

BIPAR Update

15 April 2022

bipar

European Federation of Insurance Intermediaries

Commission

INSIDE THIS ISSUE

1. Commission launches the EU Digital Finance Platform
2. EIOPA's FAQ on PEPP for consumers and professionals
3. Sustainable Finance - Recommendations for Environmental Transition and Social Taxonomy
4. Sustainable Finance - Recommendations on the four remaining Taxonomy environmental objectives
5. EIOPA supervisory statement on supervision of run-off undertakings
6. ESAs warn consumers on the risks of crypto-assets

1. Commission launches the EU Digital Finance Platform

On 8 April 2022, the European Commission launched the EU Digital Finance Platform, a [website](#) designed to bring together industry and EU supervisory authorities in a joint effort to overcome fragmentation and to continue building the Single Market in digital finance. **The Platform is open to entire spectrum of the market players**, including start-ups and FinTechs/InsurTechs as well as incumbent actors (like insurance intermediaries), who are keen to test new ideas.

Speaking at the online launch event, Commissioner Mairead McGuinness, noted that the Platform is one of the key initiatives announced in the EU Digital Finance Strategy of September 2020 (see our mail in this respect) and is intended to encourage interaction. Commissioner McGuinness said that *“business as usual is not an option, it changes all the time. We need to be ahead. We need to support the kind of innovation we would like”*.

The EU Digital Finance Platform consists of two main features:

1. The **Digital Finance Observatory** including, among other functionalities, a **Fintech Map** - an interactive map showing registered Fintech entities in the EU Member States and a description of their businesses. Registered users will be able to share relevant research material.
2. A **European Forum for Innovation Facilitators Gateway**, which is designed to help connect entrepreneurs with the relevant national authorities. The Gateway will act as a **single access point to supervisors**, with information about national innovation hubs, regulatory sandboxes and licensing requirements. It also provides a platform for

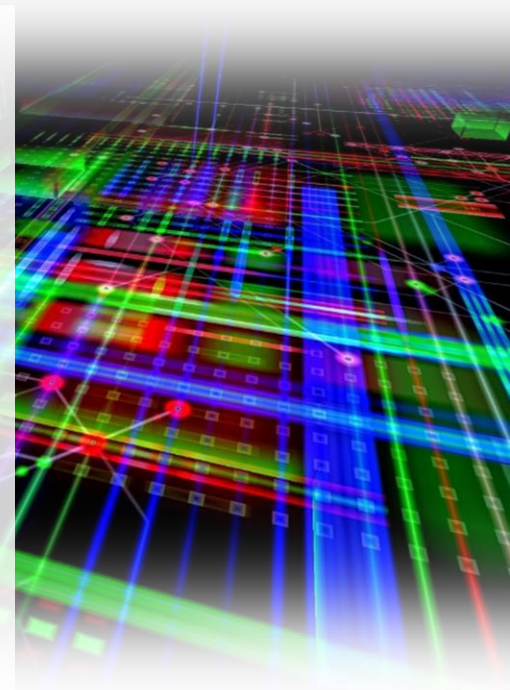
discussion between the authorities and businesses about several issues, such as the regulatory treatment of innovative products, services and business models.

This part of the Platform will also host **functionalities linked to cross-border testing** - enabling firms to **involve multiple national authorities in the testing of new products or applications**.

In a second phase, to be launched in 2023, new features will be added to the EU Digital Finance Platform. As announced by Commissioner McGuinness, there are discussions about **the creation of a Data Hub** intended to be a space where firms can get access to data enabling them to test innovative products and applications.

In her closing remarks, Verena Ross, Chair of the European Securities and Markets Authority (ESMA), stated that the Platform will support cross-border activities of national financial facilitators (hubs, sandboxes and accelerators) in their engagements with innovative FinTechs in Europe. In this context she also mentioned **some of the activities conducted currently by the European Forum of Innovation Facilitators (EFIF)**, including dedicated meetings to address various areas of innovation, such as Distributed Ledger Technology (DLT), stablecoins, AI, Big Data, platformisation, open finance, APIs and crypto-assets.

BIPAR will come back to its members on the EU Digital Finance Platform with more detailed information. For BIPAR, it is crucial that this Platform ensures a level-playing field between incumbent and “start-ups” (same activities, same rules).



2. EIOPA's FAQ on PEPP for consumers and professionals

After publishing a set of FAQ for [consumers](#) on the day of application of the Pan-European Personal Pension Products (PEPP) Regulation (22 March 2022), EIOPA has now also published a set of FAQ for [professionals](#) on PEPP. The questions include general questions, questions on supervision and questions on the stochastic model.

