

# Insurance Europe analysis of the proposal for a regulation on sustainability-related disclosures in the financial services sector

Referring to: [ECO-LTI-19-056](#)

## Overview of the text of political agreement

The proposal has been assessed on the basis of Insurance Europe agreed positions, in accordance with the key messages in view of the trilogue negotiations ([ECO-LTI-19-013](#)) and Insurance Europe comments on the EC proposal ([ECO-LTI-18-034](#)). The secretariat notes that the analysis below, which provides highlights of the main provisions in comparison to the co-legislators' positions, is based on the final compromise text, which is still to be formally adopted and therefore it might be subject to some changes.

### **Article 1 and Article 2 - Scope and definitions**

For insurance undertakings, **the scope is limited to insurance undertakings making available IBIPs** (in line with the industry's position). In terms of key definitions:

- **sustainability factors** are "environmental, *social and employee matters, respect for human rights, anti-corruption and bribery matters*" (aligned with Directive 2013/34/EU on non-financial reporting).
- **sustainable investments** still include all ESG aspects (in line with industry's position).
- A clear distinction is drawn between:
  - "**sustainability risks**", i.e. material negative impact on the value of the investment
  - "**principal adverse impacts**", i.e. negative impact on sustainability factors

### **Article 3 - Sustainability risk policies in websites**

- Insurers will have to publish information on their policies on the integration of sustainability risks in the investment decision-making process on their websites.
- *Comment: The final text reflects the position of the industry and no longer contain EP proposals to have in place due diligence policies in an extensive list of areas (governance, operating conditions, investments strategy, risk management, voting rights, etc).*

### **Article 3gamma - Adverse sustainability impacts at entity level**

- The article contains a "comply or explain" mechanism for market players to publish on websites either a statement on due diligence policies regarding the consideration of adverse sustainability impacts or clear reasons for not doing so.
- After a transition period of 18 months from the entry into force of the regulation and only for financial market players with more than 500 employees, the statement of due diligence policies will be mandatory.
- The ESAs will develop regulatory technical standards (RTS) on the presentation of this information.
- *Comment: This text is the result of the EP push to have in place detailed due diligence procedures for all insurers and all financial products.*

### **Article 3a - Remuneration policies**

- Insurers will have to publish on their websites how their remuneration policies are consistent with the integration of sustainability risks.
- *Comment: The final text is an improvement both over the original EC text that required consistency with respect to the specific sustainable financial products and the over-prescriptive EP position.*

#### **Article 4 - Integration of sustainability risks**

- Insurers will have to describe in pre-contractual disclosures:
  - how sustainability risks are integrated in the investment decisions, and
  - the assessment result of the impacts of sustainability risks on the returns of the financial products
 In case sustainability risks are considered not relevant, an explanation should also be provided.
- *Comment: In comparison with the EP negotiating positions, there are significant improvements as the due diligence requirements on sustainability risks were removed. The wording of the final text is milder compared to the EC proposal to describe the "procedures and conditions applied for integrating sustainability risks" and the "extent to which sustainability risks are expected to have a relevant impact on the returns".*

#### **Article 4gamma - Adverse sustainability impacts at financial product level**

- After 36 months from the entry into force of the regulation, insurers will have to follow a "comply or explain" mechanism at financial products regarding adverse sustainability impacts. Insurers that do not consider adverse sustainability impacts (as per Article 3gamma) will have to provide an explanation for not doing so. Those insurers that consider adverse sustainability impacts (as per Article 3gamma) will have to provide for each of their financial products:
  - an explanation of how a financial product considers principal adverse impacts
  - a statement that information on the adverse impacts is available in accordance with their reporting
- The ESAs will develop regulatory technical standards (RTS) on the presentation of this information.
- *Comment: As in Article 3gamma, this text is the result of the EP push to have in place detailed disclosures at product level. On the positive side, these disclosures are linked to the adverse sustainability impacts at entity level and have been limited significantly compared to the original EP proposals.*

#### **Article 4a and Article 5 – disclosures for sustainable financial products**

For sustainable financial products, additional disclosures are required to explain how the sustainability characteristics are met.

