

Decrees, orders, circulars

GENERAL LEGISLATION

MINISTRY FOR THE ECONOMY, FINANCE AND THE RECOVERY

Decree no. 2021-663 of 27 May 2021 implementing Article L.533-22-1 of the Monetary and Financial Code

NOR: *ECOT2112559D*

Relevant structures: insurance and reinsurance companies, supplementary health insurance companies, provident institutions and their unions, portfolio management companies, credit institutions and investment companies for their portfolio management activities on behalf of third parties and investment advice, Caisse des Dépôts et Consignations, supplementary professional pension institutions, supplementary professional pension funds, supplementary pension institution for non-established central government and other public authority civil servants, government-funded institution managing the mandatory additional public pension scheme, national pension fund for local government civil servants.

Purpose: presentation of the information to be published concerning the conditions for taking account, in the investment policy, of criteria for compliance with environmental, social and governance quality goals, and concerning the measures implemented to contribute to the energy and ecological transition.

Effective date: the legislation shall enter into force the day after its publication.

Notice: Article 29 of the Energy and Climate Act no. 2019-1147 of 8 November 2019 supplemented the provisions on information provided by financial market stakeholders on the conditions for taking account, in their investment policy, of criteria for compliance with environmental, social and governance quality goals; in particular as regards the climate and biodiversity. This Decree stipulates the information required and the conditions for its presentation.

References: This Decree implements Article L.533-22-1 of the Monetary and Financial Code, in its wording originating from Article 29 of the Energy and Climate Act no. 2019-1147 of 8 November 2019. The Monetary and Financial Code, as amended by the Decree, can be consulted on the Légifrance website (<https://www.legifrance.gouv.fr>).

The Prime Minister,

In view of the report from the Minister for the Ecological Transition, the Minister for the Economy, Finance and the Recovery and the Minister for Overseas France,

Having regard to the Convention on Biological Diversity which was adopted in Rio de Janeiro on 22 May 1992 and signed by France on 13 June 1992;

Having regard to the Paris Agreement which was adopted on 12 December 2015 and signed by France in New York on 22 April 2016;

Having regard to Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector;

Having regard to Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks;

Having regard to 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;

Having regard to the Insurance Code, in particular its Articles L.310-1-1-3 and L.385-7-2;

Having regard to the Environment Code, in particular its Article L.222-1 B;

Having regard to the Monetary and Financial Code, in particular its Articles L.533-22-1 and D.533-16-1;

Having regard to Act no. 2010-788 of 12 July 2010 on a national commitment for the environment, in particular its Article 224;

Having regard to the Energy Transition and Green Growth Act no. 2015-992 of 17 August 2015, in particular its Article 173;

Having regard to the Energy and Climate Act no. 2019-1147 of 8 November 2019, in particular its Article 29;

Having regard to the opinion of the Advisory Committee on Financial Legislation and Regulation dated 18 March 2021;

Hereby decrees:

Article 1 – Article D.533-16-1 of the Monetary and Financial Code is replaced by the following provisions:

“*Art. D.533-16-1. – I. –* This article applies to entities subject to Article L.533-22-1.

“For the credit institutions and investment companies mentioned in Article L.511-4-3, this article applies to portfolio management activities on behalf of third parties, such as defined in Article L.321-1. For their business activity of financial adviser, the entities mentioned in this article shall apply the provisions relating to financial advisers within the meaning of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

“II. – Information on environmental, social and governance quality criteria, called sustainability factors as defined in Article 2(24) of said regulation, and mentioned in II of Article L.533-22-1, shall be presented as follows:

“1° Information shall be published by distinguishing each category of asset. The entity shall describe how this distinction was made on the basis of a principle of proportionality applied to the nature of financial instruments within the meaning of Title 1 of Book II of this code and, for portfolio management, according to their respective volumes in the relevant collective investment undertakings. The entity may make additional distinctions by activity, investment portfolio, issuer, sector or any other relevant distinction, in particular between listed assets and unlisted assets.

“In particular, the entity may provide information for a set of products with similar features.

