

To: Jean-Claude Juncker, President of the European Commission

cc: Valdis Dombrovskis, Vice-President of the European Commission

cc: Jyrki Katainen, Vice-President of the European Commission

cc: Olivier Guersent, Director-General for Financial Stability, Financial Services and Capital Markets Union

cc: Martin Spolc, Head of Unit, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

Brussels, 22 March 2018

**On a human rights mandate for the Technical Expert Group on Sustainable Finance**

Dear President Juncker,

We, the undersigned Members of the European Parliament, civil society organisations, trade unions and independent experts, welcome the Commission's ambitious Action Plan on Financing Sustainable Growth (Action Plan), built on the impressive work of the High Level Expert Group on Sustainable Finance (HLEG).

We commend the Commission's swift action in opening a call for applications<sup>1</sup> (call) for the formation of a technical expert group on sustainable finance which will, inter alia, be tasked with the creation of an EU taxonomy and classification system for sustainable assets and activities.

Nonetheless, we regret that the mandate of the group, as described in the call, is **insufficient** in ensuring the ambitions of the Commission's Action Plan are met. While the Action Plan does make reference to a taxonomy which will help inform investors about activities qualifying as contributing to "social objectives"<sup>2</sup>, as well as the recognition that "one part of sustainability must not be detrimental to other related risks or objectives"<sup>3</sup>, the proposed composition of the technical group does not seem to have the remit to ensure these risks not be reflected in the taxonomy from the outset. In addition, the

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<sup>1</sup> DG FISMA (2017) *Call for Applications for the selection of members of the technical group on sustainable finance*. Available at: [https://ec.europa.eu/info/publications/180308-sustainable-finance-call-for-applications\\_sv](https://ec.europa.eu/info/publications/180308-sustainable-finance-call-for-applications_sv) [accessed 11.03.18]

<sup>2</sup> European Commission (2018). *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* (p.4)

<sup>3</sup> Ibid.

Commission's intention to release a legislative proposal on an EU taxonomy including "socially sustainable activities" does not seem best served by the mandate and scope of the proposed technical expert group.

It is crucial that the Commission **include human rights expertise in the technical expert group from the outset**, and ensure that a human rights-based approach is adopted in the development and classification of all activities meant to contribute to climate mitigation and adaptation, as well as in the certification of projects and assets linked to green bonds.

While we do understand the Commission's reasoning, we believe that a "step-by-step" approach is counterproductive to the Commission's intention of re-engineering the financial system, so it can equally serve the promotion of economic, social and environmental goals, as outlined in the Mid-term Review of the Capital Markets Union<sup>4</sup>.

It is certainly true that taking strong action to prevent climate change is a necessary precondition in order for peoples' enjoyment of their human rights, including rights to food, health, water, and housing. Nonetheless, it has also been well-documented that climate mitigation and adaptation activities may cause harm to both the environment and to people, when undertaken without proper safeguards. Cases of human rights violations in the context of such projects have been linked, inter alia, to the Clean Development Mechanism<sup>5</sup> and the Reducing Emissions from Deforestation and Forest Degradation Framework (REDD)<sup>6</sup>. In addition, evidence shows that the absence of strong human rights safeguards in EU biofuel policies, the framework for common climate mitigation projects, have led to food insecurity, as well as land conflicts<sup>7</sup>.

The protection of human rights and the protection of the environment are interlinked and inseparable - this fact should be reflected in all policy instruments to be developed and deployed as part of the Action Plan.

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<sup>4</sup> DG FISMA (2017) *Communication on the CMU Midterm Review of the Capital Markets Union*. Available: [https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017_en.pdf) [accessed 11.03.18]

<sup>5</sup> Obergassel, Wolfgang and Schade, Jeannette (2014). *Human Rights and the Clean Development Mechanism*. Cambridge Review of International Affairs (vol. 27, no. 4), pp. 717-735.

<sup>6</sup> See e.g. Friends of the Earth, *"The Green Economy, Forest Peoples and Territories: Rights Violations in the State of Acre"* (2014).

<sup>7</sup> See e.g. Oxfam, "Burning land, burning the climate" (2016); ActionAid, *"Fuel for Thought: Addressing the social impacts of EU biofuel policies"* (2012); Heinrich-Böll-Stiftung's, *"Human rights and gender equality in EU climate actions: A case study of palm oil for biofuels in Indonesia"* (2018); European Parliament (2017/2086(INI)) on women, gender equality and climate justice; UNEP & Columbia Law School, *"Climate Change and Human Rights"* (2015).

