

BIPAR Update

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bipar

European Federation of Insurance Intermediaries

Commission

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1. Slovenia takes over Council's Presidency

On 1 July 2021, Slovenia took over the Presidency of the Council of the EU from Portugal. Slovenia's six-month [programme](#) is based on four priorities. Under the slogan "*Together. Resilient. Europe*", they will strive to facilitate the EU's recovery and reinforce its resilience, reflect on the future of Europe, strengthen the rule of law and European values, and increase security and stability in the European neighbourhood.

Slovenia will focus on strengthening the long-term stability and efficiency of the financial system, which must be relieved of the risks arising from the consequences of the pandemic in a sustainable manner. With regard to **financial services**, the Slovenian Presidency will continue activities related to the Banking Union. Considerable work will be devoted to further measures for the prevention of **money laundering** and terrorist financing, based on the Commission's action plan.

Other important activities in the area of financial services will relate to legislative proposals on **digital finance**, including the regulation of the **crypto-assets** market, strengthening of the financial sector's digital operational resilience (**DORA**), and the establishment of the **European Green Bond Standard**. As regards **insurance**, the Slovenian Presidency will focus on revising the **Solvency II Directive**.

*"We will also further initiatives to strengthen the **Capital Markets Union**, with the aim of facilitating access to finance for businesses. Legislative work in the area of **taxation** will focus on two dossiers that will provide the basis for new EU own resources, namely the dossiers on digital taxation and the carbon border adjustment mechanism".*

As a sidenote, the Portuguese Council Presidency did not find agreement on the appointment of the next ESMA chair. This is therefore also one of the points on the agenda of the new Presidency.

2. Sustainable Finance – European Commission's Taxonomy Compass for users

On the official [website](#) of the European Commission, an **EU Taxonomy Compass** is now available. It provides a visual representation of the **contents of the EU Taxonomy**. It includes the technical screening criteria for the first two environment objectives (climate mitigation and climate adaptation), as laid down in the Taxonomy Delegated Act adopted on 4 June 2021.

Looking forward, the EU Taxonomy Compass will be updated to include future delegated acts specifying technical screening criteria for additional economic activities substantially contributing to the first two environmental objectives as well as the other environmental objectives of the Taxonomy Regulation. It will also reflect reviews of the delegated acts in the future.

Please note that the first EU Taxonomy Climate Delegated Act is currently under review by the European Parliament and the Council. As such, it has not yet entered into force and has not yet been published in the Official Journal of the EU. For more information, please see also the BIPAR Update of 30 April 2021 and of 25 June 2021.

The EU Taxonomy Compass aims to **make the contents of the EU Taxonomy easier to access** for a variety of users. It enables users to check which activities are included in the EU Taxonomy (taxonomy-eligible activities), to which objectives they substantially contribute and what criteria they have to meet. It is important to note that minimum safeguards (social standards) have to be met for an economic activity to be considered taxonomy-aligned.

You can visit “**EU Taxonomy Compass**” tab to display the economic activities per environmental objective. The criteria for a given activity can be accessed by clicking on the activity name or by clicking on the button for an activity-objective combination of interest. A little “E” or “T” indicates if the activity is an enabling or transitional activity (if meeting the criteria).

You can also visit the “**Activities by sector**” tab, to check which economic activities for a given sector are considered taxonomy-relevant and view the technical screening criteria applicable to them.

3. Non-financial reporting – Commission adopted rules for certain undertakings to disclose their taxonomy-aligned activities (Article 8)

The European Commission adopted on 6 July 2021 its [Delegated Act](#) to the Taxonomy Regulation to specify the content, methodology and presentation of the information to be disclosed concerning the environmentally sustainable economic activities of certain companies that are subject to the scope of the Non-Financial Reporting Directive (NFRD). The draft Delegated Act specifies the disclosure obligations under **Article 8 of the Taxonomy Regulation**.

Article 8 of the Taxonomy Regulation, which entered into force on 12 July 2020 and will start to apply by the 1 January 2022, requires companies falling within the scope of the existing NFRD - AND the additional companies brought under the scope of the recently proposed Corporate Sustainability Reporting Directive (CSRD), if approved by the co-legislators - **to report on the extent to which their activities are taxonomy-aligned**. The CSRD proposal extends the scope of NFRD to all large companies (including non-listed large companies) and all size companies listed on regulated markets (except listed micro-enterprises). Other SME undertakings may comply with this disclosure obligation on a voluntary basis (*for more details about the proposal for a CSRD, please see the BIPAR Update of 30 April 2021*).