“For portfolio management activities on behalf of third parties, information for which the publication is provided for in this article may be published on the basis of model portfolios drawn up by each credit institution.

“The items set out in the second and third subsections of 1° do not concern the information required in respect of the above-mentioned regulation.

“2° For each piece of information for which the publication is provided for in this article, the entity shall indicate, consistent with the delegated regulation pursuant to Article 4 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019:

“a) The proportion as a percentage and the amount in euros of outstanding amount or the balance sheet;

“b) The scope of the entities and financial products to which factoring in environmental, social and governance quality criteria applies;

“c) The proportion of estimated or actual data, out of the total outstanding managed by the entity and, where applicable, the total outstanding of the relevant financial product;

“d) When a schedule has been set, the effective date of the commitments;

“e) When a quantitative analysis is required, the methods and databases on which the analysis is based, specifying, where applicable, whether the data is freely accessible, the name of the supplier of the methods or data, the risks of double counting and the measures taken to avoid it, at entity or financial product level.

“III. – The information on environmental, social and governance quality criteria mentioned in II of Article L.533-22-1 is as follows:

“1° Information on the entity’s general approach:

“a) Brief overview of the entity’s general approach for taking account of environmental, social and governance quality criteria and, in particular, in the investment policy and strategy:

“b) The content, frequency and means used by the entity to inform subscribers, affiliates, contributors, beneficiaries and clients about the environmental, social and governance quality criteria which are factored in to the investment policy and strategy;

“c) A list of the financial products mentioned in respect of Articles 8 and 9 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 and the overall proportion, as a percentage, of the outstanding under management taking account of environmental, social and governance quality criteria in the total amount of outstanding managed by the entity;

“d) Taking account of environmental, social and governance quality criteria in the decision-making process for the allocation of new management mandates by the entities mentioned in Articles L.310-1-1-3 and L.385-7-2 of the Insurance Code;

“e) Adherence of the entity or certain financial products to a charter, code, initiative, or obtaining certification for taking account of environmental, social and governance quality criteria, and a brief description of these, consistent with d) of 2 of Article 4 of the above-mentioned regulation.

“2° Information on the in-house resources rolled out by the entity:

“a) Description of the financial, human and technical resources devoted to taking account of environmental, social and governance quality criteria in the investment strategy in relation to the total outstanding managed or held by the entity. The description shall include all or some of the following indicators: the proportion, as a percentage, of the corresponding full-time equivalent staff; the proportion, as a percentage and as an amount in euros of the budgets earmarked for environmental, social and governance quality data; the amount of investments in research; use of external service providers and data suppliers;

“b) Initiatives introduced with an eye to bolstering the entity’s in-house capabilities. The description shall include all or some of the information concerning training, the communication strategy and the development of the financial products and services associated with these initiatives.

“3° Information on the approach to take account of environmental, social and governance quality criteria at entity-governance level:

“a) Knowledge, skills and experience of the governance boards, in particular the administration, supervisory and management bodies, in respect of decision-making to include environmental, social and governance quality criteria in the investment policy and strategy of the entity and the entities controlled by the latter where applicable. Information may concern, inter alia, the level of supervision and the associated process, the presentation of results and skills;

“b) Inclusion, pursuant to Article 5 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, in remuneration policies of information on how those policies are consistent with the integration of sustainability risks, including explanations of the criteria for matching the remuneration policy with performance indicators;

“c) Integration of environmental, social and governance quality criteria into the by-laws of the entity’s board of directors or supervisory board.

“4° Information on the engagement strategy vis-à-vis issuers or management companies and its implementation:

“a) Scope of companies concerned by the engagement strategy;

“b) Overview of the voting policy;

“c) Review of the engagement strategy rolled out which may include the proportion of companies with which the entity has started discussions, the topics covered and initiatives to monitor this strategy;

“d) Review of the voting policy, in particular concerning tabling and voting on resolutions on environmental, social and governance quality issues at general meetings;

“e) Decisions taken on the investment strategy, particularly concerning sectoral disengagement.

