# BIPAR Update

6 December 2021

bipar

European Federation of Insurance Intermediaries

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## 1. European Commission's work programme 2022

The European Commission recently published its 2022 work programme *"Making Europe stronger together"*. The work programme sets out the next steps in the Commission's agenda towards a post-COVID-19 Europe that is greener, fairer, more digital and more resilient. It contains 42 new policy initiatives across all six headline ambitions of President von der Leyen's Political Guidelines. As a reminder, these 6 headline ambitions are: A European Green Deal; A Europe fit for the digital age; **An economy that works for people**; A stronger Europe in the world; Promoting our European way of life; and A new push for European democracy.

In the annexes of the 2022 Commission Work Programme, you can find a full list of the:

- **42 new policy initiatives** (for ex. facilitating SME access to capital, an initiative on harmonizing certain aspects of substantive law on insolvency proceedings, …)
- **26 REFIT initiatives** to simplify existing legislation, (for ex. VAT in the digital age: Revision of the VAT Directive and of the Council Regulation on VAT administrative cooperation)
- **76 priority pending legislative files** (where the Commission wants the co-legislators to take the swiftest action, such as: DORA, Digital Finance package, reviews of Solvency II and the Consumer Credit Directive, AML, corporate sustainability reporting …)
- **6 intended withdrawals** of pending proposals.

With regard to **financial services**, the list of **new initiatives** is rather limited (see below). This has to be seen however in the framework of bigger projects that have already been launched this year and which will continue to be in the focus next year such as the retail investment strategy, Solvency II, the reviews of MiFIR / AIFMD, …

### *In detail: An Economy that Works for People*

For this headline ambition, which regards most financial sector initiatives, the work programme sets out the following new actions:

- ✓ Protection of workers from the risks related to exposure to asbestos at work (legislative, incl. impact assessment, Q3 2022)
- ✓ Small and medium sized enterprises Facilitating small and medium sized enterprises' access to capital (legislative, incl. impact assessment, Q3 2022)
- ✓ Instant payments Initiative on instant payments in the EU (legislative or non-legislative, Q2 2022)
- ✓ Deepening the Capital Markets Union Initiative on harmonising certain aspects of substantive law on insolvency proceedings (legislative or non-legislative, Q3 2022)
- ✓ Fair taxation Proposal on implementation of the OECD global agreement on re-allocation of taxing rights (legislative)
- ✓ Minimum income Recommendation on minimum income (non-legislative, Q3 2022)
- ✓ Outermost regions Renewed strategic partnership with the outermost regions (non-legislative, Q2 2022)

What's Next?

*The Commission will start discussions with the European Parliament and the Council of the EU to establish a **list of joint legislative priorities** on which co-legislators agree to take swift action. The Commission will continue to support and work with Member States to ensure the implementation of new and existing EU rules and will not hesitate to uphold EU law through infringement proceedings where needed.*

In its press release, the Commissions also recalled its 'One-in, one-out' approach: "*To minimise the burden linked to our EU policy objectives, the **Commission will fully deploy the 'one-in, one-out' approach with this work programme**. This will ensure that when introducing unavoidable new burdens, we will systematically and proactively reduce burdens linked to existing EU legislation in the same policy area. Expected costs of complying with EU legislation will be quantified more transparently and systematically presented in impact assessments, while administrative costs will be offset. Better regulation will also continue to support sustainability and the digital transformation, by focusing on the 'do no significant harm' and 'digital-by-default' principles.*"

Ursula von der Leyen, President of the European Commission, said: "*The past year has proven what challenges we can deal with and what we can achieve for European citizens when we act united. We must continue in the same spirit next year, for example to implement our policies for climate neutrality in Europe by 2050, to shape our digital future, to strengthen our unique social market economy and to defend our values and our interests, at home and abroad. The combined power of the EU's long-term budget and NextGenerationEU, which together make €2.018 trillion will help to build a better and more modern Europe.*"

## 2. Pensions "auto-enrolment schemes": Commission's study and best practices

The European Commission has published a study that investigates the performance of "auto-enrolment mechanisms" in pension schemes in a number of EU and non-EU countries. "Auto-enrolment mechanisms" automatically sign individuals up to a pension plan, while giving them the chance to opt out. These schemes allocate pension savings in pension funds that invest in European and global capital markets to generate long-term returns.