Among the general questions is question 8 on distribution:

“When do PEPP-specific distribution rules apply in a sale process?”

The PEPP specific distribution rules apply with regards the retirement-related demands and needs test, the mandatory provision of advice as well as with regards the distribution related aspects of the Product Oversight and Governance requirements.

However, sectoral distribution rules (i.e., IDD, MiFID, and national distribution rules) apply for other aspects of distribution.”

EIOPA explains that the purpose of the list of frequently asked questions is to provide aid to the market in application of the PEPP legislative framework. EIOPA stresses that its paper is not binding and not to be considered a Q&A in the meaning of Article 16b of the EIOPA Regulation. The answers in the document reflect EIOPA staff's views on the application of the PEPP legislative framework. They do not in any way constitute official legal interpretation of PEPP legislative acts, which can only be provided by the European Commission through the Q&A process. Finally, only the Court of Justice of the European Union is competent to authoritatively interpret Union law.



3. Sustainable Finance – Recommendations for Environmental Transition and Social Taxonomy

In February and March 2022, the Platform on Sustainable Finance set up by the European Commission published two Reports relating to the EU Taxonomy:

1. [Report on Environmental Transition Taxonomy](#); and
2. [Report on Social Taxonomy](#).

The Reports are part of the Platform’s main deliverables to advise the Commission on the potential extension of taxonomy framework under Article 26 of the Taxonomy Regulation.

- 1) The Report on Environmental Transition Taxonomy proposes moving beyond the dichotomy of green/non-green to classify a wider range of economic activities. **The EU Taxonomy focuses on the performance levels of economic activities that are making a substantial contribution (SC) to the EU’s environmental objectives while doing no significant harm (DNSH) to any of those objectives** and meeting minimum social safeguards. Thus, some activities may not be included in the Taxonomy, either because they have no sustainable transition options or because they are low-impact activities.

All these activities need **specific finance for investment to make the specific transition** needed in their case, which can range from activities that must transition away from significantly harmful (SH) performance levels (e.g. inefficient gas-fired power production and conventionally powered vehicles) through to activities with a low environmental impact and no likelihood of making a substantial contribution to environmental objectives (e.g. the provision of accounting services to small businesses or childcare).

The Report introduces, therefore, a “traffic-light system” with two **new labels** for additional economic activities:

- **Significant negative (or red) impact** on the environment, meaning unsustainable performance requiring an urgent transition. These activities could qualify for Taxonomy-recognised investment as part of a transition plan to avoid their current significantly harmful performance and move to intermediate performance levels.
- **Intermediate (or amber-orange/yellow) impact**, with performances between the thresholds of substantial contribution (SC) and do not significant harm (DNSH). Activities (e.g. renewable or other power generation, heavy industry or transport sector activities) could qualify for this intermediate transition plan under which they continue to improve to stay out of significantly harmful performance.

Additionally, the Report recognises the existence of a **new category of activities, those with low or always significant harmful impact on the environment**, which represent around 30% of all the economic activities on the markets and that **may never be part of Taxonomy**. For activities with always significant harmful performance (ASH), urgent, managed exit/decommissioning is required with a Just Transition effort. Activities with low environmental impact (LEnvI) should not be regarded as either red, amber or green (e.g lawyers, tax advisers, hairdressers); they have little impact either negative or positive. This could allow enterprises or entities to show that their overall activities, while not considered green, do not cause environmental or social harm. This classification should also encourage “LEnvI enterprises” to access green Taxonomy-aligned finance for their green investments and expenditures.

- 2) The Report on Social Taxonomy examines what constitutes a substantial social contribution, how to not do significant harm and what activities are socially harmful. It also considers the relationship between the social and environmental taxonomies, governance objectives and the regulatory environment.

