

**REPORT 42/2018 OF 20 SEPTEMBER 2018 BY THE JOINT COMMITTEE ON THE EUROPEAN UNION ON THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY BY THE FOLLOWING PROPOSALS:**

- **PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ESTABLISHMENT OF A FRAMEWORK TO FACILITATE SUSTAINABLE INVESTMENT (TEXT WITH EEA RELEVANCE) [COM (2018) 353 FINAL] [2018/0178 (COD)] (SEC (2018) 257 FINAL) (SWD (2018) 264 FINAL) (SWD (2018) 265 FINAL).**
- **PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON DISCLOSURES RELATING TO SUSTAINABLE INVESTMENTS AND SUSTAINABILITY RISKS AND AMENDING DIRECTIVE (EU) 2016/2341 (TEXT WITH EEA RELEVANCE) [COM (2018) 354 FINAL] [2018/0179 (COD)] (SEC (2018) 257 FINAL) (SWD (2018) 264 FINAL) (SWD (2018) 265 FINAL).**

**BACKGROUND**

A. The Protocol on the application of the principles of subsidiarity and proportionality annexed to the 2007 Lisbon Treaty, in force since 1 December 2009, laid down a procedure for scrutiny by the national parliaments to ensure that draft EU legislation complies with the principle of subsidiarity. Spain implemented this Protocol by means of Law No 24/2009 of 22 December 2009, amending Law No 8/1994 of 19 May 1994. More specifically, the legal basis for this report can be found in Articles 3(j), 5 and 6, introduced to Law No 8/1994 by said amendment.

B. The Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment and the Proposal for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341 were approved by the European Commission and sent to the national parliaments, which had a period of eight weeks to check whether the proposals comply with the principle of subsidiarity. That period ended on 24 September 2018.

C. On 11 September 2018 the Bureau and the spokespersons of the Joint Committee on the European Union decided to examine the above draft European legislation, appointed Senator Francisco David Lucas Parrón (SGPS) as rapporteur, and asked the Government for the report provided for in Article 3(j) of Law No 8/1994.

D. A report was received from the Government. Letters have been received from the Parliament of the Basque Country, the Parliament of Galicia, the Parliament of La Rioja and the Parliament of Cantabria requesting acknowledgement, closure of the file or non-delivery of a reasoned opinion.

E. At its meeting on 20 September 2018, the Joint Committee on the European Union approved the following

## REPORT

1.- Article 5(1) of the Treaty on European Union states that *‘the use of Union competences is governed by the principles of subsidiarity and proportionality’*. According to Article 5(3) of the same Treaty, *‘under the principle of subsidiarity [...] the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level’*.

2.- The legislative proposals analysed are based on Article 114 of the Treaty on the Functioning of the European Union, which provides as follows:

### *‘Article 114*

1. *Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

2. *Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.*

3. *The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.*

4. *If, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.*

5. *Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.*

6. *The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on*

*trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.*

*In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.*

*When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.*

7. *When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.*

8. *When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.*

9. *By way of derogation from the procedure laid down in Articles 258 and 259, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.*

10. *The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Union control procedure.'*

3.- The initiatives form part of a package of measures implementing the Action Plan on Sustainable Finance presented by the European Commission in March in response to the recommendations of the Final Report of the High Level Expert Group on Sustainable Finance. The two initiatives are closely related and are therefore being analysed jointly. The aforementioned Plan set out the strategy for increasing the sustainability of the sector and of financial activities. In that regard, it is considered necessary:

- to be able to establish a common language in the financial field which is valid for all countries of the European Union;
- to establish a label with the classification 'green' and 'low-carbon' to enable investors to identify products which meet the recommended requirements;
- to set out clearly the obligations of asset managers and institutional investors in terms of sustainability.

4.- The first Proposal for a Regulation, on the establishment of a framework to facilitate sustainable investment, implements the Plan's first action line, which seeks to establish a clear framework for setting out criteria to determine the environmental sustainability of an economic activity, an investment in this case. The intention is not to set the criteria for a company or an asset but rather for the economic activity, though that will make it possible to determine a given company's degree of environmental sustainability for the purposes of investment. Furthermore, it takes account of investment portfolios consisting of several companies, which will incentivise investments in environmentally sustainable economic

activities, without penalising or creating disincentives for investments in other economic activities.

5.- This Regulation applies in the context of marketing requirements for market actors offering financial products or corporate bonds pursuing environmental objectives, in particular in the context of labelling. It does not create a label for sustainable financial products, but rather it provides a framework for setting criteria for the creation of such labels at national or EU level.

6.- It requires those financial market participants that are subject to the disclosure obligations to disclose the degree of environmental sustainability of those financial products that they claim pursue environmental objectives. If a fund manager offers a fund claiming it is a 'green fund', then for that particular fund the manager will have to indicate the way and the extent to which the criteria for environmentally sustainable economic activities were used to determine the environmental sustainability of the investment in the fund's pre-contractual disclosure document.

7.- The second Proposal for a Regulation, on sustainable investments and sustainability risks and amending Directive (EU) 2016/2341, implements the Plan's third action line, which seeks to improve transparency and sustainability in certain financial products. It focuses mainly on investment funds, life insurance or pension products and portfolio management services which are provided to pool investors' capital and then to invest that capital collectively in stock, bonds and other securities. It provides that people choosing those products must have access to all the information they need to confirm the product's sustainability and transparency.

8.- In that way, and with a view to providing that accurate information, the initiative increases transparency on how institutional investors, asset managers and financial advisers consider sustainability risks in their investment decision-making or advisory processes.

9.- In other fora (the Financial Services Committee) in which the European Commission has presented the proposals implementing the Action Plan on Sustainable Finance, there has been general support from the Member States. At the first technical meeting of experts in the Council of the European Union, there was also general support for the Commission's proposed approach, though some technical doubts were expressed regarding whether or not a defined and specific taxonomy was needed in order to be able to apply and comply with the obligations, as well as issues regarding the monitoring of compliance with those obligations.

10.- The scope of the two initiatives will be specified by delegated acts once the technical screening criteria for environmentally sustainable activities are developed. The disclosure obligation will help investors better understand the degree of sustainability.

11.- Both Proposals are therefore intended to rectify the shortcomings of the existing legal framework and to coordinate the actions of the Member States, some of which have already begun to establish this type of taxonomy. The intention is to establish uniform criteria, thereby seeking to ensure that EU-level action is more effective in guaranteeing uniformity and legal certainty as regards the exercise of Treaty freedoms.

## **CONCLUSION**

**For the reasons set out above, the Joint Committee on the European Union considers that the Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment and the Proposal for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341 comply with the principle of subsidiarity laid down in the Treaty on European Union.**