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Decrees, orders, circulars

GENERAL TEXTS

MINISTRY OF FINANCE AND PUBLIC ACCOUNTS

Decree No. 2015-1850 of 29 December 2015 adopted pursuant to Article L. 533-22-1 of the [French] Monetary and Financial Code

NOR: FCPT1529597D

Public concerned: insurance companies, mutual insurance companies, employee benefits institutions, portfolio management companies, Caisse des Dépôts et Consignations, supplementary pension institutions, institution providing supplementary pension schemes for non-statutory employees of the government and public bodies, the public institution managing the mandatory supplementary public-service pension scheme, the National Pension Fund for local authority employees.

Purpose: presentation of information to be published on the means by which criteria relating to compliance with environmental, social and quality of governance objectives are taken into account in investment policy and on the methods implemented to contribute to the energy and ecological transition.

Entry into force: the text shall enter into force on the day after its publication.

Notice: VI of Article 173 of Law No 2015-992 of 17 August 2015 on Energy Transition for Green Growth has supplemented the provisions on information provided by institutional investors about the means by which criteria relating to compliance with environmental, social and quality of governance objectives are taken into account in their investment policy. This Decree defines a standard presentation of information published for these criteria, specifies the information that may be provided for climate-related aspects and explains the methods for presenting this information.

References: this Decree is adopted pursuant to Article L. 533-22-1 of the [French] Monetary and Financial Code, introduced by VI of Article 173 of Law No 2015-992 of 17 August 2015 on Energy Transition for Green Growth. The [French] Monetary and Financial Code amended by this Decree may be consulted on the Légifrance website (<http://www.legifrance.gouv.fr>).

The Prime Minister,

Regarding the report of the Minister of Finance and Public Accounts and the Minister of Ecology, Sustainable Development and Energy;

Having regard to the [French] Monetary and Financial Code, in particular Article L. 533-22-1 thereof;

Having regard to Law No 2010-788 of 12 July 2010 concerning the national commitment to the environment, in particular Article 224 thereof;

Having regard to Law No 2015-992 of 17 August 2015 on Energy Transition for Green Growth, in particular Article 173 thereof;

Having regard to the opinion of the French High Council on Mutual Insurance dated 9 December 2015;

Having regard to the opinion issued by the Supervisory Committee of the Caisse des dépôts et consignations dated 11 December 2015;

Having regard to the opinion of the Advisory Committee on Financial Legislation and Regulation dated 11 December 2015,

Hereby decrees:

Article 1. – Article D. 533-16-1 of the [French] Monetary and Financial Code is replaced by the following provisions: "Article D. 533-16-1. – I. – This Article shall apply:

"1° to the portfolio management companies mentioned in Article L. 532-9, for the UCITS or AIF that they manage and falling under paragraphs 1, 2 and 6 of subsection 2, of paragraph 2 or sub-paragraph 1 of paragraph 1 of subsection 3, or subsection 4 of section 2 of chapter IV of title I of book II;

"2° to the entities mentioned in paragraph three of Article L. 533-22-1, other than those mentioned in 1°.

"II. – Information relating to environmental, social and quality of governance criteria mentioned in Article L. 533-22-1 shall be presented as follows:

"1° Information related to the entity:

" – a presentation of the entity's or portfolio management company's general approach to accounting for environmental, social and quality of governance criteria in investment policy and, as appropriate, risk management;

" – the content, frequency and means used by the entity or portfolio management company to inform subscribers, affiliates, contributors, beneficiaries or clients about the criteria relating to the environmental, social and quality of governance objectives taken into account in the investment policy and, as appropriate, risk management;

" – for a portfolio management company mentioned in 1° of I, a list of the undertakings for collective investment managed as mentioned in 1° of I which simultaneously take into account environmental, social and quality of governance criteria; the proportion of assets of these undertakings, as a percentage, of the total amount of assets managed by the management company;

" – any commitment of the entity, or certain undertakings for collective investment mentioned in 1° of I, to a charter, code or initiative, or label obtained for taking into account criteria relating to compliance with environmental, social and quality of governance objectives. Summary description of the charter, code, initiative or label;

" – when the entity implements a risk management policy, a general description of its internal procedures in order to identify the risks associated with the environmental, social and quality of governance criteria and the exposure of its activities to these risks, and a general description of these risks;

"2° Information relating to the entity's or portfolio management company's consideration of the environmental, social and quality of governance criteria in its investment policy:

"The entities or portfolio management companies may, as appropriate, make distinctions by activity, asset class, investment portfolio, issuer and sector or by any other relevant distinction. The entities or portfolio management companies shall indicate the reasons for these distinctions. In particular, portfolio management companies may provide the expected information for a set of funds with similar characteristics.

