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Mr
Valdis Dombrovskis, MdEP
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Action Plan on Sustainable Finance and Transposition Measures

Dear Mr Dombrovskis,

Listed companies as well as other capital market-oriented enterprises in Germany are well aware of the tremendous challenges, which a changing world climate and a decline in natural resources impose on the economy. German companies are of the firm belief that a rethinking of business and production is necessary to ensure a sustainable development for both businesses and the society alike. Suitable solutions have to be found to maintain and ensure good living conditions not only for the present but also for future generations. From this understanding, companies across all industries are committed to assist the European Commission in its efforts to move towards a low carbon and more resource-efficient economy.

Deutsches Aktieninstitut therefore supports the overarching aims of Commission's Action Plan on Sustainable Finance. However, we do see some legislative plans and practical transposition-measures as problematic. Our concerns relate among others to the composition of the recently established 'Technical Expert Group on Sustainable Finance' (TEG). In addition, we see the absence of addressing conflicts of interests between different ESG-goals as well as a certain tendency to rearrange competences granted under EU-legislative proceedings as critical. Furthermore, we believe regulatory one size fits all-approaches and an - even indirect - interference with the principle of free investment to give a wrong signal. Please allow me to illustrate our concerns as follows:

1. We generally welcome the Commission's intention to find a definition for environmentally sustainable economic activities. This would bring much needed clarity into the debate on sustainable finance and would provide financial market participants and regulators alike with much needed legal certainty. A definition would be an essential part for the development of a classification system (taxonomy), which the Commission's Action Plan rightly describes as fundament on which all future initiatives on sustainable finance are to be built. From this perspective, efforts presently undertaken to move ahead and disconnect the legislative proceedings on the Commission's proposals on benchmarks and investor transparency duties from the taxonomy proposal are not understandable and will prove as

counterproductive.
Due to the complexity of sustainability issues, a practicable definition capable of thoroughly distinguishing between a “green” and a “non-green” activity will be hard to reach. An efficient approach to this difficult task would have been taken if the diversity of financial markets participants had been more adequately reflected in the composition of the TEG set to assist the Commission, among others, in developing details of a taxonomy. Only two of its present members are representatives of issuing companies from the real economy. The vast majority of the group stems from the financial sector. Against the backdrop that future regulation on sustainable finance will affect companies at large, we believe that at least one third of the group should have been composed of issuer-representatives. This would have ensured a better balance of the interests involved although we, of course, welcome the Commission’s offer of inviting representatives of issuing companies to the expert group meetings on an ad hoc-basis. For the sake of a broad stakeholder-discussion, which is much needed from the background of the large economic and societal impacts that regulation on sustainable finance has, we kindly ask the Commission to adequately reflect the diversity of financial markets participants in the composition of the yet to be established platform on sustainable finance (Art. 15 of the draft-regulation on the establishment of a framework for sustainable investments from 24 May 2018).

2. In its afore-mentioned draft regulation the Commission focuses on environmental aspects. This is understandable as environmental aspects are clearly determined and tangible. However, the approach chosen by the Commission ignores the holistic ESG-picture and especially the fact that ESG goals can collide with one another. While an increase in e-mobility may have the potential of a greenhouse gas reduction it could create societal and public governance problems at large. An example can be seen in rare earths needed for the production of vehicle battery cells. These rare earths frequently originate in geopolitically sensitive regions, e.g. West Africa, where European labour- and human rights-standards are widely ignored. The large quantities of rare earths that would be needed for a boost of battery cell-production and e-mobilty might in these areas be mined even by children or slave labourers. As a close observation of human rights is an unnegotiable core European value, the necessity for a continuing use of fossil fuels until acceptable standards and conditions for the hauling and use of natural resources from outside the EU are reached appears evident. Such conflicts of interest need to be duly noted and taken into account by the European legislator. The development of realistic solutions is much needed.

3. Similar to the previous example, the consideration of sustainability aspects along the value chain needs to be improved. Light metals for example may be important for environmentally friendly fuel-efficient cars but are usually less environmentally friendly in their manufacturing. In addition and in this context, measuring the environmental sustainability of an economic activity by quantifiable criteria such as percentage figures or thresholds does not only seem unfeasible but tends to likewise ignore the holistic ESG picture as disregarding crucial features of the individual case. We believe that one size fits all- approaches, which are promoted by the use of quantifiable criteria will not produce sensible solutions.

4. The introduction of a green supporting factor, submitting (alleged) green investments to less stricter capital requirements than traditional ones, appears to be dangerous. A general rule for capital alleviations as regards green investments would mean nothing less than disregarding the individual level of risk immanent to each investment. As we have already seen that green investments are not necessarily safer and in the firm believe that sustainable finance must not be achieved at the expense of financial sustainability, we see the introduction of a green supporting factor as a wrong signal.

5. Regulatory initiatives on sustainability/sustainable finance will significantly shape and change both, the economy and the society. Crucial legislative undertakings, such as quitting carbon-based energy production, should thus be legitimized by the vote of democratically elected parliaments. From this background, we see a broad delegation of competences to the European Commission by means of delegated acts as problematic since this would finally result in a transfer of political decisions to an administrative institution. Parliamentary decisions should be the first and principal rule for reasons of public acceptance and legitimation.

   From the necessity of maintaining Europe competitive in a global competition environment, disclosure duties for companies and investors alike have to be proportionate. An excessive disclosure regime has the capacity of creating competitive disadvantages. Attempts to regulate on a firm order of ESG-factors, which is to be respected in investment decisions and reported accordingly by institutional investors will result in a de-facto ban of certain investments. Such an interference with the principle of free investment can be expected to drive a significant quantity of investments out of the EU. Besides the political and economic dimension and the legal questions, which such an approach would raise, we do not see any necessity for a limit or ban of traditional – while entirely legal – investments from the objective of the Commission's Action Plan to mobilize capital for green investments. We do not have any information on green investment project running short on private sector finance. If there were evidence for the opposite, we would kindly ask the European Commission for explanations.

6. With regard to "green bonds", we note that the current ICMA definition of green bonds suggests that the proceeds of a bond issue need to be dedicated to specific green investment projects. Corporates however typically do not issue bonds to fund individual projects (or project portfolios) but rather to meet their overall funding requirements which may, for example, also stem from the need to refinance existing indebtedness or to fund investments in digitalization. The notion of a link between assets and liabilities in this regard is pure fiction.

   We therefore suggest that any official definition of green bonds amend the current ICMA definition to include a new "Green Bond Type A" for green issuers and a the current "Green Bond Type B" for green projects.

In order to achieve a maximum level of credibility and public acceptance, all efforts to move towards a low carbon- and resource-efficient economy should be backed by a broad public and transparent discussion including all stakeholders. The respect for checks and balances in place as well as proportionality and subsidiarity must remain the essential coordinates for any legislative initiative adopted. Only these measures can ensure a maximum legitimation, which is desired. We kindly ask you to take our thoughts into consideration in the forthcoming debate on sustainable finance.

Yours faithfully

Dr. Christine Bortenlänger
Executive Member of the Board