More precisely, the Taxonomy Regulation (Article 8) requires that financial and non-financial undertakings under the scope of NFRD (and CSRD) to report how and to what extent their activities qualify as environmentally sustainable. In particular, non-financial undertakings will have to disclose the share of their turnover, capital, and operational expenditure resulting from environmentally sustainable economic activities (key performance indicators - KPIs). Financial undertakings will have to disclose to what extent they finance, or invest, in environmentally sustainable economic activities. Article 8 (2) of Taxonomy does not specify equivalent indicators (KPIs) for financial undertakings, mainly large banks, asset managers, investment firms, insurance and reinsurance undertakings.

This disclosure aims to help investors and the public to understand the companies' trajectory towards sustainability through the annual publication of their KPIs associated with environmentally sustainable economic activities and to prevent greenwashing. Financial and non-financial undertakings can use the information disclosed to design credible green financial products such as green bonds or investment funds and channel investor demand towards sustainable projects, in order to meet their own obligations under the Sustainable Finance Disclosure Regulation (SFDR).

According to the Commission, reporting under this Delegated Act will facilitate the development of EU-wide standards for environmentally sustainable financial products and the creation of labels that recognise compliance with these standards. It is noteworthy that the Commission has also adopted a proposal on the EU green bond standard (EU GBS).

Draft Article 8 KPIs in brief

According to this Taxonomy Delegated Act, turnover, capital expenditure and operating expenditure are irrelevant for assessing the environmental sustainability of financial activities, including lending, investment and insurance. Specific KPIs are required for financial undertakings. Qualitative information should also accompany the KPIs (Annex XI).

The KPIs for insurance and reinsurance undertakings that are subject to the NFRD/CSRD disclosure obligations should capture their underwriting activities and investment policy that are part of their business model. One key performance indicator should relate to the investment policy of such insurance and reinsurance undertakings for the funds collected from their underwriting activities and should show the share of Taxonomy-aligned assets in their overall assets. A second indicator should relate to the underwriting activities themselves and show what proportion of the overall non-life underwriting activities is composed of non-life underwriting activities related to taxonomy-aligned activities, i.e. climate adaptation (gross premiums written non-life (re)insurance revenue).

Asset managers should disclose the proportion of investments they made in Taxonomy-aligned economic activities in the value of all investments managed by them resulting from both their collective and individual portfolio management activities.

Investment firms that are subject to the NFRD/CSRD disclosure obligations should cover in their KPIs both their dealing on own account and their dealing on behalf of clients. The disclosure of the key performance indicator for dealing on own account should reflect which proportion of the total assets is composed of Taxonomy-aligned assets. That indicator should focus on the investment firms' investments, including debt securities and equity instruments in investee companies. The key performance indicator for the environmental sustainability of investment firms' services and activities on behalf of all their clients should be based on the revenue in the form of fees, commissions and other monetary benefits that investment firms generate from their investment services and activities provided to their clients.

The exposures to undertakings not subject to an obligation to publish non-financial information pursuant to NFRD/CSRD shall be excluded from the numerator of KPIs of financial undertakings, even when they provide such information voluntarily. This information may be included from 1 January 2025, subject to a review and outcome of an impact assessment.

The information to be disclosed by each type of financial undertaking and the templates are laid down in the respective Annexes accompanying the Commission Delegated Act (e.g. [Annex VII](#) and [Annex VIII](#) for KPIs of investment firms).



Background on data pooling and data sharing arrangements

Article 8(4) of the Taxonomy Regulation requires the Commission to adopt by 1 June 2021 a delegated act to further specify the content, methodology, and presentation of the information to be disclosed by both non-financial and financial undertakings.

In view of the preparation of the Delegated Act, the Commission had addressed a call for advice to the European Supervisory Authorities (ESAs) on 15 September 2020. It invited ESAs to determine which methodology should be used by different financial undertakings under their remit to disclose their degree of Taxonomy-alignment under Article 8 of the Taxonomy Regulation. For more details on the EIOPA, ESMA and EBA Advice in relation to Article 8 of Taxonomy, please see the BIPAR update of 19 March 2021.

The Commission published for consultation its draft Delegated on Article 8 of Taxonomy in May 2021. Please see also the BIPAR update of 20 May 2021.



The Taxonomy Delegated Act will now be scrutinised by the European Parliament and the Council. If approved, it will start to apply from 1 January 2023 for non-financial undertakings and from 1 January 2024 for financial undertakings.

From 1 January 2022, financial undertakings shall disclose for reporting period 2021, not the detailed KPIs, but the share of their exposures to Taxonomy non-eligible and Taxonomy-eligible economic activities in their total assets and qualitative information.

For your information, you can also see the [FAQ on the Taxonomy Article 8 Delegated Act](#).

