

MEMO# 32638

July 27, 2020

Meetings with ESMA and EIOPA on Disclosure Regulation RTS Consultation

[32638]

July 27, 2020 TO: EU ESG Disclosure Regulation Working Group
Global Advocacy Coordination Advisory Committee RE: Meetings with ESMA and EIOPA on Disclosure Regulation RTS Consultation

We are speaking with Patrik Karlsson at the European Securities and Markets Authority (ESMA) on Wednesday about the European Supervisory Authorities' (ESAs) consultation on the regulatory technical standards (RTS) for the sustainable finance Disclosure Regulation (SFDR).[\[1\]](#) We will be raising the issues that have come up on past Working Group calls, but please let us know if you have any additional questions or concerns on which you'd like us to particularly focus.

In addition, we wanted to send you a readout of our call last Thursday, 23 July, with the European Insurance and Occupational Pensions Authority (EIOPA). We had the call on very short notice and spoke with Sandra Hack, David Cowan, and Ursula Bordas. You may remember that Ursula Bordas led the ESAs' hearing presentation on pre-contractual product-level disclosure. Below are some items of note from our conversation:

Overall implementation timing

- They absolutely understand the practical issues with the timing of the RTS and the level 1 compliance date, but this is a political issue, with some MEPs not wanting any delays.

Manager-level disclosure (“Principal Adverse Impact [PAI] Statement”)

- **Timing.** Need to have some PAI Statement info (not the indicators) disclosed in March. They will clarify how the subsequent PAI indicator disclosure will work. They hear the concerns about availability of quality PAI data. Hearing industry asking for a staggered approach.
- **Where is the line between “comply” and “explain”?** They mentioned that this had come up in the hearing, and that explanations of PAI estimates/best efforts will be acceptable where data is not available. “Comply” disclosure should have a comprehensive PAI Statement analysis though (i.e., narrative sections). They are

further reflecting on this and noted that it probably depends on how much of the PAI indicator disclosure you're doing (i.e., more or less disclosure).

- **Thresholds for adverse impact.** There is particular interest in how to measure adverse impact. The ESAs agree that financial market participants should screen all investments against the indicators. They are further thinking though about whether there should be thresholds for what adverse impacts are reported in the website disclosure (e.g., whether Taxonomy-compliant economic activities could be excluded from PAI reporting). They also mentioned the idea of potentially disclosing an aggregate value but then also classifying whether it is "very adverse" or "less adverse." They would welcome suggestions on this issue.
- **PAI and concept of "do no significant harm" (DNSH).** They need some guidance from the European Commission on coherence around how the Taxonomy's concept of DNSH (for an environmentally sustainable economic activity) links to the SFDR's concept of DNSH (for a sustainable investment) and principal adverse impact (PAI). They envisage the Taxonomy's DNSH analysis (for no harm against environmental objectives) as one reference point, and the PAI social indicators are intended to link to the Taxonomy's concept of "social safeguards" (i.e., the Taxonomy's approach to DNSH for social considerations). But they are looking for more coherence here around how the Taxonomy and SFDR relate.
- **Concerns about how to analyze adverse impact for investments not in the EU.** Some of the PAI indicator methodology has references to EU legislation so the indicators could be screened against existing EU standards. They're not sure what the size of the investment universe is of investments that will fall outside of this (not subject to EU standards).
- **Engagement.** The PAI Statement section on actions taken is very important. They view disclosure of engagement with investee companies and outcomes as very important.

Product-level disclosure

- **Templates.** In an ideal world, they would have liked templates to be included in this consultation. Templates for pre-contractual and periodic disclosure are being developed and will be published for comment in September (via a survey). Interestingly, the consumer testing of templates is being done for Article 8 products only, as they are more challenging to explain. They are also getting input from EIOPA's standing stakeholder groups.
- **Volume of information to be disclosed to end investor.** They are very mindful how much new information will need to be included in the pre-contractual documents, particularly in the PEPP context as the information will need to be disclosed in a PEPP KID. They are discussing with the Commission if an Annex approach may work for the PEPP KID. Very supportive of layering information in general, simplified disclosure, with the end consumer in mind, but there may be limits to how this can be presented based on level 1 requirements and applicable sectoral legislation.
- **Article 8 and sustainable investments.** They do seem to believe that Art 8 products should determine if they have sustainable investments and then comply with the applicable disclosure requirements. Interestingly, they emphasized that the proposal does not suggest methodology for determining "sustainable investments." They see the Taxonomy as the main reference point for environmental sustainability,

and an eventual social Taxonomy as the reference for social sustainability, but there is no prescribed methodology.

- **Industry input.** They are very interested in the industry input on the right balance of information to end UCITS/PEPP investors. Any industry insight/research reflecting our recommendation is welcome. They are interested to speak again in September after the templates are released.

We hope this is helpful.

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endnotes

[1] See ICI Global Memorandum No. 32441 *available at* <https://www.iciglobal.org/iciglobal/pubs/memos/memo32441>.

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