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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of 30.11.2022

amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of environmental, social and governance risks

(Text with EEA relevance)

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amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of environmental, social and governance risks

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012¹, and in particular Article 434a thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2021/637² specifies uniform disclosure formats and associated instructions for the disclosures required under Titles II and III of Regulation (EU) No 575/2013. Regulation (EU) No 575/2013 was amended by Regulation (EU) 2019/876³, *inter alia* to introduce a new Article 449a. That Article requires large institutions that have issued securities that are admitted to trading on a regulated market of any Member State to disclose, as from 28 June 2022, information on environmental, social and governance (ESG) risks, including physical risks and transition risks. That amendment to Regulation (EU) No 575/2013 should be reflected in Commission Implementing Regulation (EU) 2021/637, which should set out, in addition to the existing uniform disclosure formats and associated instructions, additional uniform disclosure formats and associated instructions for the disclosures of ESG risks.
- (2) When laying down uniform disclosure formats, the complete materiality of the information to be disclosed should be taken into account. That means that disclosures by institutions should cover, on the one hand, the financial impact of ESG factors on the institutions' economic and financial activities (outside-in perspective), and, on the other hand, the ESG factors that may be triggered by the institutions' own activities, which in turn become financially material when they affect institutions' stakeholders

¹ OJ L 176, 27.6.2013, p. 1.

² Commission Implementing Regulation (EU) 2021/637 of 15 March 2021 laying down implementing technical standards with regard to public disclosures by institutions of the information referred to in Titles II and III of Part Eight of Regulation (EU) No 575/2013 of the European Parliament and of the Council and repealing Commission Implementing Regulation (EU) No 1423/2013, Commission Delegated Regulation (EU) 2015/1555, Commission Implementing Regulation (EU) 2016/200 and Commission Delegated Regulation (EU) 2017/2295 (OJ L 136, 21.4.2021, p. 1).

³ Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

(inside-out perspective). As a result, the tables and templates used for those disclosures should convey sufficiently comprehensive and comparable information on ESG risks, thus enabling users of that information to assess the risk profile of institutions.

- (3) It is necessary to ensure coherence and consistency with other Union legislation in the area of ESG risks. Rules on the disclosure of ESG risks should therefore take into account the criteria, classifications and definitions laid down in that Union legislation. Those rules should in particular take into account the criteria for the identification and classification of environmentally sustainable economic activities, as laid down in Regulation (EU) 2020/852 of the European Parliament and of the Council⁴ and in Commission Delegated Regulation (EU) 2020/1818⁵. With regard to the disclosure of information on the energy performance of the real estate portfolio of institutions, the information provided by the energy performance certificate as defined in Article 2, point 12, of Directive 2010/31/EU of the European Parliament and of the Council⁶, should be taken into account.
- (4) Articles 19a and 29a of Directive 2013/34/EU of the European Parliament and of the Council⁷ require certain large undertakings that are public-interest entities, or public-interest entities which are parent undertakings of a large group, respectively, to include in their management report or in their consolidated management report information about the impact of their activity on environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. That obligation does not apply, however, to other undertakings. As a result, undertakings that are not subject to Articles 19a and 29a of Directive 2013/34/EU are not required to disclose such information and may be not able to provide such information to institutions. Those undertakings that are counterparties to institutions can thus only be expected to provide that information and data on a voluntary basis. Nevertheless, it is appropriate to provide those undertakings with guidance on the calculation of the percentage of the exposures to activities that are environmentally sustainable economic activities as referred to in Article 3 of Regulation (EU) 2020/852, so that that information and those data can be presented in a standardised and comparable format. Where that information and those data are not provided voluntarily, institutions should be able to calculate the percentage of taxonomy-aligned exposures by using estimates or proxies.
- (5) Article 449a of Regulation (EU) No 575/2013 requires that the information on ESG risks is disclosed as of 28 June 2022, on an annual basis for the first year and biannually thereafter. For those reasons, the first annual disclosure reference date should be set as of 31 December 2022.
- (6) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Banking Authority.

⁴ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

⁵ Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

⁶ Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).

⁷ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(7) The European Banking Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁸.

