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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
No. prev. doc.:	5487/20
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 - Political agreement

1. On 8 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 main objectives of that action plan is to reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth.
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 "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".
3. Political agreements have been reached with the European Parliament on the Disclosure and Benchmarks Regulations in March 2019. They were published in the Official Journal of the European Union as Regulations (EU) 2019/2088¹ and (EU) 2019/2089², respectively.
 4. The European Economic and Social Committee delivered its opinion on the Taxonomy Regulation on 17 October 2018³.
 3. On 11 March 2019, the European Parliament's Committee on Economic and Monetary Affairs (ECON) and Committee on the Environment, Public Health and Food Safety (ENVI) adopted their joint report on this proposal, followed by the adoption of European Parliament's first reading position on 28 March 2019⁴.

¹ OJ L 317, 9.12.2019, p. 1.

² OJ L 317, 9.12.2019, p. 17.

³ Doc. 7342/19.

⁴ Doc. 7759/19.

4. The Permanent Representatives Committee agreed on a negotiating mandate on the abovementioned proposal on 25 September 2019⁵. On that basis, negotiations took place with the European Parliament and the Commission with a view to an early second reading agreement.
5. A total of five trilogues took place. On the basis of a revised mandate given by the Permanent Representatives Committee on 16 December 2019, the Presidency concluded the negotiations with the European Parliament in a sixth trilogue, followed by a written procedure, that took place on the same day.
6. The Presidency submitted the negotiated text to the Permanent Representatives Committee on 18 December 2019 for endorsement of the agreement reached with the European Parliament.
7. ECON and ENVI Committees voted on 23 January 2020 in favour of the agreed text.
8. On 24 January 2020, the Chairs of the ECON and ENVI 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. The letter, including the negotiated text of the Taxonomy Regulation, is reproduced in doc. 5426/20.

⁵ Doc. 12360/2/19 REV 2 + ADD 1.

9. The text contained in the Annex to that letter is set out in Addendum 1 to this note. That text is identical to the text endorsed by the Permanent Representatives Committee on 18 December 2019, with the exception of a correction of an error that concerns Article 16(6). In line with the Council's mandate and agreement of the co-legislators, the objection period for delegated acts of two months was changed to four months (extendable by two additional months).
10. On 5 February 2020, the Permanent Representatives Committee confirmed the agreement reached with the European Parliament and suggested to the Council to adopt a political agreement on the text of the Regulation⁶.
11. Several Member States submitted statements for inclusion in the minutes of the Council. Those statements are set out in the Annex to this note.
12. In view of the above, the Council is invited to:
 - take note of the statements set out in the Annex to this note,
 - adopt a political agreement on the text of this Regulation, as set out in Addendum 1 to this note.

After adoption of the political agreement, the texts will be sent for lawyer-linguist revision so that the Council can adopt its first reading position as an "A" item at a forthcoming Council. Subsequently, the Council's position at first reading will be communicated to the European Parliament with a view to approval by the Plenary without amendment in second reading.

⁶ Doc. 5487/20 + ADD 1.

Statement by Austria

"We share the objective to establish a credible taxonomy that will guide investors in identifying environmentally sustainable activities. We still believe that the taxonomy should be adopted as quickly as possible. Substantial progress was already achieved within the trilogue. However, any taxonomy that would allow for nuclear power to be qualified as sustainable, or even as a "transition" or "enabling activity", 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. The outcome of the negotiations is not able to remove our concern that the proposed framework could leave the door open to diverting financial resources away from environmentally sustainable activities and into technologies that cannot be considered either safe or sustainable, such as nuclear power."

Statement by the Czech Republic, Hungary, Slovakia and Slovenia

"The Czech Republic, Hungary, Slovakia and Slovenia appreciate the endurance and the efforts of the Presidency dedicated to the taxonomy proposal. In view of further work as regards the energy related provisions, the Czech Republic, Hungary, Slovakia and Slovenia stress the need to respect technological neutrality as one of the underlying principles of the proposal.