The Preamble of the Paris Agreement recognises the inseparability of protecting the environment and protecting communities, by stating that *“parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”*. The aforementioned evidence shows that this ambition is commonly not translated into action.

The European Union should take a lead in operationalising this element of the Paris Agreement, and ensure that the protection of human rights be a key component of all aspects of the proposed taxonomy.

**We recommend that:**

1. The Commission amend the mandate of the call to include applications from stakeholders (in all categories) with expertise in:
  - international human rights law, including, but not limited to as it relates to financial regulation and environmental law;
  - the application of the UN Guiding Principles on Business and Human Rights<sup>8</sup>;
  - human rights reporting guidelines for companies, human rights elements of reporting frameworks used by ESG data providers, third-party research service, including ratings and indices contributing to investment decisions, as well as publicly-available human rights ratings and rankings designed by human rights experts<sup>9</sup>.

Subsequently, the Commission must guarantee their representation in the Technical Expert Group.

2. The Commission should diversify the DGs involved in the selection process for group members, including the Directorate-General for Justice and Consumers in the selection procedure;
3. The Commission should ensure a balanced distribution of stakeholder interests within the group, not just a balanced distribution of type of membership.

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<sup>8</sup> Especially principles 17 and 18, which require business entities and investors to assess the actual and potential impacts of their relationships and activities on human rights through appropriate impact assessments and due diligence.

<sup>9</sup> Including the Access to Medicine Index, the Enough Project’s Company Rankings on Conflict Minerals, Oxfam’s Behind the Brands ranking, KnowTheChain, the UN Guiding Principles Reporting Framework and the Corporate Human Rights Benchmark.

Thank you for your attention and we hope to continue engaging with you on this crucial issue.

Yours sincerely,

Members of the European Parliament,  
Civil society organisations,  
Independent experts,  
Trade unions,

**Heidi Hautala** (Greens/EFA)

**Judith Sargentini** (Greens/EFA)

**Anne-Marie Mineur** (GUE/NGL)

**Pervenche Berès** (S&D)

**Ana Gomes** (S&D)

**Olle Ludvigsson** (S&D)

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**Dr. Stephen Davis**

Associate Director and Senior Fellow, Programs on Corporate Governance and Institutional Investors,  
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**Dante Pesce**

Executive Director, Vincular Center for Social Responsibility and Sustainable Development, Catholic  
University of Valparaíso  
Vice-Chair, UN Working Group on Business and Human Rights

**Professor John Ruggie**

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Harvard University  
Former UN Secretary-General Special Representative for Business and Human Rights

**Professor Olivier De Schutter**

Professor of Law, Université catholique de Louvain  
Co-Chair, International Panel of Experts on Sustainable Food Systems  
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**Sune Skadegaard Thorsen**

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Clothes  
Campaign**

**fidh**

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 **Friends of  
the Earth  
Europe**

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PONTIFICIA  
UNIVERSIDAD  
CATÓLICA DE  
VALPARAÍSO



**UNI** europa  
global  
union

VALDIS DOMBROVSKIS

*Vice-President of the European Commission*

Members of the European Parliament

Mrs Heidi Hautala

Mrs Judith Sargentini

Mrs Anne-Marie Mineur

Mrs Pervenche Beres

Mrs Ana Gomes

Mr Olle Ludvigsson

Mr Paul Tang

Dr. Stephen Davis

Mr Dante Pesce

Professor John Ruggie

Professor Olivier De Schutter

Mr Sune Skadegaard Thorsen

Dr. Elisabeth Umlas

Brussels,

Dear Members of the European Parliament, dear representatives of civil society organisations and trade unions, dear independent experts,

Thank you very much for your letter of 22 March 2018 regarding the European Commission's Action Plan on financing sustainable growth and, in particular, the mandate of the upcoming technical expert group on sustainable finance.

In the Action Plan published on 8 March 2018, the European Commission has committed to address finance for sustainable growth in a broader sense which encompasses the climate-related, environmental and social dimension of sustainability. The 10 key actions of the Action Plan grouped around three main aims, (1) reorienting capital flows towards sustainable investments; (2) managing financial risks from sustainability issues and (3) fostering transparency and long-termism in financial and economic activity, are reflecting the broader sustainability dimension, beyond climate and environmental aspects.

The upcoming technical expert group of the European Commission is the first key step in order to establish an EU classification system for sustainable activities that helps determine which activities contribute positively to a more sustainable economy.

The mandate of the technical expert group focuses on developing a classification of activities that contribute to climate-related and other environmental objectives as the first step. The European Commission is strongly committed to develop the taxonomy for activities contributing to social objectives in a robust manner at the second stage.