A social taxonomy would be a tool to help investors identify opportunities to contribute to social objectives, like environmental taxonomy is a tool for environmentally sustainable investments. The suggested structure of a social taxonomy consists of **three objectives**, each of which addresses a different group of stakeholders:

1. **decent work (including for value-chain workers);**
2. **adequate living standards and wellbeing for end-users;**
3. **inclusive and sustainable communities and societies.**

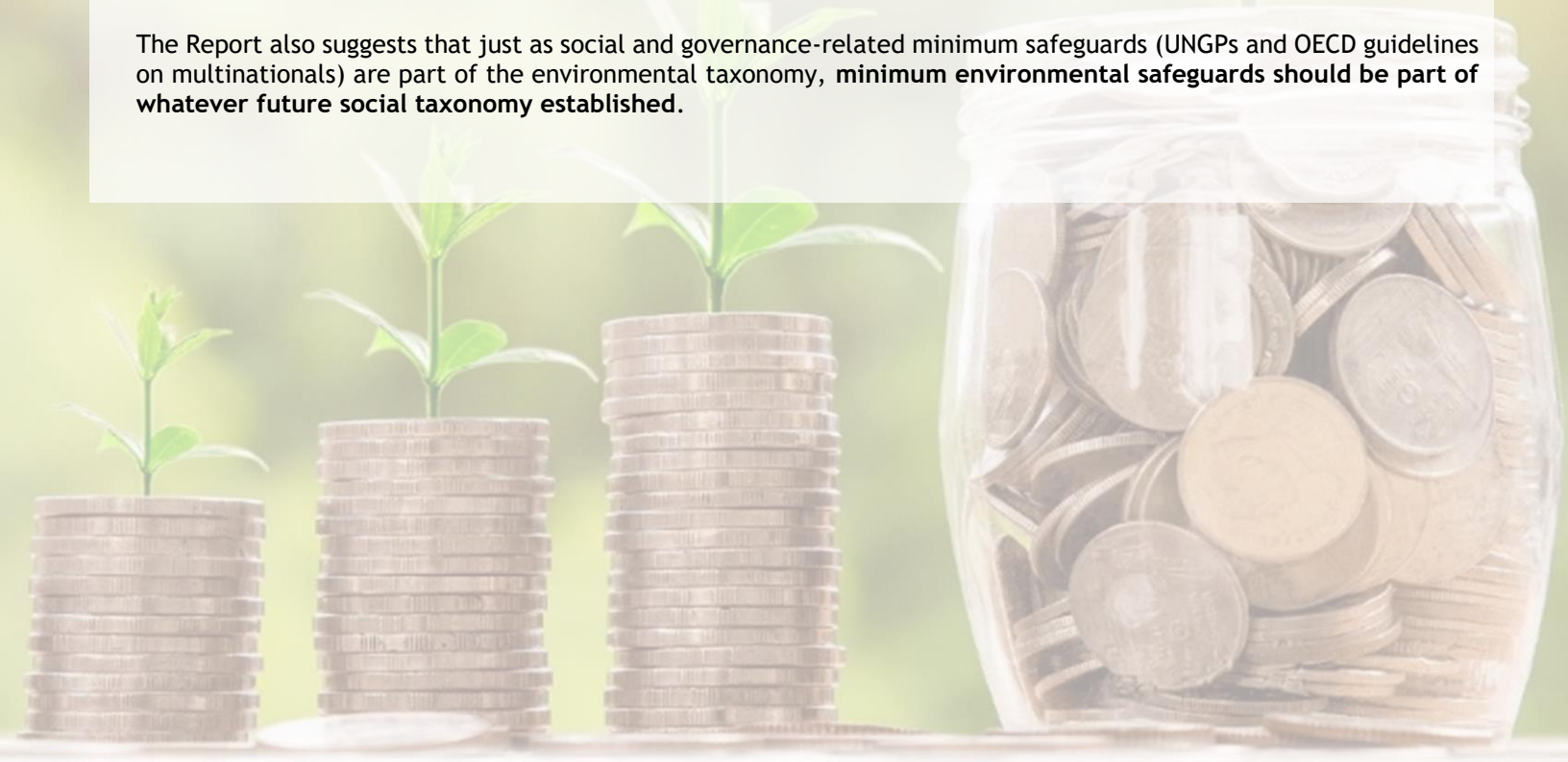
Sub-objectives to these three objectives will ensure that various aspects integral to these objectives can be addressed. These aspects include **health and safety; healthcare; housing; wages; non-discrimination; consumer health; and communities' livelihoods.**

The Report suggests that within each of these objectives, there are **different types of substantial contributions**. A) The first type is substantial contributions which focus on the additional **inherent social benefits** of the activity itself. This relates to the concept of availability, accessibility, acceptability and quality (AAAQ) to activities such as housing, healthcare transport, and telecommunications. B) The second type is substantial contributions which focus on **avoiding and addressing negative impacts on workers, consumers and communities**. This second type includes; (i) occupational health and safety (OHS); (ii) training workers for a just transition; (iii) paying wages agreed in collective agreements; and (iv) ensuring a decent life for the worker and his/her family. C) The third type of substantial contribution is **enabling activities** which enable other activities to provide social benefits.

