

MEMO# 34001

January 18, 2022

EU ESG: European Commission Publishes FAQs on Taxonomy Article 8 Delegated Act

[34001]

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TO: ICI Members

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ESG Task Force

EU ESG Disclosure Regulation Working Group SUBJECTS: ESG

International/Global RE: EU ESG: European Commission Publishes FAQs on Taxonomy Article 8 Delegated Act

On 20 December 2021, the European Commission published a set of frequently asked questions (FAQs)[\[1\]](#) to provide implementation guidance on the Disclosures Delegated Act[\[2\]](#) under Article 8 of EU Taxonomy Regulation.[\[3\]](#)

As background, the Disclosures Delegated Act specifies disclosure requirements regarding the share of Taxonomy-alignment for non-financial undertakings and financial undertakings (including asset managers) in the scope of the Non-Financial Reporting Directive (NFRD).[\[4\]](#) The Act phases in the required disclosures, with non-financial undertakings and financial undertakings being required to report from 1 January 2022 only the proportion of Taxonomy-eligible activities[\[5\]](#) in their turnover, capital expenditure, operational expenditure, and assets ("Taxonomy-eligibility reporting"). The more detailed disclosures on the proportion of Taxonomy-aligned activities[\[6\]](#) ("Taxonomy-alignment disclosures") will be expected from 1 January 2023 for non-financial undertakings, and 1 January 2024 for financial undertakings.[\[7\]](#)

The 22 FAQs reiterate and clarify the requirements under the Disclosures Delegated Act, with a focus on Taxonomy-eligibility reporting. No new obligations for undertakings in the scope of the Disclosures Delegated Act are introduced. Further FAQs on Disclosures Delegated Act will be made available on the European Commission's webpage. This memorandum highlights some of the questions.

1. Disclosure Requirements for Mixed Groups[\[8\]](#)

The FAQs clarify the entity-level disclosure requirements under Article 8 of the Taxonomy

Regulation for mixed groups, which are composed of financial and non-financial undertakings, or with diversified and multiple lines of activities. Under the NFRD, a subsidiary undertaking could be exempted from the obligations of non-financial reporting if its parent undertaking prepares a consolidated non-financial statement at the group level.[\[9\]](#) The FAQs note that such exemption also applies to disclosure obligations under Article 8 of the Taxonomy Regulation. Where the parent undertaking of a mixed group is a financial company, the consolidated Taxonomy disclosure of such group should be made in line with the requirements provided in the Disclosures Delegated Act for financial undertakings.

Entities may choose to provide additional voluntary disclosures where they consider that this is relevant to investors to gain a better understanding of the entity's Taxonomy-eligibility for the first year of reporting and Taxonomy-alignment thereafter. The entities should provide reasons for making such voluntary disclosures.

2. Assurance on Taxonomy-eligibility Reporting[\[10\]](#)

While assurance on non-financial reporting is not required under the current NFRD framework, the CSRD proposes to introduce an assurance requirement on sustainability reporting.[\[11\]](#) It is clarified that such assurance would as well cover disclosures under the Disclosures Delegated Act. The CSRD would require statutory auditors or audit firms to assess the compliance of the reporting with the requirements under the Disclosures Delegated Act. Member States would have the possibility to allow independent assurance service providers other than auditors to carry out assurance engagement.

3. Use of Estimates on Taxonomy-eligibility[\[12\]](#)

The FAQs point out that financial undertakings should use actual information provided by their underlying investees or counterparties for Taxonomy-eligibility reporting. Where an underlying undertaking has not yet disclosed its Taxonomy-eligibility, financial undertakings may choose to estimate the proportion of eligibility of the economic activities. Nevertheless, these estimated values may only be included in the additional voluntary disclosures and must not form part of the Taxonomy-eligibility reporting mandated under the Disclosures Delegated Act. These voluntary disclosures should not be given more prominence than the mandatory Taxonomy-eligibility reporting.

Separately, the Platform for Sustainable Finance (PSF) has developed a set of criteria to frame the methodologies and promote consistency for the use of estimates and proxies on Taxonomy-eligibility in voluntary disclosures ("PSF Guidance").[\[13\]](#) It includes principle-based, illustrative guidance for such voluntary disclosures. As most entities do not segment their turnover/revenue in line with the Statistical Classification of Economic Activities in the European Community (NACE) in their reporting, the PSF also published an indicative mapping[\[14\]](#) of selected industry classification systems[\[15\]](#) against NACE to support entities in estimating the Taxonomy-eligibility.

4. Templates for Taxonomy-eligibility Reporting[\[16\]](#)

The Disclosures Delegated Act does not require non-financial undertakings or financial undertakings using the reporting templates[\[17\]](#) provided in its Annexes when making Taxonomy-eligibility reporting. Nevertheless, to facilitate comparability between Taxonomy-eligibility reporting and the Taxonomy-alignment disclosures thereafter, and to ensure coherence of the disclosures across undertakings, the FAQs suggest that non-financial

undertakings and financial undertakings use the reporting templates on a voluntary basis.