I consider this step-by-step approach necessary in order to ensure high quality output. The Commission should embark on the creation of this very significant work at a scale which is both feasible and credible to stakeholders.

At the same time, I agree that the protection of human rights and the protection of the environment are interlinked and inseparable. The concern expressed in your letter about climate change mitigation and adaptation activities causing harm to both the environment and to people, cases for which have been documented in the past, is a very important issue that the recently adopted legislative proposal<sup>1</sup> aims to address in the following way.

In order to prevent that the step-by-step approach results in activities qualifying under the taxonomy as ‘environmentally sustainable’ while causing harm to the environment, the proposal includes a ‘do-no-harm’ principle. This aims to ensure that activities that contribute to a climate- or other environmental objectives do not cause significant harm to any of the other environmental objectives.

To prevent green activities causing harm to people, the legislative proposal contains minimum safeguards. These aim to ensure that activities included in the EU classification system would have to respect basic human rights principles from the very first step, i.e. even when the taxonomy only defines ‘environmentally sustainable’ economic activities, and not yet socially sustainable ones. In particular, the legislative proposal foresees safeguards when classifying environmentally sustainable activities and investments by requiring undertakings to implement procedures to ensure compliance with the principles and right set out in the eight fundamental conventions identified by the International Labour Organisation's declaration on Fundamental Rights and Principles at Work.

The technical expert group on sustainable finance would be tasked with setting out activity-specific criteria for the ‘do-no-harm principle’. However the expert group is not expected to set out activity-specific conditions on respecting human rights, as we believe these minimum safeguards should apply in the same way across all activities. Nevertheless, in order to ensure that the work of the expert group is fully in line with human rights considerations, Commission services are open to invite ad-hoc participants with expertise in human rights to relevant meetings of the expert group.

Finally, a review clause in the proposed Regulation foresees to assess whether it allow extending its scope to cover other sustainability objectives, in particular social objectives. The European Commission will carry out an assessment of the application of the Regulation, examining – among other issues – the next step of extending the taxonomy to socially sustainable economic activities. The Commission will send this assessment in the form of a report to the European Parliament and the Council. For this next step, a

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<sup>1</sup> [A proposal for a regulation on the establishment of a framework to facilitate sustainable investment;](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-353_en)  
[https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-353\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-353_en)

specific longer-term private-public governance structure for the EU classification system of sustainable activities would be established. This would include all relevant stakeholders in this process, with experts representing, in a balanced way, all relevant actors in the field of social sustainability, in order to take into account relevant social and cross-cutting issues.

I would like to reassure you that the European Commission is committed to placing all sustainability considerations in the centre of the EU financial policy agenda as expressed in the Action Plan on financing sustainable growth, and involving all relevant experts at the right stage of the process.

Yours sincerely,

A handwritten signature in blue ink, consisting of a stylized 'V' followed by 'D' and a long horizontal flourish.

Valdis Dombrovskis



To: Valdis Dombrovskis, Vice-President of the European Commission

cc: Jean-Claude Juncker, President of the European Commission

cc: Jyrki Katainen, Vice-President of the European Commission

cc: Olivier Guersent, Director-General for Financial Stability, Financial Services and Capital Markets Union

cc: Martin Spolc, Head of Unit, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

Brussels, 23 July 2018

Dear Vice-President Dombrovskis,

We warmly thank you for your response to our letter of 22 March 2018, titled "On a Human Rights Mandate for the Technical Expert Group on Sustainable Finance"<sup>1</sup>, and welcome the Commission's willingness to engage with civil society and trade unions on this crucial topic.

As our original letter was sent in the months preceding the release of COM (2018) 353<sup>2</sup> concerning a "framework to facilitate sustainable investment" ('the taxonomy'), we would like to congratulate you for the positive steps taken to ensure that legally-protected human rights are considered and respected in this core component of the Commission's work, namely through the development of criteria to operationalise a 'do-no-harm' approach<sup>3</sup>, as well as minimum safeguards<sup>4</sup> based on the International Labour Organisation's (ILO) core conventions (collectively, 'the human rights provisions').

The Commission's approach increasingly demonstrates that the inseparability of climate-related, environmental and social factors should be a permanent feature in the EU's approach to the development of all public policy initiatives related to sustainable finance. Nonetheless, we would also like to express our reservations as to whether the Commission's current approach to developing the provisions will ensure this intended outcome.

