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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on the establishment of a framework to facilitate sustainable
investment, and amending Regulation (EU) 2019/2088
– Draft Statement of the Council's reasons

I. INTRODUCTION

On 8 March 2018, the Commission published its Action Plan 'Financing Sustainable Growth', setting up an ambitious and comprehensive strategy on sustainable finance. One of the main objectives of that action plan is to reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth.

In this context, on 24 May 2018, the Commission submitted to the Council a package of legislative proposals:

- Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, also referred to as "the Taxonomy Regulation";
- 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, also referred to as "the Disclosure Regulation"; and
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks, also referred to as "the Benchmarks Regulation".

The Disclosure and Benchmarks Regulations were published in the Official Journal of the European Union as Regulations (EU) 2019/2088¹ and (EU) 2019/2089², respectively.

¹ OJ L 317, 9.12.2019, p. 1.

² OJ L 317, 9.12.2019, p. 17.

The European Parliament adopted its position on the Taxonomy Regulation at first reading at its plenary session on 28 March 2019.

The Working Party on Financial Services examined the proposed Taxonomy Regulation in a number of meetings under various Presidencies.

The Permanent Representatives Committee (Part 2) agreed on 25 September 2019 on the initial negotiation mandate. This mandate was revised on 16 December 2019.

On 16 December 2019, a final compromise with the European Parliament was found, which permitted the conclusion of the negotiations.

On 23 January 2020, the Committee on Economic and Monetary Affairs (ECON) and Committee on the Environment, Public Health and Food Safety (ENVI) of the European Parliament approved the outcome of the trilogue negotiations. On 24 January 2020, the Chairs of those Committees addressed a letter to the Presidency indicating that they would recommend to the Plenary that the Council's position be accepted, subject to legal-linguistic verification, at Parliament's second reading.

On 18 February 2020, the Council reached a political agreement on the revised text.

Taking into account the above agreement and after legal-linguistic revision, the Council adopted its position at first reading on [xxxx 2020], in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union (TFEU).

II. OBJECTIVE

One of the objectives of the Action Plan 'Financing Sustainable Growth' is to reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth. Adoption of the Taxonomy Regulation that will establish a unified classification system for sustainable activities is the most important and urgent action to that effect. Clear guidance on activities that qualify as contributing to environmental objectives will help inform investors about the investments that fund environmentally sustainable economic activities. 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 will find it easier to raise funding across borders for their environmentally sustainable activities, since their economic activities could be compared against uniform criteria in order to be selected as underlying assets for environmentally sustainable investments. Such harmonisation will therefore facilitate cross-border sustainable investment in the Union.

For the purpose of determining the environmental sustainability of a given economic activity, the Taxonomy Regulation will lay down an exhaustive list of the following six environmental objectives: climate change mitigation; climate change adaptation; the sustainable use and protection of water and marine resources; the transition to a circular economy; pollution prevention and control; and the protection and restoration of biodiversity and ecosystems.

For each environmental objective, uniform technical screening criteria for determining whether economic activities contribute substantially to that objective will be laid down by the Commission in delegated acts. One key element of the uniform criteria is also to avoid significant harm to any of the environmental objectives in order to avoid that investments qualify as environmentally sustainable in cases where the economic activities benefitting from those investments cause significant harm to the environment to an extent that outweighs their contribution to an environmental objective. Moreover, compliance with minimum safeguards is a further condition for economic activities to qualify as environmentally sustainable.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

(a) Material scope

The Council text keeps the focus of the Taxonomy Regulation on defining environmentally sustainable activities with a substantial impact on environmental sustainability and thus responds to the most pressing need to define on Union level which activities are to be considered green. Beyond that, the Council text invites the Commission to publish, by 31 December 2021, a report describing the provisions that would be required to extend the scope to cover environmentally sustainable economic activities which do not have a substantial impact on environmental sustainability, economic activities that significantly harm environmental sustainability, as well as to cover other sustainability objectives, such as social objectives.

Furthermore, to enhance transparency and to provide an objective point of comparison by financial market participants to end-investors on the proportion of investments that fund environmentally sustainable economic activities, the Taxonomy Regulation will supplement the rules on transparency in pre-contractual disclosures and in periodic reports laid down in the Disclosure Regulation in relation not only to taxonomy-compliant financial products, but also other financial products, including an obligation that information to be disclosed shall be accompanied by factual statements.

(b) Personal scope

The Council position provides that large companies which are subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU will report in its non-financial statements or consolidated non-financial statements on certain climate-related key performance indicators that are based on the framework established by the Taxonomy Regulation. This will provide useful information to investors who are interested in companies whose products and services contribute substantially to one of the environmental objectives set out in the Taxonomy Regulation.

(c) Governance

Given the specific technical details needed to assess the environmental impact of an economic activity and the fast-changing nature of both science and technology, technical screening criteria for environmentally sustainable economic activities will be established and adapted regularly by the Commission in delegated acts in accordance with the principles and procedures laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, through the involvement of the Member States Expert Group on Sustainable Finance and of the Platform on Sustainable Finance. The Commission will set up the Platform involving a wide array of experts representing both the public and private sectors, as well as civil society.

(d) Climate neutrality

The Council text lays down clear requirements for technical screening criteria which the Commission will have to respect when developing those criteria through delegated acts. Those requirements, *inter alia*, recognise the principle of technical neutrality in the establishment of technical screening criteria and provide that technical screening criteria will ensure that power generation activities which use solid fossil fuels do not qualify as environmentally sustainable economic activities. Furthermore, the Council text lays down requirements for transitional and enabling activities.

(e) Implementation timelines

The Council text requires the Commission to give priority to delegated acts pursuing climate-related objectives by adopting them no later than 31 December 2020, with a view to ensuring their application from 1 January 2022. Adoption of delegated acts pursuing the remaining objectives under the Taxonomy Regulation is planned no later than 31 December 2021, with a view to ensuring their application from 1 January 2023.

The European Parliament could accept these changes.

IV. CONCLUSION

The Council's Position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, with the support of the Commission.

The Council believes that its position at first reading represents a balanced package and that, once adopted, the Taxonomy Regulation will play a key role in reorienting capital flows towards sustainable investment in order to achieve sustainable and inclusive growth and that it therefore represents a key step towards the overall objective of achieving a climate-neutral European Union by 2050.