According to the Report, a further structural element will be “do no significant harm” criteria. This safeguard can include counting a substantial social contribution for a company which in another area is acting against social and or governance principles. In this way, corporate-governance topics will generally be linked to the entity and will be recognised in minimum safeguard criteria.

Finally, the social taxonomy considers **socially harmful activities**. Similar to the environmental taxonomy, the question in this case is which activities can be considered socially harmful under any circumstances.

The Report also suggests that just as social and governance-related minimum safeguards (UNGP and OECD guidelines on multinationals) are part of the environmental taxonomy, **minimum environmental safeguards should be part of whatever future social taxonomy established.**



4. Sustainable Finance – Recommendations on the four remaining Taxonomy environmental objectives

The European Commission's Platform on Sustainable Finance published at the end of March 2022 its [Report on technical screening criteria for the four remaining environmental objectives under the EU Taxonomy](#).

The [Taxonomy Regulation](#) (Art. 3) defines six environmental objectives:

1. climate change mitigation;
2. climate change adaptation;
3. the sustainable use and protection of water and marine resources;
4. the transition to a circular economy;
5. pollution prevention and control;
6. the protection and restoration of biodiversity and ecosystem.

The Commission will adopt the EU taxonomy as a series of delegated acts under the Taxonomy Regulation, based on advice from external experts. To this purpose, the Platform on Sustainable Finance acts as a permanent expert group of the European Commission, established under Article 20 of the Taxonomy Regulation, and its mandate is to assist the Commission in developing its sustainable finance policies, notably the further development of the EU taxonomy.

The Platform's Report sets out **recommendations** (Part A) relating to the rationale of technical screening criteria for **objectives 3 - 6 of the Taxonomy Regulation**. The technical screening criteria define when activity is assessed as environmentally sustainable. This report is **supplemented by a [Technical Annex](#)** (Part B) containing the technical screening criteria for the selected economic activities contributing to all six environmental objectives of the Taxonomy Regulation (e.g. agriculture, forestry fishing, manufacturing, energy, transport, water supply, etc.).

The Taxonomy aims to define economic activities as taxonomy-aligned. An activity is considered taxonomy-aligned if: **i)** it makes a substantial contribution to at least one of the following environmental objectives, and **ii)** while not causing significant harm to any of the other five objectives.

The Taxonomy intends to be as comprehensive as possible and covering all relevant parts of the economy. Thus, the Platform applies the NACE industrial/sector classification system in defining technical screening criteria to the environmental objectives 3- 6. The Report identifies a list of **priority economic activities for each of the objectives 3-6** (based on the magnitude of each activity's impact and its improvement potential) as well as **some relevant enabling activities¹ per objective** for which technical screening criteria will need to be developed. The activity should be within scope of the technical screening criteria to ensure a substantial contribution to a given environmental objective depending on the activity boundary.

What's Next?

A first delegated act on sustainable activities for climate change adaptation and mitigation objectives entered into force on 1 January 2022 (please see also our mail sent on 16.12.2021). A second delegated act covering the remaining environmental objectives 3-6 (as well as some additional criteria for the environmental objectives 1-2) will be adopted by the Commission following the recommendations of the platform. The Platform Report is not binding for the Commission. The platform will release additional criteria in May.

¹ Enabling activities are defined in Article 16 of the Taxonomy Regulation: "An economic activity shall qualify as contributing substantially to one or more of the environmental objectives set out in Article 9 by directly enabling other activities to make a substantial contribution to one or more of those objectives, provided that such economic activity: (a) does not lead to a lock-in of assets that undermine long-term environmental goals, considering the economic lifetime of those assets; and (b) has a substantial positive environmental impact, on the basis of life-cycle consideration".

5. EIOPA supervisory statement on supervision of run-off undertakings

Early April, the European Insurance and Occupational Pensions Authority (EIOPA) published a [supervisory statement on supervision of run-off undertakings](#). The statement is addressed to the competent authorities with responsibility for insurance supervision in the European Union.

EIOPA explains that the aim of the statement is to ensure that *“a high-quality and convergent supervision is applied to run-off undertakings and portfolios while taking into account their specific nature and risks, the principle of proportionality and the prudent person principle”*.