Using findings from case studies, interviews and expert meetings, the study identifies a **list of best practices** for the successful introduction of auto-enrolment schemes. The study is a follow up to the 2020 CMU Action Plan, which aims at offering greater access to capital markets and investment opportunities for European savers, meanwhile contributing to important social goals (such as pension adequacy). In particular, the study is expected to inform the current discussions on pension reforms in a number of Member States, with a view to supporting people in their retirement, as is also outlined in the CMU Action Plan.

Commissioner for Financial Services, Financial Stability and Capital Markets Union, **Mairead McGuinness** said: *"Pensions are the main source of income for over 25% of the EU's population at retirement. We need to ensure that pensions provide dignified and appropriate standards of living for our retired citizens. Capital markets can contribute to increasing pension savings in the short term, and adequacy in the long term. This study offers new insights on the effectiveness and the best practices in auto-enrolment schemes. I hope that the findings of this study will inform ongoing discussions on pension reforms in a number of EU Member States."*

## 3. MiFID II – Transposition of MiFID II Quick fix + New ESMA Q&A

### 1/ Transposition MiFID II Quick-Fix

On 28 November 2021, the deadline for Member States to transpose the MiFID II Covid-19 "Quick-Fix" into national legislation passed.

As a reminder this MiFID II Quick-Fix was part of the European Commission's Covid-19 "Capital Markets Recovery package" intended to make it easier for capital markets to support European businesses to recover from the Covid-19 crisis by encouraging greater investments in the economy, allowing for the rapid re-capitalisation of companies and increasing banks' capacity to finance the recovery.

The changes to MiFID II apply mostly to **professional clients and eligible counterparties** such as insurers, pension funds, or public institutions and include:

- more targeted information to (professional) clients;
- digital information as default;
- adapted product governance requirements for certain bonds.

The measures are expected to become applicable on 6 March 2022.

### 2/ New ESMA MiFID II Q&A

The European Securities and Markets Authority (ESMA) has published another update of its Questions and Answers (Q&As) regarding the implementation of investor protection and intermediaries topics under MiFID II.

One new question has been added in the heading on "product governance" of the Q&A document: "*Are all bonds embedding a make-whole clause exempt from the MiFID II product governance requirements?*".

ESMA replies: "*According to Article 16a of MiFID II, "an investment firm shall be exempted from the requirements set out in the second to fifth subparagraphs of Article 16(3) and in Article 24(2), where the investment service it provides relates to bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties". This means that the mere presence of a make-whole clause is not sufficient for a financial instrument to be exempt from the MiFID II product governance requirements.*"

ESMA includes on p 130-131 a list of practical examples.

## 4. Digital Finance – Pilot Regime for Distributed Ledger Technology

A political agreement has been reached between the European Parliament and the Council on the Commission's proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology (the "DLT pilot regime"). This is part of the Commission's Digital Finance Strategy, which aims to make Europe's financial services more digital-friendly and to stimulate responsible innovation and competition among financial service providers in the EU.

The pilot regime aims to help EU regulators and market participants to gain experience using distributed ledger technology (i.e. the technology used for the trading and settlement of "tokenised" financial instruments), while ensuring that they can deal with risks to investor protection, market integrity and financial stability (please see also our mail sent on 16.12.2021).

The project based on distributed ledger technology (DLT) follows the "sandbox" approach, allowing DLT market infrastructures **to request to be temporarily exempted from some specific requirements of the EU financial services legislation that could otherwise prevent them from developing solutions for the trading and settlement of transactions in crypto-assets that qualify as financial instruments.** ESMA will issue a non-binding opinion and make recommendations on the application of the exemptions requested.

For example, an exemption from the obligation of intermediation, provided that the exemption is proportionate and limited to a specific use. "*Traditional multilateral trading facilities (MTFs) may admit as members or participants only investment firms, credit institutions and other persons who have sufficient level of trading ability, competence and with adequate organisational arrangements and resources. By contrast, many trading platforms for crypto-assets offer a disintermediated access and provide direct access to retail clients. One potential regulatory hurdle to the development of MTFs for DLT financial instruments could be the obligation of intermediation embedded in Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II). A DLT MTF is allowed to request a temporary derogation to such an obligation of intermediation and to provide access to retail investors, provided that adequate safeguards in terms of investor protection would be in place and that such retail investors are fit and proper for anti-money laundering and combatting the financing of terrorism purpose*".

