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#### **COVER NOTE**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 April 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 155 final
Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment 2018/0178 (COD), and amending Regulation 2019/2088 on sustainability- related disclosures in the financial services sector

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Delegations will find attached document COM(2020) 155 final.

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Encl.: COM(2020) 155 final



Brussels, 23.4.2020  
COM(2020) 155 final

2018/0178 (COD)

**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union**

**concerning the**

**position of the Council on the adoption of a Regulation of the European Parliament and  
of the Council on the establishment of a framework to facilitate sustainable investment  
2018/0178 (COD), and amending Regulation 2019/2088 on sustainability-related  
disclosures in the financial services sector**

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**1. BACKGROUND**

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2018) 0353 final – 2018/0178 COD):	24 May 2018
Date of the opinion of the European Economic and Social Committee:	17 October 2018
Date of the position of the European Parliament, first reading:	28 March 2019
Date of transmission of the amended proposal:	N/A
Date of adoption of the position of the Council:	15 April 2020

**2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION**

In March 2018, the Commission presented an ambitious action plan on financing sustainable growth.<sup>1</sup> The aim of this action plan is to mobilise the private sector for the transition towards a low-carbon, more resource-efficient and more sustainable economy. As outlined in the action plan, the lack of a clear definition of what is ‘environmentally sustainable’ currently presents one of the biggest obstacles to scale up green investment. This is why one of the cornerstones of the action plan is the creation of a common classification system for environmentally sustainable economic activities, or an “EU taxonomy”. To this end, the Commission tabled a proposal for a regulation in May 2018,<sup>2</sup> which had the following three goals:

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<sup>1</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions Action Plan: Financing Sustainable Growth (COM/2018/097 final)

<sup>2</sup> Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment (2018/0178 (COD)).

- (1) to provide appropriate definitions to companies and investors on which economic activities can be considered environmentally sustainable;
- (2) to empower end-investors, including retail investors, to channel capital towards environmentally sustainable activities, by limiting the risks of ‘greenwashing’ through these definitions;<sup>3</sup> and
- (3) to avoid market fragmentation by providing a single point of reference for investors, companies, and Member States, when defining environmental sustainability for investment purposes.

The EU taxonomy will constitute a common language that investors and companies can use to identify investment opportunities for projects and economic activities that make a substantial contribution to climate and environmental objectives. This will help investors and companies to transition their operations towards sustainability. The EU taxonomy will thus help to scale up private and public investments to finance the sustainability transition, in line with the objectives of the European green deal.

The taxonomy focuses on environmentally sustainable activities in the areas of: climate change mitigation; climate change adaptation; sustainable use and protection of water and marine resources; circular economy; pollution prevention and control; and protection and restoration of biodiversity and ecosystems. By 31 December 2021, the Commission must publish a report on extending the scope of the taxonomy to cover other sustainability objectives, including social objectives.

Once complete, the taxonomy will facilitate the development of standards and labels for green financial products. It will also form an integral part of sustainability-related reporting by financial and non-financial companies. Moreover, as announced in the European green deal investment plan,<sup>4</sup> the taxonomy will also be taken into consideration in the guidance documents on climate and environmental tracking and sustainability proofing as part of InvestEU,<sup>5</sup> to be published in the second half of 2020. Beyond InvestEU, the Commission will explore through a renewed strategy on sustainable finance, to be published in the second half of 2020, how public sector entities can use the taxonomy, in order to achieve convergence of standards between the private sector and public entities and make the most appropriate use of blended finance vehicles.

### **3. COMMENTS ON THE POSITION OF THE COUNCIL**

The position of the Council reflects the political agreement reached between the European Parliament and the Council on 16 December 2019. The Commission supports this agreement.

The political agreement introduced several changes that deviate from the initial Commission proposal, including on the following points:

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<sup>3</sup> ‘Greenwashing’ refers to the practice of promoting an organisation's products, aims or policies as environmentally-friendly when they may not be.

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Green Deal Investment Plan (COM/2020/21 final).

<sup>5</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU Programme (COM/2018/439 final - 2018/0229 (COD)).

## 1. Extension of the scope of the Regulation:

Firstly, the political agreement sets out an additional obligation on the EU to apply the taxonomy for the purposes of any public measures, standards or labels, setting out requirements on financial market participants or issuers in the area of financial products or corporate bonds that are marketed as ‘environmentally sustainable’.

Second, all financial market participants, as defined in the Disclosure Regulation,<sup>6</sup> will be required to disclose how and to what extent the investments that underlie their financial product support economic activities that are aligned with the taxonomy. Financial market participants that do not wish to disclose taxonomy-alignment, and subsequently do not wish to market their product as environmentally sustainable or as having similar characteristics, will need to make a statement explaining this.

Third, large financial and non-financial companies that already have to publish a non-financial statement<sup>7</sup> will need to disclose how and to what extent their activities are associated with those covered by the taxonomy. This includes approximately 6,000 companies and groups across the EU. In line with the guidelines accompanying the Non-Financial Reporting Directive, the relevant reporting key performance indicators (KPIs) include turnover, capital expenditure, and operating expenditure. For financial companies, different KPIs can be further specified in a delegated act that the Commission is set to provide by June 2021.

## 2. Specification of the types of economic activities that can be considered for eligibility:

The political agreement introduces two sub-categories of environmentally sustainable economic activities: *enabling activities* (applicable to all six environmental objectives) and *transition activities* (applicable only to the climate change mitigation objective).