The PSF Guidance also includes guidance for non-financial undertakings, asset managers, and credit institutions on the voluntary use of the reporting templates for Taxonomy-eligibility reporting.^[18]

5. Interaction with Financial Product-level Disclosure Requirements^[19]

Under the Sustainable Finance Disclosure Regulation (SFDR),^[20] Article 8 products that promote environmental characteristics, and Article 9 products that make sustainable investments contributing to an environmental objective are required to make Taxonomy-related disclosures in accordance with Articles 5 and 6 of the Taxonomy Regulation. A draft regulatory technical standard (RTS) specifying the relevant product disclosure requirements has been submitted to the European Commission for scrutiny.^[21] The FAQs state that financial market participants should use the key performance indicators disclosed by their investee companies in compliance with the Disclosures Delegated Act for the product disclosures required under the SFDR.

Further, while the application of the RTS will be delayed to 1 January 2023,^[22] the application of the SFDR or Articles 5 and 6 of the Taxonomy Regulation is not conditional on the formal adoption and entry into force or application of the RTS. Financial market participants that offer SFDR Article 8 and Article 9 financial products must comply with the respective requirements set out in the SFDR and in Articles 5 and 6 of the Taxonomy Regulation.

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endnotes

^[1] Frequently asked questions: How should financial and non-financial undertakings report taxonomy-eligible economic activities and assets in accordance with the Taxonomy Regulation Article 8 Disclosures Delegated Act, *available at* https://ec.europa.eu/info/files/sustainable-finance-taxonomy-article-8-report-eligible-activities-assets-faq_en.

^[2] COMMISSION DELEGATED REGULATION (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation, *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2021.443.01.0009.01.ENG&toc=OJ:L:2021:443:TOC. Also See ICI Memorandum No. 33939, dated 6 December 2021, *available at* <https://www.ici.org/memo33939>.

^[3] REGULATION (EU) 2020/852 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2020 on the establishment of a framework to facilitate sustainable investment,

available at

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R0852&from=EN#d1e40-13-1>.

[4] The NFRD scope covers large undertakings that are public-interest entities with more than 500 employees. Large undertakings are defined as those that surpass at least two of the following three criteria: (i) balance sheet total of 20 million EUR; (ii) net turnover of 40 million EUR; and (iii) 250 employees. See DIRECTIVE 2014/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, *available at*

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>. The Corporate Sustainability Reporting Directive (CSRD) is expected to extend the scope of NFRD to all large undertakings and all EU-listed corporates, with the exception of listed micro-undertakings. The CSRD is expected to be finalized by mid-2022. See Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting COM/2021/189 final, *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0189>. Also See ICI Memorandum No. 33509, dated 28 April 2021, *available at* <https://www.ici.org/memo33509>.

[5] Taxonomy-eligible activities refer to economic activities that are described in the delegated acts adopted pursuant to Article 10(3), Article 11(3), Article 12(2), Article 13(2), Article 14(2) and Article 15(2) of the Taxonomy Regulation, irrespective of whether such activities meet all of the technical screening criteria laid down in those delegated acts. See Disclosures Delegated Act, *supra* note 2, Article 1(5).

[6] Taxonomy-aligned activities are economic activities that comply with the requirements laid down in Article 3 of the Taxonomy Regulation. See Disclosures Delegated Act, *supra* note 2, Article 1(2).

[7] See ICI Memorandum No. 33939, *supra* note 2, for further details on the implementation timeline of Disclosures Delegated Act.

[8] See FAQs, *supra* note 1, at Question 4.

[9] See NFRD, *supra* note 4, at Article 1.

[10] See FAQs, *supra* note 1, at Question 7.

[11] The CSRD proposes that the statutory auditors or audit firms should express an opinion on the compliance of the sustainability reporting with the EU requirements based on a limited assurance engagement. The conclusion of a limited assurance engagement is usually provided in a negative form of expression by stating that no matter has been identified by the practitioner to conclude that the subject matter is materially misstated. See CSRD, *supra* note 4, Recital (53).

[12] See FAQs, *supra* note 1, at Question 12.

[13] See Platform considerations on voluntary information as part of Taxonomy-eligibility reporting, *available at* https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/sustainable-finance-taxonomy-eligibility-reporting-voluntary-information_en.pdf.

[14] See Platform on Sustainable Finance: EU taxonomy NACE alternate classification mapping, *available at* https://ec.europa.eu/info/files/sustainable-finance-taxonomy-nace-alternate-classification-mapping_en.

[15] The selected industry classification systems are: FTSE Russell Green Revenues Classification System, Refinitiv Business Classification (TRBC), Bloomberg Industry Classification Standard (BICS), FactSet's Revere Business Industry Classification System (RBICS), S&P Global's Trucost EU Taxonomy Revenue Share, and MSCI Environmental Impact Metrics.

[16] See FAQs, *supra* note 1, at Question 5.

[17] See Disclosures Delegated Act, *supra* note 4, at Annex II (templates for non-financial undertakings) and Annex IV (template for asset managers).

[18] See PSF Guidance, *supra* note 12, at pp. 9-14.

[19] See FAQs, *supra* note 1, at Question 22.

[20] REGULATION (EU) 2019/2088 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 November 2019 on sustainability-related disclosures in the financial services sector, *available at* <https://eur-lex.europa.eu/eli/reg/2019/2088/oj>.

[21] See ICI Memorandum [33924], dated 29 November 2021, *available at* <https://www.ici.org/memo33924>.

[22] See ICI Memorandum [33925], dated 30 November 2021, *available at* <https://www.ici.org/memo33925>.