

To: President of the European Commission Juncker

cc: Vice-President of the European Commission Dombrovskis

cc: Vice-President of the European Commission Katainen

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

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 Sustainable Finance (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 applications¹ (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"², as well as the recognition that "one part of sustainability must not be detrimental to other related risks or objectives"³, the technical group does not seem to have the remit in ensuring these risks not be reflected in the taxonomy from the very beginning. In addition, the 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.

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 Union⁴.

¹ 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 [accessed 11.03.18]

² 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)

³ Ibid.

⁴ 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 [accessed 11.03.18]

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 Mechanism⁵ and the Reducing Emissions from Deforestation and Forest Degradation Framework (REDD)⁶. 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 conflicts⁷.

It is thus 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.

The protection of human rights and the protection of the environment are interlinked and inseparable - this fact should be reflected in all current policy developments in the area of sustainable finance.

The Paris Agreement clearly echoes this reality in its Preamble, 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.

Europe should take a lead in operationalising this element of the Paris Agreement, and ensure human rights are mainstreamed in all policy instruments linked to sustainable finance.

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;

⁵ 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.

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

⁷ 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 application of the UN Guiding Principles on Business and Human Rights⁸;
 - 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 experts⁹.
2. The Commission should diversify the DGs involved in the selection process for group members, and include the Directorate-General for Justice and Consumers;
 3. The Commission should ensure a balanced distribution of stakeholder interests within the group, not just a balanced distribution of type of membership.

Yours sincerely,

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

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Anne-Marie Mineur (GUE/NGL)

Heidi Hautala (Greens/EFA)

Judith Sargentini (Greens/EFA)

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Associate Director and Senior Fellow, Programs on Corporate Governance and Institutional Investors, Harvard Law School

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⁸ 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.

⁹ Including the Access to Medicine Index, the Enough Project's Company Rankings on Conflict Minerals, Oxfam's Behind the Brands ranking, KnowTheChain, and the Corporate Human Rights Benchmark.

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