“Should the entity publish a specific report on its shareholder engagement policy, this information may be incorporated by referring to this article.

“5° Information on European taxonomy and fossil fuels:

“a) Proportion of outstanding concerning activities in compliance with the technical screening criteria defined in the delegated acts relating to Articles 10 to 15 of 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, in accordance with the delegated act adopted pursuant to Article 8 of that regulation;

“b) Proportion of outstanding in companies operating in the fossil fuel sector, within the meaning of the delegated act under Article 4 of said regulation;

“6° Information on the strategy for alignment with the international climate change limitation objectives of the above-mentioned Paris Agreement, consistent with *d* of 2 of Article 4 of said regulation:

“The entity shall publish its strategy for alignment with the long-term objectives of Articles 2 and 4 of the Paris Agreement on lowering greenhouse gas emissions and, where applicable, for the financial products for which the underlying investments are all made in France, its National Low-Carbon Strategy as mentioned in Article L.222-1 B of the Environment Code, which includes:

“a) A quantitative goal between now and 2030 which will be reviewed every five years up to 2050. The goal shall be revised at least five years prior to its end date. The goal shall include direct and indirect greenhouse gas emissions in absolute value or in value of intensity in relation to a reference scenario and a reference year. It may be expressed by measuring the implicit rise in temperature or by the volume of greenhouse gas emissions;

“b) When the entity uses an in-house methodology, components of this methodology to assess the investment strategy’s alignment with the Paris Agreement or with the National Low-Carbon Strategy:

“i) The general approach and the method used, in particular if it is a cumulative or one-off analysis;

“ii) The amount of cover at portfolio level and between classes of assets, and the aggregation method;

“iii) The timeline chosen for the assessment;

“iv) The assumptions selected on estimated data, in particular in the energy-climate scenarios chosen, and the technological assumptions, in particular concerning negative emission technologies, and the name and year of publication of each scenario used;

“v) The way in which the methodology adjusts the chosen energy-climate scenario to the analysed portfolios, including an examination of the weighted average of carbon intensity, in both absolute value and value of intensity;

“vi) An analysis of the quality of the methodologies and data, in particular the uncertainty noted and its extent;

“vii) The scope used for the methodology in terms of covering greenhouse gas emissions within the value chain for both direct and indirect generated emissions, avoided emissions and negative emissions, by explaining the estimated share of each category in the methodology, and the scope of financed emissions and, in the event of a divergence between the two scopes, a clear explanation of this difference;

“viii) The method enabling a forward-looking estimate to be made, according to the type of goal selected, in particular any extrapolations and regressions carried out;

“ix) The level of time-based, sectoral and geographic granularity of the analysis;

“x) If several scenarios are used, elements for comparing these;

“c) Quantification of the results using at least one indicator;

“d) For entities managing index funds, information on use of the EU Climate Transition and Paris Agreement Benchmarks as defined in Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019;

“e) The role and use of assessment in the investment strategy and, in particular, the extent of complementarity between the selected assessment method and the other indicators on the environmental, social and governance quality criteria more broadly used in the investment strategy;

“f) Changes to the investment strategy relating to alignment with the Paris Agreement and, in particular, the policies introduced with an eye to gradually phasing out use of coal and non-conventional hydrocarbons and specifying the chosen schedule for withdrawal and the proportion of total outstanding managed or held by the entity covered by these policies;

“g) Any initiatives for monitoring outcomes and the changes having occurred;

“h) The frequency of the assessment, the projected dates for updates and the relevant selected development factors.

“7° Information on the strategy for alignment with long-term biodiversity goals:

“The entity shall provide a strategy for alignment with long-term biodiversity goals, specifying the scope of the value chain selected, which shall include targets set for 2030 and every five years thereafter for the following:

“a) An assessment of compliance with the goals listed in the Convention on Biological Diversity, adopted on 5 June 1992;

“b) An analysis of the contribution to reducing the primary pressures and impacts on biodiversity as defined by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services;

“c) Mention of the use of a biodiversity footprint indicator and, where applicable, how this indicator is used to measure compliance with international biodiversity targets.