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<sup>1</sup> 'On a human rights mandate for the Technical Expert Group on Sustainable Finance' (2018). Available: <https://shareaction.org/wp-content/uploads/2018/03/Letter-to-Commission-TEG-Mandate.pdf>

<sup>2</sup> European Commission (2018), *Proposal for a regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment*. Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018PC0353&from=EN>

<sup>3</sup> Ibid. Art 12

<sup>4</sup> Ibid. Art 13

The potential uses of the taxonomy by the European Union, Member States, and financial market actors, constitutes it a key tool which is expected to significantly impact the flow of capital towards particular assets and activities. It is therefore crucial that the design of the taxonomy guarantee a high level of effectiveness to the protection of human rights, as capital flows should not be incentivised towards activities that may be environmentally sound, but otherwise unsustainable. In addition, the taxonomy must facilitate the ability of end-investors, including retail investors, beneficiaries and policyholders, to ensure their capital is allocated in activities that do not harm their social interests, even in the context of climate or environmentally friendly investments. Being able to meet these expectations is a core component of how investors should approach acting in the best interests of their clients, for which a high level of granularity is needed. We consider this granularity to be currently missing from the Commission's planning.

It is our strong belief that the resilience of financial institutions is closely related to the ability to mitigate reputational and liability risks resulting from their operations, which the proposed taxonomy should not unwittingly detract from. Well-functioning, healthy and legitimate markets are based on a holistic approach to responsible investment, which fully accounts for how different elements of the ESG spectrum interact with each other. The taxonomy will also be a crucial reference point for any action aiming to foster sustainable and transparent corporate governance that is conducive to sustainable investments. Consultation with appropriate experts, as outlined below, would greatly facilitate the Commission's intention of developing a taxonomy that would truly guide sustainable investments.

We would like to offer the following recommendations on how human rights should be reflected in the immediate development of the taxonomy for environmentally sustainable economic activities ("environmental taxonomy"). Our recommendations concern the content of the human rights provisions, the structure of these provisions, as well as the development and governance of the taxonomy as a whole. In addition, we would like to offer two further recommendations, the first concerning good governance safeguards, as referred to in the explanatory memorandum to COM 2018 (353), and the second concerning the development of a taxonomy for activities contributing to social objectives ("social taxonomy").

## **On the mitigation of human rights risks in the environmental taxonomy**

### **I. The content of the human rights provisions**

We commend the Commission's intention of ensuring the development of 'do-no-harm' principles, as outlined in Article 12 of COM (2018) 353. Nonetheless, we regret that this

provision, as it currently stands, is not directly linked to the mitigation of harm related to human rights, as it will be developed exclusively vis-à-vis the environmental objectives covered by the taxonomy. We encourage the Commission to explore ways in which 'do-no-harm' principles can be independently linked to standards and instruments covering human rights and social factors.

We are encouraged by the Commission's intention to develop minimum safeguards in reference to the eight fundamental conventions of the ILO, as described in Article 13 of COM (2018) 353. Nonetheless, we would encourage the Commission to widen the scope of legal instruments on which such safeguards would depend, as the wide range of economic activities that will be covered by the taxonomy will have an impact across a far wider range of human rights and social risks than just labour rights.

In particular, we would encourage minimum safeguards to be informed by:

1. The EU Charter of Fundamental Rights, which covers, but is not limited to, the protection of liberty, personal integrity, privacy, the protection of personal data, and property;
2. The International Bill of Human Rights, comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, of which all EU Member States are party;
3. The United Nations Guiding Principles on Business and Human Rights<sup>5</sup>, which constitute the authoritative international normative framework on mitigating human rights risks related to business activity, supported by Council Conclusions 10254/16<sup>6</sup>. Recent legislative developments, such as the French Duty of Vigilance Law<sup>7</sup>, reflect the principles of the UN Guiding Principles, and set out requirements for the development, publication, review and oversight of 'vigilance plans' to oversee the mitigation of severe impacts on human rights and the environment resulting from business activity. The Principles are binding on all business enterprises, including private equity investors<sup>8</sup>.

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<sup>5</sup> United Nations (2011), *Guiding Principles of Business and Human Rights*. Available: [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>6</sup> Council of the European Union (2016), *Council Conclusions on Business and Human Rights*. Available: <http://data.consilium.europa.eu/doc/document/ST-10254-2016-INIT/en/pdf>

<sup>7</sup> *Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre 2017*. Available: <https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte>

<sup>8</sup> British Institute of International and Comparative Law and Principles for Responsible Investment (2017), *BIICL and PRI Workshop on Human Rights in Private Equity*. Available: <https://www.unpri.org/download?ac=3989>

While we consider these three sources to provide an authoritative basis of references for the content of the provisions, this list should not preclude the use of wider instruments outlining, where relevant, the rights of vulnerable groups<sup>9</sup>, as well as additional considerations linked to international humanitarian law for investments in the context of conflict.