4. BIPAR responses to consultations in June

In June, BIPAR replied to the following public consultations:

- **Commission's "Roadmap" consultation on its possible options to review the Distance Marketing of consumer Financial Services Directive (DMFSD).** The current DMFSD applies to intermediaries when distributing insurance/financial products under an organised distance sales /service provision scheme and exclusively via one or more means of distance communication.

In its reply, BIPAR explained that it is important to ensure that the revised Directive remains technology-neutral and becomes future-proofed. The principle of proportionality should be introduced as the Directive's all-encompassing scope covers the entire financial sector, which means that it applies to big firms and SMEs alike. BIPAR explained that today the Directive creates legal uncertainty due to overlaps and/or duplications with provisions of more recent sector or products specific EU legislation such as the IDD, MiFID, and PRIIPs regulation that have introduced new pre-contractual information or disclosure requirements that aim to strengthen the protection of the consumer. A revised Directive should only include requirements specific to the distance marketing of consumer financial services/products.

In the meantime, the Commission launched a more important and precise consultation on the review of the DMFSD and BIPAR will prepare a response.

- **EIOPA consultation on revised draft guidelines on the Legal Entity Identifier (LEI)** and in particular on extending their scope of application to insurance intermediaries doing cross-border business in the EU. EIOPA guidelines currently apply to insurers and IORP (institutions for occupational retirement provisions).

In its reply BIPAR states it is not in favour of imposing LEI on intermediaries doing cross-border business as this is an additional unnecessary burden. It adds formality and costs without bringing any significant and practical benefits.

If the revised LEI guidelines were to be extended to insurance intermediaries, more proportionality should then be built in the Guidelines: only intermediaries who have a substantial and systematic cross-border activity (not occasional) and who are larger than SMEs, should be in the scope of these Guidelines. Others could have a LEI on a voluntary basis.

- **EBA consultation on its revised Guidelines on Risk-Based Supervision** of credit and financial institutions' compliance with anti-money laundering and countering the financing of terrorism (AML/CFT) obligations.

The [Guidelines on risk-based AML/CFT](#) supervision were originally published by the European Supervisory Authorities (ESAs) in 2016 and set out steps that competent authorities (CA) should take to ensure compliance by credit and financial institutions with their AML/CFT obligations. Since their publication, the EBA has observed that supervisors across the EU were finding the implementation of the risk-based approach to AML/CFT supervision difficult.

In its reply BIPAR states that it is in favour of introducing risks associated with the “sector/subsector” in the definition of “risk profile”. It is important that the risk assessments take into account the risk associated to the particular sector of activities and consequently to place the main attention on sectors considered to present significant ML/TF risks, without of course neglecting the less risky sector. BIPAR also stressed that the proportionality principle is a core principle of the EU legislation, and it should be always observed.

Once implemented, the original risk-based supervision Guidelines will be repealed and replaced with the revised Guidelines.

5. Commission tells credit card companies to clearly inform consumers regarding monthly subscriptions

The European Commission and national consumer authorities have undertaken a so-called “coordinated action” vis-à-vis three major credit card companies (Visa, Mastercard and American Express). On 21 June 2021, the European Commission and the **network of national consumer authorities** (CPC), led by the Danish Consumer Ombudsman, wrote to request changes to the way information is presented to consumers when the credit card companies make a payment involving recurring subscription fees.

While credit card companies are not the ones running these schemes, they have a duty to properly inform their customers. In the payment window where consumers enter their credit card information when shopping online, there is often only information about a one-off payment amount, not the recurring subscription. The Commission and national consumer authorities request that all necessary information is presented in the payment window for the consumer.

The three credit card companies now have two months to inform the Commission and CPC authorities about the positive changes they intend to make to their current payment processes.

Commissioner for Justice, Didier Reynders, said: “The truth is that sometimes consumers are being tricked and we are calling on credit card companies to ensure that their own customers don't fall for it. Credit card companies have a duty to uphold EU law and ensure consumers know about the actual costs when buying.”

6. Cybersecurity – ENISA Guide for SMEs

In June 2021, ENISA (EU Agency for Cybersecurity) published a short [Cybersecurity Guide](#) which provides SMEs with 12 practical high-level steps on how to better secure their systems and their business.

This Guide is a companion publication to the more detailed ENISA Report “[Cybersecurity for SMEs - Cybersecurity guide for SMEs Challenges and Recommendations](#)”. This Report provides cybersecurity advice for SMEs, but also proposals for actions that Member States should consider in order to support SMEs improve their cybersecurity posture.

According to ENISA, the COVID-19 crisis showed how important the Internet and computers in general are for SMEs. In order to thrive in business during the pandemic many SMEs had to take business continuity measures, such as adopting to cloud services, improving their internet services, upgrading their websites and enabling staff to work remotely.