The experience gained with the pilot regime should help to identify possible practical proposals for new rules on trading and settlement of transactions in financial instruments based on DLT.

Mairead **McGuinness**, Commissioner for Financial Services, Financial Stability and Capital Markets Union, said: *"I warmly welcome the political agreement between the European Parliament and Council and would like to thank the negotiators for both the speed and effectiveness of their work on the DLT pilot regime proposal. This agreement is important as it allows Europe to move forward in supporting innovation while safeguarding investor protection, market integrity and financial stability."*

**MiCA and DORA**

Other parts of the Digital Finance Strategy are the proposal for a Regulation on markets in crypto-assets (MiCA) and the proposal for a Regulation on digital operational resilience for the financial sector (DORA). Member States also adopted the Council's negotiating position on these two legislative proposals and they gave their green light to enter into inter-institutional negotiations with the European Parliament and the European Commission.

## 5. Non-financial Reporting – EFRAG Report on Good Practices

The EFRAG (EU Financial Reporting Advisory Group) Project Task Force on the reporting of non-financial risks and opportunities (PTF RNFRO) has issued its Report: "Towards Sustainable Businesses: Good Practices in Business Model, Risks and Opportunities Reporting in the EU" and a "Supplementary Document: Good Reporting Practices". The aim of these documents is to help companies to benchmark and improve their current sustainability reporting practices, enhancing thereby their long-term performance.

**1/The Main Report** presents the state of play and the drivers of current reporting practices, the application of technological solutions, and suggests a path to improvement in the reporting of sustainability risks, opportunities and their linkage to the business model.

The Report key findings on the reporting on business models suggest that there is no particular company that has a disclosure meeting all the requirements. Some companies are good at explaining the value creation process, describing their risks, but there is a lack of linkage. The aim is to help investors understand the risks and opportunities underpinning particular business model. This is one of the areas where the greatest improvement could be achieved, particularly providing evidence to support the clients.

The Report key findings on sustainability reporting suggest that the financial services sector seems to be more mature in terms of reporting. In general, KPIs (key performance indicators) are used inconsistently, and they are disclosed in various places of corporate reporting. Stakeholders reported that regulatory requirements often do not take into consideration full life circle of the value chain. Taxonomy is an example that does take full circle into consideration, and it can be a good reference point for companies seeking to use standardise KPIs. Less than 20% of the companies looked into provide complete disclosure on their exposure to sustainability risks, including the financial impact of those risks. Many companies describe the risk likelihood in the short medium and long term; however, they do not provide an adequate time frame reference of when each risk is likely to materialise. Companies predominately consider sustainability issues as risks to be managed rather than opportunities for gaining competitive advantage.

**From this work, EFRAG understands that there is need for standards and for guidance to improve disclosures.**

2/The **Supplementary Document** shares 37 examples of good or leading practices extracted from 27 companies- with reasons why these are **good practices and suggestions for improvement**.

Allianz for example is listed as one of good corporate example related to climate-transition scenarios. Allianz excerpts fulfil the PTF-RNFRO Practices Evaluation Approach attributes of 1) **relevance** (Excerpt 1 provides granular sectoral risk exposure and mitigation information aligned to pursuing Paris Agreement goals, it specifies time horizons, and includes details of risk enhances and mitigators; Excerpt 2 further outlines what short, medium and long term mean for Allianz; Excerpt 3 outlines carbon prices effect on the value of the equity portfolio of under different scenarios); 2) **understandability** (Excerpt 1 has an effective tabular presentation and applies a visually effective heat map); and 3) **connectivity** (highlights the financial impact of multi-horizon climate change factor of carbon pricing).

The Report makes a suggestion for improvement: Excerpt 1 presents industry-level risk and opportunities across different time horizons. This information may be indicative but not necessarily equivalent to the company-specific risk exposure. The inclusion of company-specific risk exposure would have made this excerpt more informative.

For more details, you can listen to **EFRAG** podcast providing insights on the PTF RNFRO Report.

