation. Member States shall ensure that their competent authorities have all the necessary supervisory and investigatory powers 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 shall provide each other, without undue delay, with such information as is relevant for the purposes of carrying out their duties under this Regulation.

Article 22

Measures and penalties

Member States shall lay down the rules on measures and penalties applicable to infringements of Articles 5, 6 and 7. The measures and penalties provided for shall be effective, proportionate and dissuasive.

Article 23

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8(4), 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) shall be conferred on the Commission for an indeterminate period from … [date of entry into force of this Regulation].

3. The delegations of powers referred to in Articles 8(4), 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. The Commission shall gather all necessary expertise, prior to the adoption and during the development of delegated acts, including through the consultation of the experts of the Member State Expert Group on Sustainable Finance referred to in Article 24. Before adopting a delegated act, the Commission shall act in accordance with the principles and procedures laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 8(4), 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of four months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 24

Member State Expert Group on Sustainable Finance

1. A Member State Expert Group on Sustainable Finance (the 'Member State Expert Group') shall advise the Commission on the appropriateness of the technical screening criteria and the approach taken by the Platform regarding the development of those criteria in accordance with Article 19.

2. The Commission shall inform the Member States through meetings of the Member State Expert Group to facilitate an exchange of views between the Member States and the Commission on a timely basis, in particular as regards the main output of the Platform, such as new technical screening criteria or material updates thereof, or draft reports.

Chapter III
Final provisions

Article 25

Amendments to Regulation (EU) 2019/2088

Regulation (EU) 2019/2088 is amended as follows:

(1) the following Article is inserted:

"Article 2a

Principle of do no significant harm

1. The European Supervisory Authorities established by Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 of the European Parliament and of the Council (collectively, the 'ESAs') shall, through the Joint Committee, develop draft regulatory technical standards to specify the details of the content and presentation of the information in relation to the principle of 'do no significant harm' referred to in point (17) of Article 2 of this Regulation consistent with the content, methodologies, and presentation in respect of the sustainability indicators in relation to the adverse impacts referred to in paragraphs 6 and 7 of Article 4 of this Regulation.

2. The ESAs shall submit the draft regulatory technical standards referred to in paragraph 1 to the Commission by 30 December 2020.

3. Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in paragraph 1 of this Article in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.";

(2) Article 8 is amended as follows:

(a) the following paragraph is inserted:

'2a. Where financial market participants make available a financial product as referred to in Article 6 of Regulation (EU) …/… of the European Parliament and of the Council[*+], they shall include in the information to be disclosed pursuant to Article 6(1) and (3) of this Regulation the information required under Article 6 of Regulation (EU) …/…[+].

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[*] Regulation (EU) …/… of the European Parliament and of the Council of … on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L …, …, p. …).';

[+] OJ: please insert in the text the number of this amending Regulation and insert the number, date and OJ reference of this amending Regulation in the corresponding footnote.

(b) in paragraph 3, the first subparagraph is replaced by the following:

‘3. The ESAs shall, through the Joint Committee, develop draft regulatory technical standards to specify the details of the content and presentation of the information to be disclosed pursuant to paragraphs 1 and 2 of this Article.’;

(c) the following paragraph is added:

‘4. The ESAs shall, through the Joint Committee, develop draft regulatory technical standards to specify the details of the content and presentation of the information referred to in paragraph 2a of this Article.

When developing the draft regulatory technical standards referred to in the first subparagraph of this paragraph, the ESAs shall take into account the various types of financial products, their characteristics and the differences between them, as well as the objective that disclosures are to be accurate, fair, clear, not misleading, simple and concise and, where necessary to achieve that objective, shall develop draft amendments to the regulatory technical standards referred to in paragraph 3 of this Article. The draft regulatory technical standards shall take into account the respective dates of application set out in points (a) and (b) of Article 27(2) of Regulation (EU) …/…[+] in respect of the environmental objectives set out in Article 9 of that Regulation.

[+] OJ: please insert the number of this amending Regulation.

The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission:

(a) in respect of the environmental objectives referred to in points (a) and (b) of Article 9 of Regulation (EU) …/…[+], by 1 June 2021; and

(b) in respect of the environmental objectives referred to in points (c) to (f) of Article 9 of Regulation (EU) …/…[+], by 1 June 2022.

Power is delegated to the Commission to supplement this Regulation by adopting 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.';

(3) Article 9 is amended as follows:

(a) the following paragraph is inserted:

'4a. Financial market participants shall include in the information to be disclosed pursuant to Article 6(1) and (3) of this Regulation the information required under Article 5 of Regulation (EU) …/…[+].';

[+] OJ: please insert the number of this amending Regulation.

(b) in paragraph 5, the first subparagraph is replaced by the following:

‘5. The ESAs shall, through the Joint Committee, develop draft regulatory technical standards to specify the details of the content and presentation of the information to be disclosed pursuant to paragraphs 1 to 4 of this Article.’;

(c) the following paragraph is added:

‘6. The ESAs shall, through the Joint Committee, develop draft regulatory technical standards to specify the details of the content and presentation of the information referred to in paragraph 4a of this Article.

When developing the draft regulatory technical standards referred to in the first subparagraph of this paragraph, the ESAs shall take into account the various types of financial products, their objectives as referred to in paragraph 4a of this Article and the differences between them as well as the objective that disclosures are to be accurate, fair, clear, not misleading, simple and concise and, where necessary to achieve that objective, shall develop draft amendments to the regulatory technical standards referred to in paragraph 5 of this Article. The draft regulatory technical standards shall take into account the respective dates of application set out in points (a) and (b) of Article 27(2) of Regulation (EU) …/…[+] in respect of the environmental objectives set out in Article 9 of that Regulation.