- For products promoting an environmental or social objective (Article 4a), insurers need to disclose:
  - how those characteristics are met
  - if an index has been designated as a reference benchmark, whether and how this index is consistent with those characteristics
- **For financial product with the objective of sustainable investments (Article 5) and with an index as a reference benchmark, insurers will need disclose:**
  - how this index is aligned with that **objective**
  - **why and how the index aligned with that objective differs from a market index**
 In the case that the sustainable financial product has no index, then an explanation on how that objective target is reached needs to be provided. For those products aiming to reduce carbon emissions, it needs to be disclosed how this objective is achieved.
- As in the original proposal, these disclosures will be specified in regulatory technical standards.
- *Comment: The disclosures for products with environmental or social objectives (Article 4a) and for products with sustainable objectives (Article 5) are the result of the Council position.*

#### **Article 6 - Transparency of sustainable investments on websites**

- The article describes the information to be published on websites for sustainable financial products as defined in Article 4a and Article 5. As in the original proposal, these disclosures will be specified in regulatory technical standards.
- *Comment: The information to be disclosed is based on the Council position and it extends the original text to include transparency requirements also to products with environmental or social characteristics (Article 4a).*

#### **Article 7 - Transparency of sustainable investments in periodic reports**

- The article describes the information to be disclosed in public reporting:
  - For financial products incorporating environmental or social characteristics (defined in Article 4a), the degree of achievement of environmental or social characteristics

- For sustainable financial product (defined in Article 5):
  - the overall sustainability-related impact of the financial **product**
  - in case an index has been designated as a reference benchmark, a comparison between the impact of the **product** with the designated index and a broad market index
- The possibility to publish this information in management reports is left to insurers.
- As in the original proposal, these disclosures will be specified in regulatory technical standards.
- *Comment: This text is the result of the Council position to extend the EC proposal to cover the degree of achievement of environmental or social characteristics for financial product described in the new Article 4a. On the positive side, the ambitious EP position to have in place disclosures in management reports as per Directive 2013/34/EU remains optional for insurers.*

#### **Article 8 Review of disclosures**

- This article requires market players to keep up-to-date the information published on websites.
- *Comment: This article is the result of aligned EC, Council and EP positions.*

#### **Article 9 Marketing communications**

- This article requires that marketing communications do not contradict the disclosures in place according to the regulation. *As in the original proposal, these disclosures will be specified in implementing technical standards.*
- *Comment: This article is the result of aligned EC, Council and EP positions.*

#### **Article 9a - Competent authorities**

- This article deals with the compliance of the disclosures by the relevant national competent authorities, with the necessary supervisory and investigatory powers.
- *Comment: This text is the result of the Council position.*

#### **Article 9b: Transparency by IORPs and insurance intermediaries**

- Article 9b requires disclosures for IORPs and insurance intermediaries with respect to articles 3, 3gamma, 4, 4gamma and 6 of the regulation.
- *This text is the result of the Council position. The EC proposed amendments to Directive (EU) 2016/2341 Comment: via delegated acts have been removed.*

#### **Article 9c: Pension products operating national social security schemes**

- This article leaves flexibility to Member States (upon notification to the EC and the ESAs) to apply the regulation to manufacturers of pension products operating national social security schemes covered by Regulations (EC) No 883/2004 and (EC) No 987/2009.
- *Comment: This text is the result of the Council position.*

#### **Article 9d: Exemptions**

- This article introduces proportionality in the scope of the proposal for insurance intermediaries and investment firms that employ fewer than three people. Member States have the option to decide whether this exclusion applies.
- *Comment: This text is the result of the Council position.*

#### **Article 9e: Report**

- This article empowers the ESAs to prepare a public report on best practices and make recommendations towards voluntary reporting standards.

#### **Article 11: Evaluation**

- The application of the proposed regulation will be evaluated 36 months after the date of entry into force. Some key areas of investigation are specified, including proportionality and the lack of data and their quality at the level of investee companies.
- *Comment: This text is the result of the Council and EP position.*

#### **Article 12: Entry into force and application**

- Except for some provisions, the general application date of the regulation is 15 months following the date of publication in the EU Official Journal.