## **II. The structure of the human rights provisions**

Once the Commission has widened the scope of instruments on which the provisions should be based, we recommend a three-step approach to their development:

1. As a first step, we agree that both the minimum safeguards and the criteria behind the 'do-no-harm' approach should be developed uniformly, as outlined in your response to our letter;
2. As a second step, the Commission should consider whether activity-specific criteria in relation to human rights are necessary, to ensure sector-specific human rights risks are captured by the aforementioned safeguards;
3. As a third step, the Commission should ensure that appropriate due diligence requirements are in place to determine compliance with both the minimum safeguards and the 'do-no-harm' criteria. The development of these provisions is an important step but otherwise incomplete without ensuring they are adhered to effectively and in a transparent manner. A crucial reference for this work should be the OECD "Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises"<sup>10</sup> ("Key Considerations"). The Key Considerations provide guidance for how asset owners and asset managers can carry out due diligence in order to best comply with the OECD Guidelines for Multinational Enterprises<sup>11</sup>, also endorsed by Council Conclusions 10254/16.

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<sup>9</sup> The rights of vulnerable groups, including those of women, children and migrant workers, are referred to in the seven core international human rights treaties ("United Nations Conventions") and are binding on state parties.

<sup>10</sup> OECD (2017), *Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises*. Available: <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

<sup>11</sup> OECD (2011), *OECD Guidelines for Multinational Enterprises*. Available: <http://www.oecd.org/daf/inv/mne/48004323.pdf>

### **III. The development and governance of the human rights provisions and the taxonomy as a whole**

We regret that the Commission did not widen the call for applicants for the Technical Experts Group on Sustainable Finance ('Technical Expert Group') to include experts with specific knowledge of human rights issues, as we believe that such inclusions would have facilitated the Commission's work in developing effective minimum safeguards and criteria for the 'do-no-harm' approach. Nonetheless, even at this later stage, we believe that the following would support the Commission in achieving this outcome:

1. In terms of the work of the Technical Expert Group:
  - a. A formally established group of human rights experts, including trade union representatives, academic experts, and civil society organizations, which would follow and advise on the work of the Technical Expert Group consistently and not in an ad-hoc fashion;
  - b. The inclusion, through permanent observer status to the Technical Expert Group's work, of trade union representatives, academic experts and civil society organizations with expertise in human rights and social issues.
2. In terms of the Platform on Sustainable Finance, as outlined in Article 15 of COM 2018 (353) ('the Platform'):
  - a. A clear commitment that the Commission's selection process explicitly call for human rights experts, including civil society and trade union representatives, to ensure that it has the relevant expertise to continue to review and improve the integration of human rights considerations into the development and application of the taxonomy;
  - b. The inclusion of the European Union Agency for Fundamental Rights (FRA) in the Platform.

#### **On the development of governance safeguards**

We regret that governance safeguards, as referred to in the Explanatory Memorandum of COM 2018 (353), are wholly lacking from the work and mandate of the Technical Expert Group. We would like to emphasise that good governance, related to issues such as taxation practices,

corruption, and board structure, are not simply an 'investment target'. Good governance provisions are a crucial component of ensuring the proper design and implementation of all sustainable investments. As such, the Commission must ensure the development of governance safeguards to accompany the development of the taxonomy from the outset.

### **On the development of a taxonomy for activities contributing to social objectives**

To properly respond to the sustainability challenge, the EU needs to broaden its current ambitions beyond an environmental taxonomy. We would strongly recommend that the Commission commit to the development of a wide-ranging and robust 'social taxonomy', as the current wording of the review clause of COM 2018 (353) suggests that the development of a social taxonomy is not a certainty.

We recommend that the Commission commit to its development from the outset, as well as publicly outline this process, by setting a clear timeframe. This work should under be undertaken without undue delay, commencing earlier than the Commission's current proposed timeline, extending to 2026 and beyond.

To conclude, we would like to recognise the enormity of the Commission's task. It is not our wish that this work be further complicated, but firmly believe that for the taxonomy to serve its intended purpose the Commission needs to adopt a more holistic and comprehensive approach to its development.

Consultation with appropriate experts, as outlined above, would greatly facilitate the Commission's intention of developing a taxonomy that would truly guide sustainable investments and responsible corporate governance.

We thank you for your attention and continued engagement on this crucial topic.

Sincerely,