***Background***

*The PTF-RNFRO focuses on the reporting on sustainability risks and opportunities and the linkage to the business model which is a key element of a proposal for a Corporate Sustainability Reporting Directive (CSRD). For more details about the proposal for a CSRD, please see the BIPAR update of 30 April 2021.*

*CSRD introduces requirements to **report within the management report** and **according to mandatory EU sustainability reporting standards**. The draft standards would be developed by the European Financial Reporting Advisory Group – EFRAG. EFRAG has started work on a first set of draft sustainability reporting standards which should be ready by October 2022. Sustainability reporting standards for SMEs should be ready by October 2023. You can also see the BIPAR update of 9 April 2021 on EFRAG final report proposing a roadmap for the development of a comprehensive set of EU sustainability reporting standards.*

## 6. COP26 – UN Climate Change Conference

As COP26 held in Glasgow ended on 12 November, the Glasgow Climate Pact was approved to tackle global warming. The Pact adopts Paris Agreement Rulebook and three-quarters of nations submitted their revised national climate strategies as agreed under the Paris Agreement. The Pact *stresses the urgency of enhancing ambition and action in relation to mitigation, adaptation and finance in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement*. It is worthy to remind you that Paris Agreement has a temperature goal to hold the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.

There are also statements on adaptation finance, the global goal on adaptation, gender, and the Indigenous Peoples and Local Communities Platform. Furthermore, the Pact provided for mitigation actions in order to transition towards low-emission energy systems, *including accelerating efforts towards the phase-out unabated coal power and inefficient fossil fuel subsidies*. However, the Pact does not provide for a timeline for either commitment.

Developing and vulnerable countries asked for a specific fund to compensate them for disasters already being wrought by climate change, but their request was not accepted. However, commitments were secured from developed countries to increase other financial flows for adaptation and mitigation; building protective infrastructure or greening energy systems. The Pact also *notes with deep regret that the goal of developed countries to mobilize $100 billion a year by 2020 in climate finance has not yet met been met*. It urges therefore developed countries to deliver on this goal by 2025.

In addition, countries reached some voluntary commitments on private sector finance, methane, deforestation, getting rid of combustion engine cars, ending fossil fuel extraction and greening investment flows.

Furthermore, during COP26, the United Nations Environment Programme's Principles for Sustainable Insurance (UNEP-PSI)[1] organized several events for the insurance industry, demonstrating some initiatives that are taken in our sector to manage climate risk, such as:

- **Insurance leadership in the race to zero**
  At this event, insurance and reinsurance leaders and the UN discussed the newly formed Net Zero Insurance Alliance (NZIA)[2] as one example of collaborative action taken by the industry to accelerate the race to zero. The NZIA focuses on decarbonising underwriting portfolios.
- **Approaches to net-zero insurance**
  At this event, approaches to net-zero insurance that insurers can take to immediately decarbonise their insurance and reinsurance underwriting portfolios were discussed. The NZIA and its partners develop a global standard to measure and disclose insured emissions and a target-setting protocol for the alliance.
- **Collaborative efforts to invest in resilience and close the financial protection gap - *Launch of the V20-led and PSI-hosted Sustainable Insurance Facility***

The V20 consists of the countries most threatened by climate change including members are Afghanistan, Bangladesh, Barbados, Bhutan, Costa Rica, East Timor, Ethiopia, Ghana, Kenya, Kiribati, Madagascar, the Maldives, Nepal, the Philippines, Rwanda, Saint Lucia, Tanzania, Tuvalu, Vanuatu and Vietnam.

Chaired by the V20 Presidency and held in partnership with UNEP's Principles for Sustainable Insurance Initiative (PSI), the Munich Climate Insurance Initiative (MCII) and the InsuResilience Global Partnership, this event convened representatives from the V20, G20 and partner organisations to discuss collaborative solutions to better understand, reduce and manage climate risk, building on the First V20 Climate Vulnerables' Finance Summit last July. The V20-led Sustainable Insurance Facility (SIF), which is hosted by the PSI, is a new mechanism to enhance and accelerate country-led development and uptake of climate-smart insurance solutions for micro, small and medium-sized enterprises (MSMEs).

