

MEMO# 32089

December 10, 2019

EU Taxonomy Legislation: Provisional Agreement Reached

[32089]

December 10, 2019 TO: ICI Global Members

ESG Task Force

ICI Global Regulated Funds Committee SUBJECTS: Compliance

Disclosure

Distribution

International/Global

Investment Advisers

MiFID, EMIR, AIFMD, UCITS V RE: EU Taxonomy Legislation: Provisional Agreement Reached

We have confirmed that the European Parliament, the Finnish Presidency (on behalf of Member States), and the European Commission reached a provisional agreement on the taxonomy legislation last week after two intense, back-to-back trilogue negotiations, but that Member States still need to endorse the agreement “in principle.”[\[1\]](#) Member States are going to discuss the agreement at a meeting on Wednesday (11 Dec) on the basis of the attached document, which describes the key elements of the agreement.

If Member States endorse the agreement in principle, we understand that a final trilogue negotiation would take place on 16 December to iron out a final agreement, which then could be endorsed on 18 December at a final meeting of Member States.

Under the provisional agreement, all financial products would be subject to disclosure requirements—beyond the taxonomy’s original application to products that are marketed as environmentally sustainable. These provisions also will link to the Disclosure Regulation’s requirements for ESG financial product disclosure.[\[2\]](#) The provisional agreement also would require disclosure for large corporates that are subject to the obligation to publish a non-financial statement or a consolidated non-financial statement under the Accounting Directive.

Below is a short summary of the expanded financial product disclosure requirements. Please let me know if you note any issues, particularly with the language of the required “disclaimers,” and if there are any changes that we can suggest to Member States before the final negotiation.

- “Dark green” financial products (i.e., with an objective of sustainable investments)[\[3\]](#)
 - Links to Disclosure Regulation Article 9 financial products.

- Must disclose the sustainability objective that the product's investments contribute to and provide a description of how and the extent to which the product is invested in taxonomy-compliant activities, including details on the respective proportions of "enabling" and "transitional" activities (specifying the share of those investments as a percentage of all investments).
- "Light green" financial products (i.e., that promote environmental and social characteristics)[\[4\]](#)
 - Links to Disclosure Regulation Article 8 financial products.
 - Must provide same disclosure as "dark green" products to the extent the financial product promotes "environmental characteristics."
 - Must include the following statements in the prospectus and annual report:
 - "The 'do no significant harm' principle is applied only for the investments underlying the product that take into account the EU criteria for environmentally sustainable investments."
 - "The investments underlying the remaining portion of this financial product do not take into account the criteria for environmentally sustainable investments."
- All other financial products[\[5\]](#)
 - Must include the following statement in the prospectus and annual report:
 - "The investments underlying this financial product do not take into account the criteria for environmentally sustainable investments."

We also noted that the provisional agreement will link the taxonomy's concept of "do no significant harm" to the Disclosure Regulation's concept of "adverse impact" on environmental sustainability.[\[6\]](#) This may be problematic given that the concept of "adverse impact" is not well developed and is being linked to multiple pieces of legislation without full understanding of its implications.

Please feel free to reach out with any questions or concerns. We are following this closely and will update you with further developments.

Linda M. French
Assistant Chief Counsel, ICI Global

[Attachment](#)

endnotes

[\[1\]](#) The EU taxonomy legislation was originally proposed in May 2018. The Commission's proposed legislative text is available at https://ec.europa.eu/info/publications/sustainable-finance-teg-taxonomy_en. The European Parliament adopted its position in March 2019, available at http://www.europarl.europa.eu/doceo/document/TA-8-2019-0325_EN.html. The Council reached agreement on its general approach in September 2019, available at <https://data.consilium.europa.eu/doc/document/ST-12360-2019-ADD-1/en/pdf>. The taxonomy legislation defines what economic activities are environmentally sustainable and imposes certain financial product disclosure requirements.

[\[2\]](#) See Articles 8 and 9 of 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, *available* at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R2088&from=EN#d1e1695-1-1>.

[3] See New Article 4α on page 10 of the provisional agreement (attached).

[4] See New Article 4β on page 11 of the provisional agreement (attached).

[5] See New Article 4γ on page 11 of the provisional agreement (attached).

[6] See Part 2: Aligning RTS of Taxonomy and Disclosure Regulation on page 12 of the provisional agreement (attached).

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.