The Czech Republic, Hungary, Slovakia and Slovenia acknowledge that climate change needs to be tackled swiftly, while safeguarding the security, stability, and affordability of the energy supply in the long term. Achieving climate neutrality requires low-carbon as well as transitional energy sources and infrastructure and we welcome that this is now clearly enshrined in the taxonomy framework. It is well acknowledged by the world's expert community that the nuclear energy is necessary to tackle climate change. The Czech Republic, Hungary, Slovakia and Slovenia consider nuclear energy as a sustainable and safe energy source in the long term.

The maintaining of current nuclear capacities and their future development, while respecting the high safety and security standards, is the basic precondition for reaching climate neutrality not only in the Czech Republic, Hungary, Slovakia and Slovenia, but also at the EU level. This is confirmed also by IPCC and international energy organizations and reflected in the documents of the Commission as well. We rely on the Commission to ensure a fully transparent process of elaboration of the relevant Delegated Acts – a credible, evidence-based process based on expertise, scientific inputs and proper Member States involvement in order to undertake a fully informed and objective assessment of sustainability of all available energy technologies on a non-discriminatory basis.

The Czech Republic, Hungary, Slovakia and Slovenia support the objective of climate neutrality of the EU by 2050. In order to achieve this goal, Member States need to have all necessary tools to reach this ambitious objective in a cost-effective way and ensure credibility of our climate efforts."

Statement by Poland

"Poland expresses gratitude for the Finnish Presidency for its efforts to finalize work on the taxonomy. Poland fully supports the objectives of the regulation, in particular, support for informed business decisions for investments in environmentally sustainable activities.

We are on the position that the current text leaves too much room for interpretation on key issues. They are left to be decided in Level 2 acts, which will also be adopted with too little involvement of the Member States.

We take a negative view of the fact that there is no guarantee in the regulation that natural gas is recognized as a transition activity. Poland points out that natural gas is an essential bridge fuel used to replace coal and, at the same time, to secure the dynamic development of renewable energy sources. What is more, the practical implementation of the principle of 'Leaving no one behind' in Poland nowadays are investments in natural gas. Without these investments, Poland's energy transformation will slow down significantly, to be potentially harmful to the EU's climate policy.

The text of the regulation does not directly reflect the role of nuclear energy. Nuclear energy is essential to achieve climate neutrality, which has been confirmed both by reports and analyses of recognized international organizations and above all by documents of the European Commission or by the latest resolution of the European Parliament on COP 25 (rec. 56).

Moreover, considering the controversial issue of nuclear power within the framework of negotiations on the text of the regulation, the decision on its inclusion in the taxonomy should not be left to the lower level acts.

Poland expects that in the light of the compromise which was adopted in the field of nuclear energy and gas, the works on delegated acts will respect the principle of technological neutrality.

Poland agrees with the idea of creating legal framework that would encourage financing sustainable growth. However, in our view such actions should be consistent with other actions undertaken at the European Union level as well as they should ensure proportionality.

In our opinion introducing the additional disclosures obligations with regard to sustainability in the Taxonomy regulation, which are parallel to those foreseen in disclosure regulation, without conducting any deep analysis when preparing legislative proposal by the European Commission, can result in raising the capital outside capital market. Therefore, such situation can be contradictory to the actions foreseen within Capital Markets Union. Moreover, the adopted approach concerning regulating disclosures obligation with regard to sustainability simultaneously in two legal acts (Taxonomy and disclosures regulation) leads to the lack of the transparency of the provisions and to the interpretational doubts on the side of entities to whom the provisions are directed.

Considering the above, we call on the European Commission to take duly into account, while adopting delegated acts, the rules of proportionality and coherence in order to ensure as well fulfilling the goals of Capital Markets Union. We also call on the European Commission to take into account, when undertaking legislative proposals in the future, the existing connection between this regulation and disclosure regulation.

In view of the above, Poland does not oppose the adoption of the Regulation on Sustainable Finance - taxonomy, but cannot support it."
