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Memorandum Legislative Measures due to the EU's Green Taxonomy Regulation (Fi2021/01011)

Summary

Finansinspektionen (FI) supports in general the proposals in the memorandum. However, FI has some feedback points about the proposals. FI makes the assessment, in contrast to the memorandum, that the supervision of the disclosure requirements in the EU's green taxonomy regulation (the regulation) will result in a significant increase in the need for resources at FI and that FI should receive an increase in resources of SEK 5 million. FI also takes the position that the scope of the supervision responsibility should be clarified.

It is currently unclear if FI's supervision responsibility also includes a review of whether the underlying investments meet the environmental requirements set out in the regulation. FI takes the position that this would be an unsuitable arrangement since such activities are not in line with FI's assignment as a financial supervisory authority. FI thus does not have the competence that would be required for this type of supervision, and it would be costly and inefficient to build up such competence within FI.

FI also has feedback on the proposal to change the Safeguarding of Pension Commitments, etc., Act. FI questions whether the pension foundations are obligated to follow the taxonomy regulation and if the authority must exercise supervision of them.

Responsibility for supervision of the regulation

According to Articles 21 and 22 of the regulation, Finansinspektionen has supervision responsibility for the financial market participants' compliance with the requirements set out in Articles 5, 6 and 7 of the regulation.

It is unclear if FI's supervision of compliance with Articles 5, 6, and 7 of the regulation, in addition to reviewing that specific documentation has been prepared and specific disclosures have been made in accordance with the regulation, also includes reviewing whether a specific underlying investment meets the environmental requirements in the review criteria. FI takes the position that this would be an unsuitable arrangement since such activities are not in line with FI's assignment as a financial supervisory authority.

Supervision of the compliance of underlying investments with the environmental requirement requires competence in environmental technology, sciences, etc., depending on the type of activities that will be reviewed (forestry, energy efficiency of real estate, etc.). The Swedish Environmental Protection Agency also comments in its response that advanced environmental competence is required for such a review. FI does not currently have this competence. Building up such competence at FI would be very costly and inefficient. It is therefore important to clarify and limit the scope of FI's supervision.

If the Government still takes the position that FI's supervision responsibility includes reviewing underlying investments, this must be done through extensive collaboration with other authorities. The details of such collaboration will thus require careful consideration.

The memorandum states that any increased costs for FI resulting from the regulation are judged to be limited and can be handled within existing financial frameworks. FI does not agree with this assessment. The part of the supervision that entails reviewing the disclosure requirements in the regulation will result in a significant increase in the need for resources at FI. The regulation places entirely new disclosures requirements on both financial and non-financial firms. FI must have the resources and competence to be able to guide the firms in their work to comply with the taxonomy's disclosure requirements and thus the taxonomy's overarching aim to steer capital toward sustainable investments. The regulation is expected to contribute to the EU's environmental goals, and as a competent authority FI bears considerable responsibility for ensuring that the aim of the regulation is met.

The previous national requirements on fund management companies and AIF managers to report their sustainability work were less extensive compared to the disclosure requirements set forth by the regulation. The new requirements also include credit institutions, securities companies, occupational pension institutions, and more. In Sweden, the requirements also include securities companies and insurance intermediaries with fewer than three employees, which further increases the number of firms that must be reviewed.

Overall, this means that there will be both new areas of supervision and new objects of supervision. FI makes the assessment that these new tasks will require resources of around SEK 5 million per year. There are therefore grounds for a corresponding increase in resources via an increase in appropriations.

Expanded supervision of some pension foundations

The proposed change in section 34 of the Safeguarding of Pension Commitments, etc., Act (1967:531) (the Safeguarding Act) aims to give FI authorisation to expand its supervision of the pension foundations that are specified in section 9a, second and third paragraphs of the Safeguarding Act as set forth in Articles 5–7 of the EU’s green taxonomy regulation.¹ FI notes, however, that this regulation is to be applied to financial market participants that make available *financial products* (Article 1(2)(b)). According to the definition in Article 2(2) of the regulation, a pension foundation is a financial market participant. The question, though, is whether a pension foundation can be considered to make available financial products.

Article 2(3) of the regulation refers to the definition of a financial product in Article 2(12) of the EU Regulation on sustainability-related disclosures.² This article states that a financial product can be, for example, a pension product or a pension scheme. However, a pension foundation cannot offer pensions and therefore is not responsible for the pension commitments (section 12 of the Safeguarding Act). The sole purpose of a pension foundation is to safeguard an employer’s pension commitments (section 9 of the Safeguarding Act). The foundation’s only task is to manage capital, and since it does not have its own pension commitment or responsibility for the pension commitments, there is no corresponding liability item in the foundation’s balance sheet. The foundation normally may also not pay out pensions, either. It is the employer that estimates the pension commitments and based on this estimation makes the required payments to the foundation. It is also the employer’s responsibility to manage payment of the pensions. The pension foundation’s net asset value,

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.

² 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.

therefore, cannot be characterised as a type of collateral for the policyholders' pension claim (see Bill 2018/19:158 p. 176).

Given that a pension foundation thus does not have any own pension commitments other than safeguarding the employer's pension commitments by managing the employer's assets, it cannot be considered to provide any financial product as referred to in the regulation (pension product or pension plan). FI therefore questions whether pension foundations are obligated to comply with the regulation and if the authority must exercise supervision of them.

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