[1] *UN Environment Programme's Principles for Sustainable Insurance Initiative (PSI), the largest collaboration between the UN and the global insurance industry.*

[2] *The Net-Zero Insurance Alliance (NZIA) was launched at the G20 Climate Summit in Venice last July by its founding members—AXA (NZIA Chair), Allianz, Aviva, Generali, Munich Re, SCOR, Swiss Re and Zurich Insurance Group—under the auspices of UNEP-PSI. In the run up to COP26, the NZIA has expanded its membership, announcing five new members—American Hellenic Hull (Cyprus), Hannover Re (Germany), ICEA LION Group (Kenya), NN Group (The Netherlands), and Shinhan Life Insurance (Republic of Korea).*

### COP26 And European Parliament

A delegation from the European Parliament headed by Pascal Canfin (Renew, FR) and Peter Liese (EPP, DE) was in Glasgow and met with ministers, parliamentarians and other delegates from several countries including China, Brazil, United States, Russia, Pakistan, South Africa, Turkey, Bangladesh and the Maldives, as well as representatives from international organisations and NGOs from Europe and developing countries.

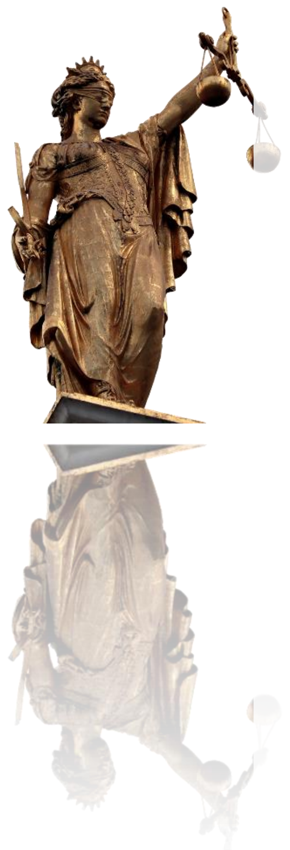
In a Plenary debate on 24 November, many MEPs described the Glasgow Climate Pact as an important step, while stressing for the urgency of more global climate action to limit warming to 1.5 degrees Celsius.

On Monday 29 November 15:30-16.45, MEPs in the Environment, Public Health and Food Safety Committee will take further stock of the COP26 conference and the consequences for EU climate policies with Commission Executive Vice-President Frans Timmermans.

***Background***

*Parliament has been pushing for more ambitious EU climate legislation, and declared a climate emergency on 28 November 2019. In June 2021, the European Climate Law was adopted by Parliament following an agreement with the Council member states and the European Commission.*

*The EU Climate Law transforms the European Green Deal's political commitment to EU climate neutrality by 2050 into a binding obligation for the EU and its member states. It also increases the EU's target to reduce greenhouse gas emissions by 2030 from 40% to at least 55%, compared to 1990 levels. In July 2021, the Commission presented the "Fit for 55 in 2030" package to enable the EU to reach the more ambitious 2030-target.*



## 7. European Commission's infringement decisions taken in November and in December against EU Member States

### Data Protection

The Commission sent a reasoned opinion to **Belgium** for failing to ensure full independence of its Data Protection Authority. It considers that Belgium violates Article 52 of the General Data Protection Regulation (GDPR), which states that the data protection supervisory authority shall perform its tasks and exercise its powers **independently.** The independence of data protection authorities requires **that their members are free from any external influence or incompatible occupation.** However, for the Commission, some members of the Belgian Data Protection Authority currently cannot be regarded as free from external influence because they either report to a management committee depending on the Belgian government, they have taken part in governmental projects on COVID-19 contact tracing, or they are members of the Information Security Committee. On 9 June 2021, the Commission sent a letter of formal notice to Belgium, giving two months to take corrective measures. Belgium's response did not address the issues raised in the letter of formal notice and the members concerned have remained in their posts. Belgium now has two months to take relevant action, failing which the Commission may decide to refer the case to the Court of Justice of the European Union.

### Anti-Money Laundering

The Commission opened infringement proceedings against **Czechia** on grounds of incorrect transposition of the 5th Anti-Money Laundering Directive. The deadline for transposing the Directive was 10 January 2020 and Czechia had declared partial transposition. The Commission assessed the notified national measures and concluded that there are several instances of incorrect transposition (non-conformity) of the Directive into national law, which affect, among others**, some fundamental aspects like the definition of beneficial ownership and the proper functioning of the beneficial ownership registers. Without the proper functioning of publicly accessible beneficial ownership registers, the person actually owning or controlling an asset, can easily remain behind the scene by setting up anonymous companies or trusts in jurisdictions that do not require registering the beneficial owner of the company - or by hiring nominees or proxies to sign the papers.** According to the Commission, this practice opens doors possible for corruption, money laundering and other illicit financial practices. EU rules on AML are part of the Commission's commitment to protect EU citizens and the EU's financial system from money laundering and terrorist financing. Legislative gaps occurring in one Member State have an impact on the EU as a whole. Without a satisfactory response from Czechia within two months, the Commission may decide to address a reasoned opinion.