« a) Nature of criteria taken into account

"Description of the nature of the main criteria taken into account and relating to these environmental, social and governance objectives.

« b) Information used for the analysis implemented for the criteria

"Description of the general information used for the analysis of issuers on criteria relating to compliance with environmental, social and quality of governance objectives.

« c) Methodology and results of the analysis implemented for the criteria

"Description of the methodology of the analysis conducted on the criteria relating to environmental, social and quality of governance objectives, and its results.

« d) Integration of the results of the analysis conducted in the investment policy

"Description of the way in which the results of the analysis implemented for criteria relating to compliance with environmental, in particular exposure to climate risks, social and quality of governance objectives are integrated in the investment policy:

« i. Description of the changes made following this analysis:

" – to the investment policy, in terms of divestment decisions and, as appropriate, in the risk management process;

" – as appropriate, a description of the way in which securities that are not part of the analysis implemented for criteria relating to compliance with environmental, social and quality of governance objectives, are taken into account.

« ii. Implementation of an engagement strategy with issuers:

" – presentation of engagement policies carried out with issuers;

" – presentation of the voting policy;

" – assessment of the implementation of these policies.

« iii. Implementation of an engagement strategy with portfolio management companies:

" – presentation of engagement policies, including in terms of exercising voting rights, carried out with the managers for portfolios for which the management is delegated by the entity as part of a mandate;

" – assessment of the implementation of these policies.

"3° As appropriate, the information mentioned in 2° relating to investments managed on behalf of third parties by a portfolio management company;

"4° As appropriate, the reasons for which the entity provides only a part or does not provide certain information mentioned in 1° to 3° of II.

"III. – For the information mentioned in 2° of II, the following shall be stated according to their relevance and under the conditions stipulated in 4° of II:

"1° in *a* of 2° of II:

« a) The reasons for selecting the main criteria relating to compliance with the environmental, social and quality of governance objectives that the entities use.

« b) For the criteria relating to environmental objectives, an indication that they cover:

« i. the climate change-related risks stipulated in paragraph four of Article L. 533-22-1 corresponding:

" – to physical risks, defined as exposure to the physical consequences directly caused by climate change;

" – to transition risks, defined as exposure to changes caused by the transition to a low-carbon economy;

« ii. Assessment of the contribution to compliance with the international objective to limit global warming and to achieving the energy and ecological transition objectives provided for in paragraph four of Article L. 533-22-1;

"2° in *b* of 2° of II, the nature of information used that may be:

" – financial or extra-financial data;

" – internal analyses, external analyses or ratings, in particular analyses conducted on the basis of the reports mentioned in Articles L. 225-37 and L. 225-102-1 of the [French] Commercial Code or equivalent documents;

" – any other type of relevant information;

"3° in *c* of 2° of II, a description of the methodologies of the analysis implemented that may include:

« a) In general:

" – the overall characteristics of the analysis methodology;

" – as appropriate, details on the main underlying assumptions and their compatibility with the international objective to limit global warming mentioned in paragraph four of Article L. 533-22-1;

" – explanations for the relevance of the method and scope used.

« b) For the methodologies implemented as regards the criteria relating to the environmental objectives mentioned in 1° of III, details, depending on the approach used according to its relevance as regards the activity of each entity and the nature of the assets concerned, on:

" – the consequences of climate change and extreme weather events;

" – the change in the availability and price of natural resources and their exploitation made in accordance with climate and ecological objectives;

" – the coherence of issuers' investment expenditure with a low-carbon strategy, in particular, in the case of actors involved in the exploitation of fossil fuel reserves, the assumptions underlying the investment expenditure intended for the development of these reserves;

" – any element linked to the implementation by the public authorities of the international objective to limit global warming and achieve the energy and ecological transition objectives;

" – past, current and future measurements of greenhouse gas emissions, direct or indirect, associated with issuers that form part of the investment portfolio, in particular by stipulating, as regards the method used, its general characteristics and specifically the scope used, and the way in which it gives rise to a risk analysis. If the measurement gives rise to an intensity calculation, the denominator used. If the measurement is an aggregate, the definition of the weightings used;

" – measurements of assets invested in thematic funds, in financial securities or infrastructure assets contributing to the energy and ecological transition, in undertakings for collective investment covered by a label, charter or initiative intended to contribute to compliance with the international objective to limit global warming and achieve the energy and ecological transition objectives;

" – any element enabling a relevant assessment of the entity's exposure to climate change-related risks and its contribution to compliance with the international objective to limit global warming and achieve the energy and ecological transition objectives;

" 4° in *d* of 2° of II, information relating to the contribution to compliance with the international objective to limit global warming and achieve the energy and ecological transition objectives.