The term "run-off" describes a variety of situations where the (re) insurance undertaking has stopped underwriting new business or old underwriting years of an active portfolio are being transferred from one active (re) insurance undertaking to another.

The supervisory statement focuses on **full, partial and specialised run-off undertakings**:

- Full run-off undertaking: an (re)insurance undertaking which is running-off its whole (previous) business.
- Partial run-off undertaking: an (re)insurance undertaking running-off a portfolio of contracts not representing its whole business.
- Specialised run-off undertaking: an (re)insurance undertaking with a run-off business model

Cross-border run-off describes the activity conducted by an undertaking which has taken over the run-off business of an undertaking located in another Member State or third - country following a cross-border portfolio transfer or an acquisition. For policyholders, it implies a change of undertaking and of the home supervisory authority.

In case of cross-border run-off, EIOPA explains that home and host supervisory authorities should cooperate and exchange any information at their disposal which could affect policyholders' rights. Cross-border transfer of run-off portfolios potentially involves specific risk areas, such as partial knowledge of the products and market trends of the new country as well as difficult communication between policyholders and their new undertaking, including difficulty to submit claims.

For EIOPA, **the run-off business model can bring benefits for the insurance market and policyholders by enabling cost reduction, introduce improvements in the business management** or by making orderly exits from the market to avoid the materialisation of risks. However, over the last years EIOPA observed a number of **supervisory issues and challenges in the supervision of run-off portfolios or undertakings**. These were related to the specific risk profile of run-off business, the difficulties of the process of authorisation of the change of ownership or portfolio transfer as well as the lack of specific provisions for run-off in the Solvency II framework. Furthermore, some investment entities (e.g. private equities) showed increasing interest to acquire run-off (re)insurance undertakings or portfolios.

The supervisory practices in run-off situations need to be flexible and should consider the specific situation of the (re)insurance undertaking. An early dialogue with the respective NCA can facilitate a lean and successful approval process.

After the transaction is completed, EIOPA explains that **it is important that the risk profile of an undertaking is in line with its risk appetite.** The business acquired shall be kept profitable and apply prudent assumptions relating to technical provisions and capital requirements calculation and should not have any impact on the insurance service and on the protection of policyholders.

6. ESAs warn consumers on the risks of crypto-assets

The European Supervisory Authorities (EBA, ESMA and EIOPA - the ESAs) issued in March 2022 a [warning to consumers that many crypto-assets are highly risky and speculative](#). The ESAs set out key steps consumers can take to ensure they make informed decisions.

This warning comes in the context of growing consumer activity and interest in crypto-assets and the aggressive promotion of those assets and related products to the public, including through social media.

In their warning, the ESAs highlight that these assets are not suited for most retail consumers as an investment or as a means of payment or exchange, as consumers:

- face the very real possibility of losing all their invested money if they buy these assets;
- should be alert to the risks of misleading advertisements, including via social media and influencers; and
- should be particularly wary of promised fast or high returns, especially those that look too good to be true.

The ESAs warning identifies the following key risks:

- many crypto-assets are subject to **sudden and extreme price movements** and are speculative;
- some crypto-assets and related products are aggressively advertised to the public, using marketing material and other **information that may be unclear, incomplete, inaccurate or even purposefully misleading**;
- some products providing exposure to crypto-assets are **very complex**, sometimes with features that can increase the magnitude of losses;
- numerous fake crypto-assets and **scams** exist;
- how crypto-assets prices are determined and the **execution of transactions at exchanges is often not transparent**;
- the distributed ledger technology underpinning crypto-assets can bear specific **operational and security risks**.

The ESAs also warn consumers that they should be aware of the lack of recourse or protection available to them, as crypto-assets and related products and services typically fall outside existing protection under current EU financial services rules. Consumers are reminded that the EC's proposal for a regulation on markets in crypto-assets (MiCA) is still under examination by the EU co-legislators and therefore consumers do not currently benefit from any of the safeguards foreseen in that proposal because it is not yet EU law.

As at the date of this warning, there are more than 17,000 different crypto-assets. The most prominent crypto-assets to-date include bitcoin and ether, which together represent about 60% of the total market capitalisation of crypto-assets. ESAs warning also refers to the high energy consumption of some crypto-assets e.g., from mining and validation processes, and their environmental impact.

In relation to the current situation in Ukraine, and with a view to ensuring the proper implementation of the sanctions in place, the ESAs welcome the clarification by the Council of the European Union of the scope of the restrictive measures against Russian and Belarusian entities and individuals as regards crypto-assets.

