

BRIEFING: INVESTOR DISCLOSURE AND DUTIES

Regulation on disclosures relating to sustainable investments and sustainability risks, amending Directive (EU) 2016/2341

PRI Position

The PRI strongly supports this proposal. Financial market reforms to promote a more sustainable European economy are necessary and urgent. We consider reform of investor duties and disclosure critical for the success of the EU's overall sustainable finance objectives. We encourage the co-legislators to adopt this proposal, with limited amendments.

Executive summary

The PRI's key recommendations are:

- Adopt and implement this proposal, as part of a consistent and complementary package of reforms under the EU Action Plan on Sustainable Finance. Establishing a sustainability taxonomy will support these efforts, but this proposal can have a significant positive impact before the taxonomy is finalised (Article 12 and general).
- Clarify the relationship with ESG and the prudent person principle in IORP and work to establish consistent procedural steps for demonstrating compliance (Article 10).
- Strengthen the definition of sustainable investment (Article 2) by introducing requirements to 'do no significant harm' across environmental, social and governance issues.
- Require disclosure of ESG risk policies from all investors and advisors (Article 3) and reporting on sustainability impacts from funds targeting environmental and social objectives (Article 5).

About the PRI

The PRI is the world's leading proponent of responsible investment. It works to understand the investment implications of environmental, social and governance (ESG) factors and to support its international network of investor signatories in incorporating these factors into their investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole. The PRI was an observer to the High Level Expert Group on Sustainable Finance and now rapporteur to the taxonomy stream of the Technical Expert Group on Sustainable Finance.

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Clarifying the intent of these proposals

Article 1, Paragraph 1:

- The intent of the regulation is better disclosure of sustainability risks for all funds, with additional disclosure for sustainability targeted funds. A clarification of the intent would ensure investor certainty. We support **amendment 9** (draft report).

Providing a robust definition of sustainable investment

Article 2, Paragraph 1:

- The definition of sustainable investment is fundamental to the success of this proposal. We feel the original definition of sustainable finance was too broad, even when balanced with mandatory disclosure of sustainability impacts. Sustainable investments should make a substantive contribution to environmental, social and/or governance objectives, with reference to the EU's sustainability taxonomy (when established). They should 'do no significant harm' to the other objectives. We support **amendments 101** (Scott Cato), **104** (Scott Cato) and **106** (Carthy) and propose adopting the phrase 'significant harm' in place of 'harm' to avoid undue burden on investors. This would also ensure consistency with the Taxonomy proposals.
- We are concerned about mandatory exclusions for sustainable investments. Our view is that introducing such lists is not necessary if 'do no significant harm' principles are embedded in the definition (as above). An exclusions list would also potentially conflict with the technical screening criteria and the minimum safeguards approach adopted by the Taxonomy, which may permit such activities to be considered 'green' where stringent standards are met. These technical screening criteria will build on formally agreed EU environmental objectives and will be subject to a robust technical development process. We therefore do not support **amendment 109** (Scott Cato).

Article 2, Paragraph 2,s:

- Sustainability risks and opportunities are dynamic, evolving in response to changing scientific understanding and societal expectations. We would support an indicative list of sustainability risks to guide investors, but are concerned that a mandatory list would encourage a 'check box' approach from investors, rather than a deep consideration of potential risks. We therefore do not support **amendments 29** (draft report), **111** (Scott Cato), **112** (Carthy), and **143** (Ludvigsson).

Clear risk disclosure requirements

Article 3, Paragraph 1:

- We support the proposal to require all investors to disclose risk policies. Despite growing awareness of the financial materiality of ESG risks, studies suggest that upwards of 80% of European asset owners do not integrate sustainability risks into their policies¹. A separate global study of international investors found that 73% do not fully consider ESG issues in long-term decision-making². We do not support **amendment 126** (Ferber) which would require only investors offering sustainable products to produce risk policies.