*Enabling activities* directly enable other activities to make a substantial contribution to one or more of the environmental objectives. Safeguards have been put in place to prevent greenwashing. The first of these safeguards is that enabling activities cannot lead to a ‘lock-in’ in assets that undermine long-term environmental goals, considering the economic lifetime of those assets. The second of these safeguards is that enabling activities must have a substantial positive environmental impact on the basis of lifecycle considerations.

*Transition activities* are activities: (i) for which there are currently no technologically and economically feasible low-carbon alternatives available; (ii) and that support the transition to a climate-neutral economy in a manner that is consistent with a pathway to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels. Similar to enabling activities, a number of safeguards have been put in place, in order to prevent greenwashing.<sup>8</sup> This sub-category of transition activities is only relevant for the climate change mitigation objective.

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<sup>6</sup> 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 (OJ L 317, 9.12.2019, pp. 1-16).

<sup>7</sup> This includes companies subject to Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, pp. 1-9).

<sup>8</sup> Transition activities must (i) have greenhouse gas emissions which are substantially lower than the sector or industry average; (ii) not hamper the development and deployment of low-carbon alternatives; and (iii) not lead to a lock-in in assets incompatible with the objective of climate-neutrality.

### 3. Changes in provisions that relate to specific economic activities of interest:

Power generation activities from solid fossil fuels are explicitly excluded from eligibility.

The importance of ‘climate-neutral energy’ for the transition is recognised in a recital to the political agreement, while the reference to ‘climate-neutral energy’ as part of the climate mitigation objective was deleted. The Commission was asked to carry out an assessment of all relevant existing technologies when selecting the activities that are eligible to be considered as ‘transition activities’. In this context, economic activities are considered as ‘significantly harming’ where the long-term disposal of waste may cause significant and long-term harm to the environment. As part of the political agreement, the text also reinforces the role of life cycle assessments in the development of the technical screening criteria.

In the area of waste incineration, the reference to ‘avoiding’ was replaced by ‘minimising’ waste incineration as one of the ways an economic activity can contribute substantially to the transition to a circular economy. Moreover, a reference to the principles of the waste hierarchy was added. The ‘do no significant harm principle’ explicitly states that eligible activities should not lead to a significant increase in the generation, incineration or disposal of waste, granting an exception to the incineration of non-recyclable hazardous waste.

### 4. Extension of the minimum social safeguards

The political agreement adds three international human rights instruments/guidelines to the list of minimum safeguards:

- the OECD Guidelines for Multinational Enterprises;
- the UN Guiding Principles on Business and Human Rights; and
- the International Bill of Human Rights.

### 5. Expansion of the membership and tasks of the Platform on Sustainable Finance (‘the Platform’):

The political agreement expands both the scope of operation of the Platform and its membership, so it can advise the Commission on the following additional points:

- the possible role of sustainability accounting and reporting standards to support the application of the taxonomy;
- the possible need to improve data availability and quality;
- addressing other sustainability objectives, including social objectives;
- the functioning of the minimum safeguards and the possible need to supplement the existing requirements;
- the evaluation and development of sustainable finance policies, including on policy coherence issues.

In this context, the political agreement specifies that the following actors must form part of the composition of the Platform:

- the European Union Agency for Fundamental Rights;
- civil society representatives;
- representatives of relevant financial and non-financial business sectors, including representatives of relevant industries;
- experts with accounting and reporting expertise.

The Platform will operate under the Commission’s horizontal rules on expert groups.<sup>9</sup>

#### 6. Establishment of a Member State Expert Group

The political agreement creates a Member State Expert Group to advise the Commission on the appropriateness of the technical screening criteria and the approach taken by the Platform. This expert group will operate under the Commission’s horizontal rules on expert groups.<sup>10</sup>

#### 7. Amendments to the Disclosure Regulation

The political agreement introduces targeted amendments to the Disclosure Regulation. In particular, these amendments seek to anchor the taxonomy-related disclosure by financial market participants within the larger framework on sustainability-related disclosures by the financial services sector as set out by the Disclosure Regulation. In this context, a number of amendments were made to empower the European Supervisory Authorities (“the ESAs”) to develop regulatory technical standards to specify the taxonomy-related disclosure requirements in this context.

In addition, an article on the principle of “do no significant harm” was introduced. This amendment empowers the ESAs to develop an additional regulatory technical standard. This additional regulatory technical standard will specify the details of the content and presentation of the information in relation to the “do no significant harm” principle for social and environmental objectives. The “do no significant harm” principle on social aspects, as defined in the Disclosure Regulation, should be consistent with the minimum safeguards laid out in the Taxonomy Regulation. Companies should, in turn, use the “do no significant harm” principle when implementing procedures to comply with these minimum safeguards.

#### 8. Timeline for the delegated acts

The Commission will be required to adopt delegated acts, which will contain the technical screening criteria, for the two climate objectives by 31 December 2020 (entry into application on 31 December 2021), and for the other four environmental objectives by 31 December 2021 (entry into application on 31 December 2022).

#### 9. Review

The political agreement extends the review clause to task the Commission with covering the following additional topics when publishing its report:

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<sup>9</sup> Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups (C(2016)3301).

<sup>10</sup> Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups (C(2016)3301).

- to describe the provisions that would be required to extend the scope of the taxonomy to cover other economic activities, including neutral and environmentally harmful activities;
- to assess the effectiveness of the advisory procedures for the development of the technical screening criteria (consisting of the Platform and the Member States Expert Group);
- to evaluate the planned supervisory regime.

## **5. CONCLUSION**

The Commission supports the results of the interinstitutional negotiations and can therefore accept the Council's position at first reading.