“8° Information on approaches to taking environmental, social and governance quality criteria into account when managing risks:

“Consistent with Article 3 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, the publication of information about taking account of environmental, social and governance quality criteria when managing risks shall include, in particular, physical, transition-related and liability risks related to climate change and biodiversity and, in particular:

“a) The process for identifying, assessing, prioritising and managing risks related to taking into account environmental, social and governance quality criteria, how the risks are integrated into the entity’s conventional risk management framework, and how this process addresses the recommendations of the European Supervisory Authorities of the European System of Financial Supervision;

“b) A description of the principal environmental, social and governance quality risks taken into account and analysed, which includes, for each of these risks:

“i) A description of these risks, including their current or emerging nature, whether they are exogenous or endogenous to the entity, their occurrence, their intensity, and their time horizon;

“ii) A segmentation of these risks according to the following classification, as well as a descriptive analysis associated with each of the main risks, including associated risk factors, such as public policies, market behaviour and technological developments:

“ – physical risks, defined as exposure to the physical consequences of environmental factors, such as climate change or biodiversity loss;

“ – transition risks, defined as exposure to changes resulting from the ecological transition, in particular the environmental objectives defined in Article 9 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector ;

“ – litigation or liability risks related to environmental factors;

“iii) An indication of the economic sectors and geographical areas affected by these risks, the recurrent or one-off nature of the risks selected, and their possible weighting;

“iv) An explanation of the criteria used to select the significant risks and the choice of any weighting;

“c) An indication of the frequency of the risk management framework review process;

“d) An action plan to reduce the entity’s exposure to the main environmental, social and governance quality risks under consideration;

“e) A quantitative estimate of the financial impact of the main environmental, social and governance quality risks identified and the portion of assets exposed, as well as the time horizon associated with these impacts, at the level of the entity and the assets involved, including the impact on the portfolio valuation. If a qualitative statement is issued, the entity shall describe the difficulties encountered and the measures planned to quantitatively assess the financial impact of these risks;

“f) An indication of the changes in the methodological choices and results.

“8° *bis* - When publishing the information referred to in 8°, the entity shall ensure that taking environmental, social and governance quality criteria into consideration in risk management complies with the following methodological criteria, with regard to:

“a) The quality of the data used:

“ A mention of the use, as early as possible, of methodologies based on forward-looking data, and an indication, where appropriate, of the relevance of using methodologies based on historical data;

“b) Climate change-related risks:

“ – for physical and transition-related risks, the use of multiple scenarios, including at least one 1.5°C or 2°C scenario and at least one trending or disorderly transition scenario, taking into account the national climate contributions of the Parties to the United Nations Framework Convention on Climate Change: if the scenario is public, by indicating its name; describing the main characteristics of the chosen scenarios where the information is not otherwise publicly available, including the descriptive analysis referred to in *b* of 8°, the scenario's baseline trajectory, the magnitude and nature of sectoral and macroscopic impacts, the compatibility with a given climate target and the scenario's main assumptions regarding technological and structural changes in the economy; where appropriate, a justification of why the entity uses customised scenarios; and an explanation of how the scenarios used are adapted to the entity's financial risk management modelling capabilities;

“ – for physical risks, a description of how the entity intends to include counterparty-specific information regarding its exposure, sensitivity, adaptation, and adaptability along the value chain;

“*c*) Biodiversity-related risks:

“ – a clear distinction between the main risks arising from impacts caused by the investment strategy and the main risks arising from the biodiversity dependencies of the assets and activities in which the entity has invested. For each risk identified, the entity shall indicate the scope of the value chain used;

“ – an indication of whether the risk is specifically related to the area of activity or geographical area of the underlying asset.

“For the credit institutions and investment companies referred to in Article L.511-4-3, the information mentioned in *b*) to *f*) of 8° and 8° bis shall apply to discretionary asset management activities, where possible.