(8) Implementing Regulation (EU) 2021/637 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2021/637

Implementing Regulation (EU) 2021/637 is amended as follows:

(1) the following Article 18a is inserted:

Article 18a

Disclosure of environmental, social and governance risks (ESG risks)

1. Institutions shall disclose the information referred to in Article 449a of Regulation (EU) No 575/2013 as follows:

- (a) qualitative information on environmental, social and governance risks by using tables 1, 2 and 3 of Annex XXXIX to this Regulation and by following the instructions set out in Annex XL to this Regulation;
- (b) quantitative information on climate change transition risk by using Templates 1 to 4 of Annex XXXIX to this Regulation and by following the instructions set out in Annex XL to this Regulation;
- (c) quantitative information on climate change physical risks by using Template 5 of Annex XXXIX to this Regulation and by following the instructions set out in Annex XL to this Regulation;
- (d) quantitative information on mitigating actions associated with economic activities that qualify as environmentally sustainable under Articles 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council*1 towards those counterparties that are subject to Articles 19a or 29a of Directive 2013/34/EU of the European Parliament and of the Council *2, towards households, and towards local governments as referred to in Part 1, point 42(b), of Annex V to Commission Implementing Regulation (EU) 2021/451*3, by using Templates 6, 7 and 8 of Annex XXXIX to this Regulation and by following the instructions set out in Annex XL to this Regulation;
- (e) quantitative information on other mitigating actions and exposures to climate-change-related risks that do not qualify as environmentally sustainable economic activities under Article 3 of Regulation (EU) 2020/852 but support counterparties in the transition or adaptation process for the objectives of climate change mitigation and climate change adaptation, by using Template

⁸ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

10 of Annex XXXIX to this Regulation and by following the instructions set out in Annex XL to this Regulation.

2. Institutions may choose to disclose quantitative information on mitigating actions and exposures on climate-change-related risks associated with economic activities that qualify as environmentally sustainable under Article 3 of Regulation (EU) 2020/852, towards counterparties that are non-financial corporations as referred to in Part 1, point 42(e) of Annex V to Implementing Regulation (EU) 2021/451, that are not subject to the disclosure obligations laid down in Articles 19a or 29a of Directive 2013/34/EU and that are not subject to the disclosure obligations laid down in Commission Implementing Regulation (EU) 2021/2178^{*4}, by using Template 9 of Annex XXXIX to this Regulation and by following the instructions set out in Annex XL to this Regulation.

For the calculation of the percentage of the exposures to activities that comply with the requirements laid down in Article 3 of Regulation (EU) 2020/852 (taxonomy-aligned exposures) towards those counterparties, institutions:

- (a) may, where available, use the information received from their counterparties on a voluntary and bilateral basis through the loan origination, and regular credit review and monitoring processes;
- (b) where the counterparty is not able or willing to provide the data concerned on a bilateral basis, may use internal estimates and proxies and explain in the narrative accompanying the template to what extent those internal estimates and proxies have been used, and which internal estimates and proxies have been applied;
- (c) where they are unable to collect on a bilateral basis the information concerned, or cannot use internal estimates and proxies, or cannot collect that information or use those estimates and proxies in a way that is not overly burdensome for them or their counterparties, may explain that inability in the narrative accompanying the template.

For the purposes of point (a), institutions shall inform their counterparties that the provision of such information is voluntary.

3. Unless indicated otherwise in the instructions set out in Annex XL to this Regulation, institutions shall, as of 31 December 2022, disclose the information referred to in Article 449a of Regulation (EU) No 575/2013 on the following dates:
 - (a) for annual disclosures: 31 December;
 - (b) for semi-annual disclosures: 30 June and 31 December of each year.

^{*1} Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

^{*2} Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182 29.6.2013, p. 19).

^{*3} Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory

reporting of institutions and repealing Implementing Regulation (EU) No 680/2014 (OJ L 97, 19.3.2021, p. 1).

*⁴ Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (OJ L 443, 10.12.2021, p. 9).

- (2) the text set out in Annex I to this Regulation is added as Annex XXXIX;
- (3) the text set out in Annex II to this Regulation is added as Annex XL.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30.11.2022

For the Commission
The President
Ursula VON DER LEYEN