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General Secretariat

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CM 2023/20

CODEC
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WRITTEN PROCEDURE

Contact: pawel.zamojski@consilium.europa.eu

Tel./Fax: +32.2.281.42.71

Subject: Draft 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 **(2018/0178 COD)**
Outcome of the written procedure initiated by CM 2005/20
– Adoption of the Council's position at first reading and of the statement of the Council's reasons

Delegations are informed that the written procedure, opened by CM 2005/20 of Wednesday, 8 April 2020 was completed on Wednesday, 15 April 2020 and that all delegations voted in favour of, except for Austria, Bulgaria, Hungary and Poland that abstained and Sweden that voted against, the adoption of the Council's position at first reading on the draft 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 and the statement of the Council's reasons, as set out in the following documents:

5639/20 + COR 1

5639/1/20 REV 1 (hr, hu, pt) + REV 1 COR 1 (hr, hu, pt)

5639/20 ADD 1 + COR 1

The required qualified majority has been reached. Therefore, the above position of the Council at first reading and the statement of the Council's reasons are adopted.

The statements submitted are reproduced in the Annex to this CM and will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

Statement by Germany supported by Hungary

We share the objective to establish a credible taxonomy that will guide investors in identifying environmentally sustainable activities. However, with a view to the inclusion into the taxonomy of sectors for which the EU does not have competence to regulate, we have strong concerns regarding the use of delegated acts. As regards the forestry sector, we stress that the formulation of forest policies is the competence of the Member States. The use of delegated acts to define sustainability criteria in relation to the forestry sector should not prejudice any shift of competence from the Member States to the EU in this policy domain.

In addition, as to “sustainable forest management” Germany is of the opinion that the definition as contained in FOREST EUROPE Resolution “General Guidelines for the Sustainable Management of Forests in Europe”, as unanimously adopted by the Member States and the European Union in 1993, should be regarded as the basis.

Statement by Luxembourg

The taxonomy should be an essential instrument to guide investors in identifying environmentally sustainable activities. Luxembourg recalls that nuclear energy is not a safe nor a sustainable energy source. A credible taxonomy does consequently not allow for nuclear power generation and nuclear fuel cycle projects of any kind to qualify as sustainable activities.

In that regard, the reinforcement of the "do no significant harm" principle in the final version of the regulation shall safeguard the credibility of the taxonomy in the eyes of a broad range of European investors and of the EU population. We rely on the European institutions to ensure that this principle is applied in a strict and unambiguous manner. Any different application of this principle, in particular when it comes to nuclear energy, would risk creating long-term “lock-in effects” into such technologies, thereby generating an undeterminable amount of additional costs, and would hence run counter the overall objective of the sustainable finance agenda.

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 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 Poland

Poland fully supports the objectives of the regulation, in particular, the 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. 59).

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 principle of technological neutrality will be respected in the works on delegated acts and EU taxonomy will not exclude technologies indispensable to achieve climate neutrality. TEG Report on Taxonomy has formulated a recommendation to set up an expert group to examine the environmental impact of spent fuel and radioactive waste management. It is our expectation that delegated acts, especially on mitigation activities, will not be adopted unless such objective analysis is carried by independent experts, nor will it ignore data provided by leading international fora and organisations (IPCC, OECD).

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 disclosure 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 disclosure 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.

Statement by Sweden

Sweden would like to recall its concerns in relation to the treatment of sustainable forest management and forest policy in the Taxonomy Regulation. Throughout the negotiations, we have persistently called for a clear and unambiguous reference to Forest Europe's definition of 'sustainable forest management'. We regret that this was not maintained in the final compromise text.

Forest Europe's internationally agreed, well-recognized and acknowledged definition of sustainable forest management has helped to promote a pan-European common understanding of sustainable forest management for almost 30 years. The final compromise struck by the co-legislators introduces a different notion of sustainable forest management that may diffuse the common understanding among the 47 Forest Europe signatories, including the EU and its Member States. It is paramount to maintain this agreed definition in the development and application of the Taxonomy Regulation. Departing from this common understanding could lead to incoherent use and application of sustainable forest management.

We would also like to recall what the Council of the European Union has stated twice this year¹: that although the EU has a variety of forest-related policies, the Treaty on the Functioning of the European Union makes no reference to a common EU forest policy, that the responsibility for forests lies with the Member States, and that all forest-related decisions and policies in the EU must respect the principle of subsidiarity and Member States' competence in this field.

As the final text was not deemed acceptable in relation to the treatment of sustainable forest management and forest policy, Sweden is not in a position to support the adoption of the regulation. We urge the Commission and future expert groups to take the above-stated into consideration when developing technical screening criteria and secondary legislation.

¹ Conclusions of the Council and of the Governments of the Member States sitting in the Council on the Communication on Stepping Up EU Action to Protect and Restore the World's Forests (adopted 16 December 2019) Council Conclusions on the progress on the implementation of the EU Forest Strategy and on a new strategic framework for forests (adopted 15 April 2019)

Statement by Czech Republic and Slovakia

We, the delegations of Czech Republic and Slovakia, appreciate the effort of the Presidency to reach an agreement with the European Parliament on the taxonomy dossier. In view of the work ahead of us, we find it necessary to make two remarks in relation to sustainable forest management and forest policy.

Throughout the negotiations on the taxonomy, we have persistently called for a clear and unambiguous reference to Forest Europe's definition of 'sustainable forest management'. We regret that this was not maintained in the final compromise text.

Forest Europe’s internationally agreed, well-recognized and acknowledged definition of sustainable forest management has helped to promote a pan-European common understanding of sustainable forest management for almost 30 years. The final compromise struck by the co-legislators introduces a different notion of sustainable forest management that may diffuse the common understanding among the 47 Forest Europe signatories, including the EU and its Member States. It is paramount to maintain this agreed definition in the development and application of the Taxonomy Regulation. Departing from this common understanding could lead to incoherent use and application of sustainable forest management.

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Statement by Hungary

We would like to express concerns with the significant widening of the material and personal scope of the Regulation. Extending the scope to products that do not pursue any kind of environmental, social or governance aim would only add to the administrative burden of market participants without providing further useful information to investors.

Moreover, extending the scope to companies within the scope of article 19a and article 29a of Directive 2013/34/EU is also not appropriate. The non-financial reporting requirements are subject to fitness check conducted by the European Commission and the revision of the requirements are also foreseen, therefore any new requirement in this field should have been introduced after thorough assessment with the relevant experts.