[+] OJ: please insert the number of this amending Regulation.

The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission:

(a) in respect of the environmental objectives referred to in points (a) and (b) of Article 9 of Regulation (EU) …/…[+], by 1 June 2021; and

(b) in respect of the environmental objectives referred to in points (c) to (f) of Article 9 of Regulation (EU) …/…[+], by 1 June 2022.

Power is delegated to the Commission to supplement this Regulation by adopting 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.';

(4) Article 11 is amended as follows:

(a) in paragraph 1, the following points are added:

'(c) for a financial product subject to Article 5 of Regulation (EU) …/…[+], the information required under that Article;

(d) for a financial product subject to Article 6 of Regulation (EU) …/…[+], the information required under that Article.';

[+] OJ: please insert the number of this amending Regulation.

(b) in paragraph 4, the first subparagraph is replaced by:

‘4. The ESAs shall, through the Joint Committee, develop draft regulatory technical standards to specify the details of the content and presentation of the information referred to in points (a) and (b) of paragraph 1.’;

(c) the following paragraph is added:

‘5. The ESAs shall, through the Joint Committee, develop draft regulatory technical standards to specify the details of the content and presentation of the information referred to in points (c) and (d) of paragraph 1.

When developing the draft regulatory technical standards referred to in the first subparagraph of this paragraph, the ESAs shall take into account the various types of financial products, their characteristics and objectives and the differences between them and, where necessary, shall develop draft amendments to the regulatory technical standards referred to in paragraph 4 of this Article. The draft regulatory technical standards shall take into account the respective dates of application set out in points (a) and (b) of Article 27(2) of Regulation (EU) …/…[+] in respect of the environmental objectives set out in Article 9 of that Regulation. The ESAs shall update the regulatory technical standards in the light of regulatory and technological developments.

[+] OJ: please insert the number of this amending Regulation.

The ESAs shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission:

(a) in respect of the environmental objectives referred to in points (a) and (b) of Article 9 of Regulation (EU) …/…[+], by 1 June 2021; and

(b) in respect of the environmental objectives referred to in points (c) to (f) of Article 9 of Regulation (EU) …/…[+], by 1 June 2022.

Power is delegated to the Commission to supplement this Regulation by adopting 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.';

(5) in Article 20, paragraph 3 is replaced by the following:

'3. By way of derogation from paragraph 2 of this Article:

(a) Articles 4(6) and (7), 8(3), 9(5), 10(2), 11(4) and 13(2) shall apply from 29 December 2019;

(b) Articles 2a, 8(4), 9(6) and 11(5) shall apply from … [date of entry into force of this amending Regulation];

[+] OJ: please insert the number of this amending Regulation.

(c) Articles 8(2a) and 9(4a) shall apply:

(i) in respect of the environmental objectives referred to in points (a) and (b) of Article 9 of Regulation (EU) …/…[+], from 1 January 2022; and

(ii) in respect of the environmental objectives referred to in points (c) to (f) of Article 9 of Regulation (EU) …/…[+], from 1 January 2023:

(d) Article 11(1), (2) and (3) shall apply from 1 January 2022.'.

Article 26

Review

1. By … [two years after the date of entry into force of this Regulation], and subsequently every three years thereafter, the Commission shall publish a report on the application of this Regulation. That report shall evaluate the following:

(a) the progress in implementing this Regulation with regard to the development of technical screening criteria for environmentally sustainable economic activities;

(b) the possible need to revise and complement the criteria set out in Article 3 for an economic activity to qualify as environmentally sustainable;

[+] OJ: please insert the number of this amending Regulation.

(c) the use of the definition of environmentally sustainable investment in Union law, and at Member State level, including the provisions required for setting up verification mechanisms of compliance with the criteria set out in this Regulation;

(d) the effectiveness of the application of the technical screening criteria established pursuant to this Regulation in channelling private investments into environmentally sustainable economic activities and in particular as regards capital flows, including equity, into private enterprises and other legal entities, both through financial products covered by this Regulation and other financial products;

(e) the access by financial market participants covered by this Regulation and by investors to reliable, timely and verifiable information and data regarding private enterprises and other legal entities, including investee companies within and outside the scope of this Regulation and, in both cases, as regards equity and debt capital, taking into account the associated administrative burden, as well as the procedures for the verification of the data that are necessary for the determination of the degree of alignment with the technical screening criteria and to ensure compliance with those procedures;

(f) the application of Articles 21 and 22.

2. By 31 December 2021, the Commission shall publish a report describing the provisions that would be required to extend the scope of this Regulation beyond environmentally sustainable economic activities and describing the provisions that would be required to cover:

(a) economic activities that do not have a significant impact on environmental sustainability and economic activities that significantly harm environmental sustainability, as well as a review of the appropriateness of specific disclosure requirements related to transitional and enabling activities; and

(b) other sustainability objectives, such as social objectives.

3. By … [two years after the date of entry into force of this Regulation], the Commission shall assess the effectiveness of the advisory procedures for the development of the technical screening criteria established under this Regulation.

Article 27

Entry into force and application

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

2. Articles 4, 5, 6 and 7 shall apply:

(a) in respect of the environmental objectives referred to in points (a) and (b) of Article 9 from 1 January 2022; and

(b) in respect of the environmental objectives referred to in points (c) to (f) of Article 9 from 1 January 2023.

3. Article 4 shall not apply to certificate based tax incentive schemes that exist prior to the entry into force of this Regulation and that set out requirements for financial products that aim to finance sustainable projects.

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

Done at …,

For the European Parliament	*For the Council*
The President	*The President*