"The contribution to compliance with the objectives mentioned in the previous paragraph shall be assessed using information relating:

« a) to the way in which the entity analyses the coherence of its investment policy with these objectives and the way in which it contributes to this, depending on the nature of its activities and the nature of its investments;

« b) to indicative targets that it sets in this respect by specifying how it assesses their coherence with the international objective to limit global warming, the guidelines decided upon by the European Union and the carbon budgets and national low-carbon strategy mentioned in Article L. 222-1 B of the [French] Environmental Code;

« c) to the actions carried out following the analysis mentioned in *a* including specifically changes to the investment and divestiture policy, an engagement with issuers, an increase in assets invested in thematic funds, in financial securities or infrastructure assets contributing to the energy and ecological transition, in undertakings for collective investment falling under a label, charter or initiative intended to contribute to compliance with the international objective to limit global warming and achieve the energy and ecological transition objectives;

« d) as appropriate, for the last completed financial year, to its position in relation to indicative targets that it set and the reasons that explain any differences;

"5° In accordance with the assessment of the application of the provisions of this Article that the government will carry out at the end of the first two financial years pursuant to Article 4 of Decree No 2015-1850 of 29 December 2015 adopted pursuant to Article L. 533-22-1 of the [French] Monetary and Financial Code, an order of the Minister responsible for the economy and the Minister responsible for ecology, drawn up on the basis of the best practices observed among the entities mentioned in I and intended to assist with achieving the international objective to limit global warming and the energy and ecological transition objectives, may define a reference typology for the indicative targets mentioned in *b* of 4°.

"IV. – The information mentioned in II shall be presented as follows:

"1° Entities belonging to a group preparing the consolidated or combined accounts of which the total amount of the consolidated or combined balance sheet is less than 500 million euros, and portfolio management companies, for each undertaking of collective investment mentioned in 1° of I that they manage and of which the assets are less than 500 million euros, may only present the information mentioned in 1° of II. When the entity is not included in any scope of consolidation or combination, it may only present the information mentioned in 1° of II, when the total amount of its company balance sheet is less than 500 million euros;

"2° The information mentioned in 1° of II shall be presented in an easily identifiable manner on the entity's website and updated annually;

"3° The information mentioned in 2° of II shall be presented:

" – on the entity's or portfolio management company's website and updated annually, as appropriate by UCITS or AIF falling under paragraphs 1, 2 and 6 of subsection 2, of paragraph 2 or sub-paragraph 1 of paragraph 1 of subsection 3, or subsection 4 of section 2 of chapter IV of title I of book II or by category of UCITS or AIF falling under paragraphs 1, 2 and 6 of subsection 2, of paragraph 2 or sub-paragraph 1 of paragraph 1 of subsection 3, or subsection 4 of section 2 of chapter IV of title I of book II. The AIF falling under Article L. 214-26-1, of paragraph 6 of subsection 2, of paragraph 2 and of sub-paragraph 1 of paragraph 1 of subsection 3 and subsection 4 of section 2 of chapter IV of title I of book II are not subject to this obligation, except if they are the subject of a communication on the portfolio management company's website;

" – in the entity's annual report updated annually. For a portfolio management company, this information shall be presented in the annual report of each Undertaking for Collective Investment mentioned in 1° of I;

"This information may be presented according to a code drawn up by a professional association. In this case, the entity shall specify the code used in the preamble;

"4° For the entities included in a group's scope of consolidation or combination, the information in 2° and 3° of II may be presented as an aggregate for all of the group by the parent company responsible for preparing the consolidated or combined accounts.

"When the parent company is not subject to the provisions of this Article, the aggregate presentation mentioned in the previous paragraph may be used at the most appropriate level for consolidating entities of the group that are subject to these provisions. "

Article 2. – The information that must appear on the entity's website pursuant to Article D. 533-22-1 shall be presented there alongside the publication of its annual report for the financial year beginning on or after 1 January 2016 or by 30 June 2017 at the latest.

The information that must appear in the entity's annual report pursuant to the same Article shall be presented in the annual reports relating to the financial years beginning on or after 1 January 2016.

Article 3. – The competent authorities shall ensure, in accordance with their tasks provided for by law and within the limits thereof, that the entities subject to their control comply with the provisions of this Decree.

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 before 31 December 2018.

Article 5. – The Minister for Ecology, Sustainable Development and Energy, the Minister of Finance and Public Accounts and the Minister of Social Affairs, Health and Women's Rights are responsible, each to the extent to which it is concerned, for the implementation of this Decree, which will be published in the *Official Journal* of the French Republic.

Done on 29 December 2015.

By the Prime Minister:

MANUEL VALLS

*The Minister of Finance
and Public Accounts,*
MICHEL SAPIN

*The Minister of Social Affairs,
Health
and Women's Rights,*
MARISOL TOURAINE

*The Minister for Ecology,
Sustainable Development
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SÉGOLÈNE ROYAL