¹ Study of 1241 European asset owners: Source: Mercer, 2017 European Asset Allocation report <https://www.uk.mercer.com/content/dam/mercer/attachments/private/uk-2017-european-asset-allocation-report-new.pdf>.

² Source: State Street Global Advisors, PERFORMING FOR THE FUTURE, <https://www.ssga.com/investment-topics/environmental-social-governance/2018/08/esg-institutional-investor-survey.pdf>

- It is important to clarify that an investor cannot fulfil the requirements of this regulation by stating that no policy has been established. We support **amendment 120** (Scott Cato).
- To ensure that disclosures are meaningful and comprehensive, further clarification of the content of sustainability risk policies, to include governance, asset allocation, investment strategy and engagement is needed. We support **amendments 21** (Draft report), **128** (Wierinck, Tremosa i Balcells) and **129** (Wierinck, Tremosa i Balcells).

Sustainability impact reporting

Article 5, Paragraph 1:

- We welcome the proposals to require sustainability impact reporting by investors with sustainability strategies. At present, the industry lacks the tools and capacity to require impact reporting on a mass scale. Requiring impact reporting for funds targeting sustainability objectives is proportionate and would encourage rapid innovation, as well as helping to build trust and credibility in sustainable funds. The EU is developing a range of tools to support sustainable finance, including a sustainability taxonomy which will help to develop this further. We do not support **amendments 183** (Pietikäinen), **194** (Carthy), and **196** (Pietikäinen).

Consistent investor duties

Article 10, paragraph 1:

- Clear, harmonised investor duties across the entire intermediation chain are foundational to the EU's entire sustainable finance strategy. We strongly support action by the EU to clarify these duties and establish consistent procedures for demonstrating compliance. One way to address this would be to empower the European Commission to develop delegated acts in this area, consistent with existing empowerments under other key financial services directives. We therefore do not support **amendments 41 to 46** (draft report), **235** (Ferber) and **236** (Kamall).
- We agree with the need to clarify the Article 19 of the IORP Directive with respect to environmental, social and governance risks and opportunities. We propose the following:

Member States shall require IORPs registered or authorised in their territories to invest in accordance with the 'prudent person' rule and in particular in accordance with the following rules:

- a) the assets shall be invested in the best ~~(long-term)~~ interests of members and beneficiaries as a whole, **consistent with their investment timeframe**. In the case of a potential conflict of interest, an IORP, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries;*
- b) **IORPs must consider the impact of long-term factors, including ESG factors, in investment decision-making and the decision-making of their agents;***
- c) ...*

- We would also support measures to encourage pension funds to engage with their beneficiaries and ensure they have a sound understanding of their preferences. This is consistent with proposed changes to [MiFID II](#) and [IDD](#). We note this is not possible for all

funds, especially those with complex legal structures, so should be on a ‘best endeavours’ basis.

- However, we see a clear and important distinction between a beneficiary’s best interests (which is the duty of the trustee or equivalent to determine) and their preferences (which should be accommodated where possible). We do not support **amendment 41** (Draft Report), through which the best interests of the beneficiaries are to be determined in active consultation with those beneficiaries.

Reform of investor duties is timely and necessary

Article 12, paragraph 2:

- We consider reform of investor duties and disclosure critical for the success of the EU’s overall sustainable finance objectives, as it fosters a more embedded and systematic integration of sustainability issues in decision-making. A wide range of analysis – including the EU HLEG report on sustainable finance and the Parliament’s own initiative report on sustainable finance – recognise the urgent need to strengthen the investment sector’s contribution to sustainability outcomes. This proposal will benefit from, but does not rely upon, the completion of the sustainable finance taxonomy. We therefore do not believe it is conditional on the adoption of any other aspect of the EU’s sustainable finance action plan, but one part of a mutually reinforcing and necessary set of reforms. We do not support **amendments 242** (Kamall) and **243** (Ferber).