The Commission also sent a reasoned opinion to **Ireland** for an incomplete transposition of the 5th Anti-Money Laundering Directive. Despite the fact that the transposition deadline for the 5thAML Directive was 10 January 2020, on the date of adopting the reasoned opinion, Ireland had declared only partial transposition of the Directive. The Commission assessed the notified national measures and concluded that Ireland had not completely transposed **the obligation to fully identify who actually holds or controls payment accounts and bank accounts and safe-deposit boxes**. For the Commission, the delayed access to information by the competent authorities on the identity of holders of bank and payment accounts and safe-deposit boxes hampers the detection of transfers of funds relating to money laundering and terrorism.

### Mortgage Credit Directive and credit intermediaries

The Commission sent a reasoned opinion to **Italy on the grounds of incomplete transposition of the** Mortgage Credit Directive. **In particular, the Commission requests Italy to adopt and notify the provisions on the freedom of establishment and free movement of services of credit intermediaries, as well as on their supervision**. The Directive aims to increase consumer protection in mortgage lending and to foster competition **by, amongst other aspects, opening national markets to credit intermediaries**. For the Commission, enhanced competition should benefit consumers through more choice and lower cost. The deadline for its transposition into national law was 21 March 2016. Italy now has two months to remedy the issue otherwise the Commission may decide to refer the case to the Court of Justice of the European Union.

### Measures necessary to implement the ESAs review Directive (amending Solvency II, MiFID and AMLD 4 Directives)

The Commission sent reasoned opinions to **Italy, Bulgaria** and **Czechia** for failure to communicate any required national measures to implement the European Supervisory Authorities (ESAs) Review Directive amending Solvency II, MIFID and AMLD4 Directives (Directive (EU) 2019/2177). **This Directive complements the changes in the ESAs review by giving new competences to EBA in relation to AML rules, by empowering it with a role of coordinating AML supervisors at EU level. It also confers new powers to EIOPA to set up cooperation platforms to ensure close collaboration between the supervisory authorities of the home and host Member States, in case of cross-border insurance activities. It also gives more powers to ESMA in relation to Data Reporting Services Providers (DRSPs).** The deadline for the communication of the measures was 30 June 2021. As no measures have been notified by the deadline, letters of formal notice were sent on 23 July 2021. Member States had two months to react and up to today, they have still not notified any relevant measures to the Commission. Italy, Bulgaria and Czechia have now two months to act and take the necessary measures; otherwise, the Commission may decide to refer the case to the Court of Justice of the EU.

## 8. European Parliament's change of President early next year - Maltese EPP candidate

As announced during our BIPAR's "Europe at a glance" webinar on 14 October, the European Parliament is expected to change its President in January 2022. This is based on a deal between the two largest Groups in Parliament, the Christian Democrat Group **EPP** and the Socialist Group **S&D** where the current EP President (since 3/7/2019) is David Sassoli (S&D, IT) and where on 18 January 2022 the Presidency is to switch to the EPP. The EPP Group has now elected Roberta Metsola (Malta) as its candidate to become President of the European Parliament. She received a majority of 64,4 percent of the votes of her fellow EPP Group MEPs.

Immediately after the vote, Mrs Metsola said: "*I am honoured to have been given a strong mandate by the EPP Group to be its candidate for President of the European Parliament. The second half of this legislature will be critical for Europe - I will work hard to keep building bridges in this House as we work together in pushing forward important legislative files and bringing decision-making closer to people in every Member State*."

EPP Group Chair Manfred Weber confirmed the EPP Group's commitment to the agreement between political groups in the European Parliament of 3 July 2019 that the President of the Parliament in the 2nd half of the term should come from the ranks of the EPP Group. "*As the EPP Group respected the deal in 2019 and voted for David Sassoli without proposing a candidate of our own, we call on the S&D to honour the agreement in the same spirit of loyal cooperation. The European Parliament can be strong and deliver for our citizens ahead of the 2024 elections if the pro-European forces are united*."