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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Article 3(3) of the Treaty on European Union aims to establish an internal market that works for the sustainable development of Europe, based, among other things, on balanced economic growth and a high level of protection and the improvement of the quality of the environment.

(2) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development (the '2030 Agenda'). The 2030 Agenda has at its core the Sustainable Development Goals (SDGs) and covers the three dimensions of sustainability: economic, social and environmental. The Commission communication of 22 November 2016 on the next steps for a sustainable European future links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, both within the Union and globally, take the SDGs on board at the outset. In its conclusions of 20 June 2017 the Council confirmed the commitment of the Union and its Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner, in close cooperation with partners and other stakeholders. On 11 December 2019, the Commission published its communication on 'The European Green Deal'.

(3) The Paris Agreement adopted under the United Nations Framework Convention on Climate Change (the 'Paris Agreement') was approved by the Union on 5 October 2016[(3)]. Article 2(1)(c) of the Paris Agreement aims to strengthen the response to climate

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change by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, among other means. In that context, on 12 December 2019, the European Council adopted conclusions on climate change. In light thereof, this Regulation represents a key step towards the objective of achieving a climate-neutral Union by 2050.

(4) Sustainability and the transition to a safe, climate-neutral, climate-resilient, more resource-efficient and circular economy are crucial to ensuring the long-term competitiveness of the Union economy. Sustainability has long been central to the Union project, and the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) reflect its social and environmental dimensions.

(5) In December 2016, the Commission mandated a High-Level Expert Group to develop an overarching and comprehensive Union strategy on sustainable finance. The report of the High-Level Expert Group published on 31 January 2018 calls for the creation of a technically robust classification system at Union level to establish clarity on which activities qualify as ‘green’ or ‘sustainable’, starting with climate change mitigation.

(6) In its communication of 8 March 2018, the Commission published its action plan on financing sustainable growth, launching an ambitious and comprehensive strategy on sustainable finance. One of the objectives set out in that action plan is to reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth. The establishment of a unified classification system for sustainable activities is the most important and urgent action envisaged by the action plan. The action plan recognises that the shift of capital flows towards more sustainable activities has to be underpinned by a shared, holistic understanding of the environmental sustainability of activities and investments. As a first step, clear guidance on activities that qualify as contributing to environmental objectives would help inform investors about the investments that fund environmentally sustainable economic activities. Further guidance on activities that contribute to other sustainability objectives, including social objectives, might be developed at a later stage.

(7) Given the systemic nature of global environmental challenges, there is a need for a systemic and forward-looking approach to environmental sustainability that addresses growing negative trends, such as climate change, the loss of biodiversity, the global overconsumption of resources, food scarcity, ozone depletion, ocean acidification, the deterioration of the fresh water system, and land system change as well as the appearance of new threats, such as hazardous chemicals and their combined effects.

(8) Decision No 1386/2013/EU of the European Parliament and of the Council[(4)] calls for an increase in private sector funding for environmental and climate-related expenditure, in particular by putting in place incentives and methodologies that stimulate companies to measure the environmental costs of their business and profits derived from using environmental services.

(9) Achieving the SDGs in the Union requires the channelling of capital flows towards sustainable investments. It is important to fully exploit the potential of the internal market to achieve those goals. In that context, it is crucial to remove obstacles to the

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efficient movement of capital into sustainable investments in the internal market and to prevent new obstacles from emerging.

(10) In view of the scale of the challenge and the costs associated with inaction or delayed action, the financial system should be gradually adapted in order to support the sustainable functioning of the economy. To that end, sustainable finance needs to become mainstream and consideration needs to be given to the sustainability impact of financial products and services.

(11) Making available financial products which pursue environmentally sustainable objectives is an effective way of channelling private investments into sustainable activities. Requirements for marketing financial products or corporate bonds as environmentally sustainable investments, including requirements set by Member States and the Union to allow financial market participants and issuers to use national labels, aim to enhance investor confidence and awareness of the environmental impact of those financial products or corporate bonds, to create visibility and to address concerns about 'greenwashing'. In the context of this Regulation, greenwashing refers to the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met. Currently, a few Member States have labelling schemes in place. Those existing schemes build on different classification systems for environmentally sustainable economic activities. Given the political commitments under the Paris Agreement and at Union level, it is likely that more and more Member States will establish labelling schemes or impose other requirements on financial market participants or issuers in respect of promoting financial products or corporate bonds as environmentally sustainable. In such cases, Member States would use their own national classification systems for the purposes of determining which investments qualify as sustainable. If those national labelling schemes or requirements use different criteria to determine which economic activities qualify as environmentally sustainable, investors would be discouraged from investing across borders due to difficulties in comparing different investment opportunities. In addition, economic operators that wish to attract investment from across the Union would have to meet different criteria in different Member States in order for their activities to qualify as environmentally sustainable. The absence of uniform criteria would therefore increase costs and significantly disincentivise economic operators from accessing cross-border capital markets for the purposes of sustainable investment.

