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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2018) 353 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of a framework to facilitate sustainable investment <i>- Mandate for negotiations with the European Parliament</i>

I. INTRODUCTION

1. In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth', setting up an ambitious and comprehensive action plan strategy on sustainable finance. One of the objectives of that action plan is to reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth. In line with the Paris Climate Agreement and the 2030 UN Sustainable Development Agenda, this proposal is part of a broader Commission initiative to facilitate investment in sustainable projects and assets across the European Union.
2. 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 "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 "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 "Benchmarks Regulation".

II. STATE OF PLAY

3. The Financial Services Working Party started the discussions on the three legislative proposals on 20 July 2018. Political agreements have been reached with the European Parliament on Disclosure and Benchmarks Regulations in March 2019, while discussions in the Council on a negotiation mandate for the Taxonomy Regulation continued.
4. On 28 March 2019, the European Parliament adopted a legislative resolution with its position at first reading concerning the Taxonomy Regulation¹.

¹ 7759/19.

5. The Presidency submitted a compromise proposal for a mandate for negotiations with the European Parliament on the Taxonomy Regulation, as set out in the Addendum to this note, to the Financial Services Working Party (Attachés) in a silence procedure launched on 13 September 2019. At close of business on 17 September 2019, the required majority of delegations supported the Presidency compromise. The following statements, as set out in the Annex, were submitted:

- a Joint Statement by Germany, Luxembourg and Austria;
- a Statement by Austria;
- a Statement by Greece.

III. CONCLUSION

6. In view of the above, it is suggested that the Committee of Permanent Representatives:

- agree the negotiating mandate with regard to the proposed Regulation, as set out in the Addendum to this note;
- take note of the statements set out in the Annex to this note to be entered into the COREPER minutes; and
- invite the Presidency to start, when practicable, negotiations with the European Parliament on the basis of that mandate with a view to reaching an agreement in the form of a (pre-negotiated) Council position at first reading².

² Often referred to as an 'early second-reading agreement'.

Joint statement by Germany, Luxembourg and Austria

We share the objective to establish a credible taxonomy that will guide investors in identifying environmentally sustainable activities. We are however convinced that any taxonomy that would allow for nuclear energy to be qualified as sustainable would be inherently flawed and could give rise to severe criticism, as it would send the wrong signals and incentives to financial market participants and investors. While we would like for the taxonomy to be adopted as quickly as possible, we have strong concerns that the proposed framework would leave the door open to diverting financial resources away from environmentally sustainable activities and into technologies that cannot be considered either safe or sustainable. This would risk creating long-term “lock-in effects” into these technologies, thereby generating an undeterminable amount of additional costs, and would hence run counter the overall objective of the sustainable finance agenda.

Statement by Austria

Timelines for the adoption of delegated and implementing acts

Regarding the timelines for adopting the delegated and implementing acts, we are concerned about the level of ambition. We prefer a sequential, 2-batch approach, where delegated and implementing acts for the climate objectives are already adopted in 2020. The work by the Technical Expert Group on the climate objectives has already been comprehensively elaborated and in our view there is no need to postpone the adoption for the climate objectives until technical criteria for all other environmental objectives are in place.

Competences and obligations of supervisory authorities

Competences, obligations and liabilities of competent supervisory authorities are too vague and should be clarified – ideally following the approach taken in Regulation 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (“Prospectus Regulation”).

Competent authorities cannot and should not be obliged to perform any checks on a factual basis, i.e. perform due diligence assessments whether or not all requirements by the Taxonomy Regulation are met on a material basis at any given moment. Furthermore it would be important to clarify legal liability for disclosure documents: It has to be stipulated by Union law that the legal liability rests with the entities and not with the authorities.

Statement by Greece

The Hellenic Republic would like to highlight that, based on our country's position regarding nuclear energy, and respecting the right of every Member State to define its own national energy scheme, nuclear energy should not be considered as a sustainable activity. We acknowledge the importance of adopting and implementing the Taxonomy proposal as soon as possible, in order to clarify to all market participants which activities are considered "green" and "sustainable".

We also support that the Taxonomy proposal should not include any controversial points, but rather encapsulate the widely accepted goals of sustainability, in order to produce added value as a legislative tool.