Responsibility for the critical function of good cybersecurity should be assigned to someone within the organization who should ensure appropriate resources such as time from personnel, the purchasing of cybersecurity software, services and hardware, training for staff, and the development of effective policies are given to cybersecurity.

Under the EU General Data Protection Regulation (GDPR) any SMEs that process or store personal data belonging to EU/EEA residents need to ensure that appropriate security controls are in place to protect that data. This includes ensuring that any third parties working on behalf of the SME have appropriate security measures in place.

Regular cybersecurity awareness trainings for all employees should be provided to ensure they can recognize and deal with the various cybersecurity threats. These trainings should be tailored for SMEs and focus on real-life situations. Specialised cybersecurity training should be provided to those responsible for managing cybersecurity within the business.

Other recommendations include to develop a formal incident response plan as well as practical advice for secure access to systems, secure devices, secure network, backup and information sharing.

See also the ENISA Report “[Cloud Security Guide for SMEs](#)” published in April 2015 with guidance for SMEs when migrating to the cloud.

7. European Commission's infringement decisions taken on 9 June against Member States

Data Protection

The Commission addressed a **letter of formal notice** to **Belgium** for infringing 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. In March, Didier Reynders, Commissioner for Justice, sent a letter to the Belgian authorities expressing concerns that the Belgian data protection authority was not independent. Some of its members cannot be regarded as free from external influence because they either report to a management committee depending on the Belgian government, take part in governmental projects on COVID-19 contact tracing or are members of the Information Security Committee. The information provided in the reply from the Belgian authorities in April did not alleviate those concerns.

INFRINGEMENT PROCEDURES
As the Guardian of the Treaties, the European Commission is responsible for ensuring that Community law is correctly applied and may initiate infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union (TFEU) whenever it considers that a Member State has breached Community law.

1st stage

- The Commission sends the Member State a **letter of formal notice** inviting it to submit its observations within 2 months. This exchange of views is not normally publicised.

2nd stage

- If no reply to the letter of formal notice is received, or if the observations presented by the Member State are not considered satisfactory, the Commission sends a **reasoned opinion**. The Member State is allowed an additional 2-month period within which to comply. At this stage the Commission issues a press release informing the EU's citizens of the purpose of the procedure.

3rd stage

- If the Member State still fails to comply with Community law, the Commission may decide to refer the matter to the **European Court of Justice**, whose judgment is binding.

4th stage

- If the Member State fails to comply with the Court's judgment, the Commission may seek the imposition of a **penalty payment under Article 260 of the TFEU**.

Mortgage Credit

Italy was sent a **letter of formal notice** for failing to comply with the obligation to implement all provisions of the [Mortgage Credit Directive](#). It is requested 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 aim of the Mortgage Credit Directive is to increase consumer protection in mortgage lending and to foster competition by, amongst other aspects, opening national markets to credit intermediaries. Enhanced competition should benefit consumers through more choice and lower costs.

Anti-Money Laundering

The Commission sent **reasoned opinions** to Hungary, the Netherlands, and Poland for failing to transpose fully the [5th Anti-Money Laundering Directive](#) into national law by 10 January 2020. Hungary has failed to transpose certain EU rules related to, for example, anonymous accounts, effective sanctions, access to information on beneficial ownership, and conditions regulating the exchange of information between relevant authorities. The legal measures adopted by the Netherlands fail to cover anonymous accounts, rights to administrative review, necessary transparency as regards beneficial ownership of trusts or similar legal arrangements, or adequate access to information by the Financial Intelligence Units (FIU). Poland has failed to transpose rules related to, for example, the trade of works of art, the use of anonymous prepaid cards issued in third countries, enhanced customer due diligence measures to be applied with respect to business relationships or transactions involving high-risk third countries and rules regarding the required level of transparency in the beneficial ownership of trusts or similar legal arrangements.

The effective fight against money laundering is one of the central points of the EU's approach to combating crime in Europe. The changes brought by the new Directive are important for the added transparency and rules aimed to ensure the integrity of the EU's financial system.

Public procurement

The Commission referred Poland to the **Court of Justice** on considering that the Polish legislation transposing the Public Procurement Directives ([Directive 2014/24/EU](#), [Directive 2014/25/EU](#) and [Directive 2014/23/EU](#)) is still not fully compliant with the EU legislation (rules had to be transposed by Member States into national law by 18 April 2016). It also decided to send a **letter of formal notice** to Slovenia. The Commission sent a **letter of formal notice** to Austria, requesting it to comply with the [EU rules on public procurement](#). Recently, Austria tendered out printing services for security documents such as ID cards in a way that seems to be designed to exactly and only fit the former service provider Österreichische Staatsdruckerei. If confirmed, such procurement would hinder competition and would not be in line with the public procurement provisions.