(12) The criteria for determining whether an economic activity qualifies as environmentally sustainable should be harmonised at Union level in order to remove barriers to the functioning of the internal market with regard to raising funds for sustainability projects, and to prevent the future emergence of barriers to such projects. With such harmonisation, economic operators would find it easier to raise funding across borders for their environmentally sustainable activities, as their economic activities could be compared against uniform criteria in order to be selected as underlying assets for environmentally sustainable investments. Such harmonisation would therefore facilitate cross-border sustainable investment in the Union.

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(13) If financial market participants do not provide any explanation to investors about how the activities in which they invest contribute to environmental objectives, or if financial market participants use different concepts in their explanations of what an environmentally sustainable economic activity is, investors will find it disproportionately burdensome to check and compare different financial products. It has been found that such practices discourage investors from investing in environmentally sustainable financial products. Furthermore, a lack of investor confidence has a major detrimental impact on the market for sustainable investment. It has also been shown that national rules and market-based initiatives taken to tackle that issue within national borders lead to the fragmentation of the internal market. If financial market participants disclose how and to what extent the financial products that are made available as environmentally sustainable invest in activities that meet the criteria for environmentally sustainable economic activities under this Regulation, and if financial market participants use common criteria for such disclosures across the Union, that would help investors compare investment opportunities across borders and would incentivise investee companies to make their business models more environmentally sustainable. Additionally, investors would invest in environmentally sustainable financial products across the Union with higher confidence, thereby improving the functioning of the internal market.

(14) To address existing obstacles to the functioning of the internal market and to prevent the emergence of such obstacles in the future, Member States and the Union should be required to use a common concept of environmentally sustainable investment when introducing requirements at national and Union level regarding financial market participants or issuers for the purpose of labelling financial products or corporate bonds that are marketed as environmentally sustainable. To avoid market fragmentation and harm to the interests of consumers and investors as a result of diverging notions of environmentally sustainable economic activities, national requirements that financial market participants or issuers have to comply with in order to market financial products or corporate bonds as environmentally sustainable should build on the uniform criteria for environmentally sustainable economic activities. Such financial market participants and issuers include financial market participants that make available environmentally sustainable financial products and non-financial companies that issue environmentally sustainable corporate bonds.

(15) Establishing criteria for environmentally sustainable economic activities may encourage economic operators not covered by this Regulation, on a voluntary basis, to publish and disclose information on their websites regarding the environmentally sustainable economic activities they carry out. That information will not only help financial market participants and other relevant actors on the financial markets to easily identify which economic operators carry out environmentally sustainable economic activities, but will also make it easier for those economic operators to raise funding for their environmentally sustainable activities.

(16) A classification of environmentally sustainable economic activities at Union level should enable the development of future Union policies in support of sustainable

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finance, including Union-wide standards for environmentally sustainable financial products and the eventual establishment of labels that formally recognise compliance with those standards across the Union. It could also serve as the basis for other economic and regulatory measures. Uniform legal requirements for determining the degree of environmental sustainability of investments, based on uniform criteria for environmentally sustainable economic activities, are necessary as a reference for future Union law that aims to facilitate the shift of investment towards environmentally sustainable economic activities.

(17) In the context of achieving the SDGs in the Union, policy choices such as the creation of a European Fund for Strategic Investment, have been effective in contributing to the channelling of private investment towards sustainable investments alongside public spending. Regulation (EU) 2015/1017 of the European Parliament and of the Council[(5)] specifies a 40 % climate investment target for infrastructure and innovation projects under the European Fund for Strategic Investment. Common criteria for determining whether economic activities qualify as sustainable, including their impact on the environment, could underpin future similar initiatives of the Union to mobilise investment that pursues climate-related or other environmental objectives.

(18) To avoid harming investor interests, fund managers and institutional investors that make available financial products should disclose how and to what extent they use the criteria for environmentally sustainable economic activities to determine the environmental sustainability of their investments. The information disclosed should enable investors to understand the proportion of the investments underlying the financial product in environmentally sustainable economic activities as a percentage of all investments underlying that financial product, thereby enabling investors to understand the degree of environmental sustainability of the investment. Where the investments underlying the financial product are in economic activities that contribute to an environmental objective, the information to be disclosed should specify the environmental objective or objectives to which the investment underlying the financial product contributes, as well as how and to what extent the investments underlying the financial product fund environmentally sustainable economic activities, and should include details on the respective proportions of enabling and transitional activities. The Commission should specify the information that needs to be disclosed in that regard. That information should enable national competent authorities to easily verify compliance with that disclosure obligation, and to enforce such compliance in accordance with applicable national law. Where financial market participants do not take the criteria for environmentally sustainable investments into account, they should provide a statement to that end. To avoid the circumvention of the disclosure obligation, that obligation should also apply where financial products are marketed as promoting environmental characteristics, including financial products that have as their objective environmental protection in a broad sense.

(19) The disclosure obligations laid down in this Regulation supplement the rules on sustainability-related disclosures laid down in Regulation (EU) 2019/2088 of the European Parliament and of the Council[(6)]. To enhance transparency and to provide an objective point of comparison by financial market participants to end investors