“9° In the event that the entity does not publish certain elements of the information mentioned in points 1° to 8° bis of III, it shall publish, where appropriate, a continuous improvement plan that shall include:

“*a*) Indication of any opportunities to improve the current strategy and the corresponding tangible actions to improve the current situation;

“*b*) Information on strategic and operational changes that have been or will be introduced as a result of the implementation of corrective actions;

“*c*) For each of the two previous points, objectives with a timetable for implementation.

“IV. - 1° The information referred to in II and 1° of III shall be published by all the entities referred to in I.

“The information referred to in points 2°, 3°, 4° and 5° of III shall be published by the entities referred to in I that have a balance sheet or outstanding of more than EUR 500 million.

“The information referred to in points 6°, 7°, 8°, 8° bis and 9° of III shall be published by those entities referred to in I that have more than EUR 500 million on the balance sheet or in outstanding and, where applicable, for each of the collective investment undertakings and asset management agreements that they manage and whose outstanding exceeds EUR 500 million.

“2° Entities may further aggregate publication of the information provided for in II and III in any relevant combination, either as a whole or as part of a group, in accordance with the provisions of this IV.

“V. - The information referred to in III shall be presented in an annual report produced by the entity, in accordance with the mandatory standardised format provided for in the delegated act pursuant to Article 4 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, supplementing it where appropriate. The report shall be published within six months of the end of the financial year.

“This report shall refer, where appropriate, to specific information on controlled entities or financial products published in the regular reports on financial products referred to in Article 11 of this regulation.

“It shall be published on a page of the entity's website dedicated to information on environmental, social and governance quality, in the same way as the information set out in Article 4 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 referred to above.

“The entity shall send this report electronically to the French Environment and Energy Management Agency, which may use the data for statistical studies on the Climate Transparency Hub, as well as to the competent authorities, in the format of their choosing.

“Unless otherwise provided, this information shall be updated annually”.

Article 2 - For the financial year in progress on 10 March 2021 or, if it ends within six months of the publication of the Decree, the following financial year, only the information in points 1°, 2°, 3°, 4°, 6°, 7° and a of 8° of III shall be required.

As from the financial year following the one in which the first report was made, all the information mentioned in III shall be required for each financial year.

Article 3 - The competent authorities shall ensure, in accordance with and within the limits of their duties as provided for by law, that the entities subject to their supervision comply with the provisions of this Decree and that the information provided is fair, clear and not misleading.

Article 4 - An assessment of the application of the provisions of this Decree will be carried out by the government at the end of the first two financial years prior to 31 December 2023, then every three years, based on the work of the French Financial Market Authority and the Prudential Supervisory and Resolution Authority.

Article 5 - 1° In I of Articles D.745-8, D.755-8 and D.765-8 of the Monetary and Financial Code, the following line shall be inserted after the third line of the table:

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2° To II of the aforementioned articles, a 4° shall be added as follows:

“4° For application of Article D.533-16-1:

a) The references to Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 and Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 mentioned above shall be removed;

(b) The references to the delegated regulation shall be removed;

c) The references to the national low-carbon strategy mentioned in Article L.222-1 B of the Environment Code shall be removed;

d) In III, the second paragraph and d of 6° shall not be applicable;

e) In IV, the phrase “EUR 500 million” shall be replaced by “59,665,871,000 Pacific francs”.

Article 6 - Articles 2 to 4 of this Decree shall apply to New Caledonia, French Polynesia and Wallis and Futuna.

Article 7 - Decree 2012-132 of 30 January 2012 relating to the information provided by portfolio management companies on the social, environmental and governance quality criteria taken into account in their investment policy is hereby rescinded.

Article 8 - This Decree shall enter into force on the day following its publication.

Article 9 - The Minister for the Ecological Transition, the Minister for the Economy, Finance and the Recovery and the Minister for Overseas France shall each be responsible for the implementation of this Decree, which shall be published in the Official Journal of the French Republic.

Done on 27 May 2021

JEAN CASTEX

By the Prime Minister:

*The Minister for the Economy,
Finance and the Recovery*
BRUNO LE MAIRE

The Minister for the Ecological Transition
BARBARA POMPILI

The Minister for Overseas France
SÉBASTIEN LECORNU