

MEMO# 34053

March 1, 2022

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

[34053]

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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 Additional FAQs on Taxonomy Article 8 Delegated Act

On 2 February 2022, the European Commission published a second batch of frequently asked questions (FAQs)[\[1\]](#) to provide additional implementation guidance on the Disclosures Delegated Act[\[2\]](#) under Article 8 of EU Taxonomy Regulation.[\[3\]](#)

By way of recap, 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 additional 31 FAQs complement the previous set of FAQs published in December 2021,[\[8\]](#) aiming to assist financial and non-financial undertakings in implementing their Taxonomy-eligibility reporting obligations. Some FAQs focus on non-financial undertakings, asset managers, credit institutions and other financial undertakings. No new obligations for undertakings in the scope of the Disclosures Delegated Act are introduced. This memorandum highlights some of the key questions.

1. Scope of Taxonomy-eligible Activities

The FAQs reiterate that an economic activity is eligible irrespective of whether it meets any or all of the technical screening criteria for each Taxonomy environmental objectives laid down in the delegated acts. Taxonomy-eligibility is assessed solely on the basis of the description of the activity in the delegated acts. On 4 June 2021, the Commission adopted the Climate Delegated Act^[9] with technical screening criteria for climate change adaptation and mitigation objectives. Hence, for the reporting period ending in 2022 (and for activities conducted in 2021), Taxonomy-eligible activities correspond to activities described in the Climate Delegated Act.^[10]

Similarly, economic activities defined as enabling or transitional activities^[11] under the Taxonomy Regulation should be identified as Taxonomy-eligible, provided that they are within the scope of the respective description in the Climate Delegated Act.

Notwithstanding, the Commission notes that an economic activity is transitional or enabling only if it meets the technical screening criteria set out in the Climate Delegated Act. In other words, for the first year of Taxonomy-eligibility reporting, these activities could only be considered as "eligible-to-be-transitional" or "eligible-to-be-enabling", and reported as such on a voluntary basis.^[12]

2. Climate Adaptation Activities under Taxonomy-eligibility Reporting^[13]

The FAQs clarify the different Taxonomy-eligibility reporting requirements for the two categories of activities that can make a substantial contribution to climate change adaptation. For enabling activities providing adaptation solutions,^[14] the turnover and corresponding capital expenditure (CapEx) and operational expenditure (OpEx) could qualify as Taxonomy-eligible. On the other hand, for adaptation activities including adaptation solutions,^[15] the reporting entity should demonstrate that a climate risk and vulnerability assessment has been performed and that an expenditure plan has been set up to implement adaptation solutions. Only if these requirements are fulfilled can the reporting entity count the CapEx and OpEx of such adaptation activities as Taxonomy-eligible.

3. Assess Taxonomy-eligibility of Value Chain^[16]

In general, Taxonomy-eligibility reporting does not entail an assessment of a non-financial undertaking's value chain, given that in most cases the descriptions of the activities in the Climate Delegated Act do not contain value-chain references. Also, non-financial undertakings are not expected to assess the sustainability of their suppliers in the phase of Taxonomy-eligibility reporting.

For reporting turnover, assets and processes in the value chain of an economic activity are only Taxonomy-eligible if they are explicitly included in the activity descriptions under the Climate Delegated Act. Further, if the purchases of assets and processes or services are essential to carry out a Taxonomy-eligible activity, the corresponding CapEx and OpEx are considered as Taxonomy-eligible.

4. Negative Revenue under Taxonomy-eligibility Reporting^[17]

The Disclosures Delegated Act does not specify the treatment of negative revenues under Taxonomy-eligible reporting. The FAQs point out that non-financial undertakings may report activities with negative revenue as 0% Taxonomy-eligible. Non-financial undertakings could also report the negative revenue in monetary amounts. Where a non-financial undertaking makes negative revenue in one activity, it could use the positive revenues from its remaining activities as the denominator to calculate the proportion of Taxonomy-eligibility.

5. Reporting of non-EU Activities[\[18\]](#)

Non-financial undertakings that fall within the scope of the NFRD must cover in their non-financial reporting their economic activities regardless of whether these take place outside the EU. The FAQs state that the same approach applies to the reporting obligations under Article 8 of the Taxonomy Regulation. Non-financial undertakings must include the turnover, CapEx and OpEx related to non-EU Taxonomy-eligible activities in their Taxonomy-eligibility reporting.

Non-financial undertakings would also be expected to provide information on the assessment of economic activities carried out in non-EU countries in the narrative information required under the Disclosures Delegated Act.[\[19\]](#) Such information would focus on the assessment of Taxonomy-eligibility.

6. Cash and Mortgages for Asset Managers under Taxonomy-eligibility Reporting

For Taxonomy-alignment disclosures, cash and cash equivalent assets and mortgages are included in the denominator of the key performance indicators of asset managers. The FAQs clarify that mortgages should similarly qualify as Taxonomy-eligible assets for asset managers.[\[20\]](#)

On the other hand, cash and cash equivalents assets can only be reported as funding Taxonomy-eligible activities once the funds have been allocated to a specific activity. The FAQs explain that it is not feasible to assess the Taxonomy-eligibility of cash and cash equivalents assets, given that they are not funding an economic activity and it is not clear which economic activity these assets will be allocated.[\[21\]](#)

7. Interaction with proposed requirements on corporate sustainability reporting[\[22\]](#)

The proposed Corporate Sustainability Reporting Directive (CSRD)[\[23\]](#) would amend the existing reporting requirements introduced by the NFRD with regard to sustainability disclosures by corporate issuers. The Commission notes that the CSRD should complement the Disclosures Delegated Act, given that they have the same mandatory scope of application on sustainability reporting.

The 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. In addition to the reporting requirements under Article 8 of the Taxonomy, these entities will need to publish sustainability information in their management reports in accordance with sustainability reporting standards, as proposed in the CSRD. In principle, and depending on the outcome of the legislative process on the CSRD, reporting requirements under each regulation will be clearly defined and should also be streamlined and coherent to the extent possible so that companies should not report the same information twice.

The information required under the Disclosures Delegated Act should be reported in the same entity-level management report, alongside other sustainability-related information required under the CSRD provisions as proposed. As the previous set of FAQs clarified, the assurance requirement proposed by the CSRD would as well cover disclosures under the Disclosures Delegated Act.[\[24\]](#)

endnotes

[1] Draft Commission notice on the interpretation of certain legal provisions of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of eligible economic activities and assets, available at https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/sustainable-finance-taxonomy-article-8-report-eligible-activities-assets-faq-part-2_en.pdf. This draft Commission notice has been approved in principle by the European Commission on 2 February 2022 and its formal adoption in all the official languages of the European Union will take place as soon as the language versions are available.

[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 [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>.

[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 [33939], *supra* note 2, for further details on the implementation timeline of the Disclosures Delegated Act.

[8] 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 ("December FAQs"). Also See ICI Memorandum [34001], dated 18 January 2022, available at <https://www.ici.org/memo34001>.

[9] See Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives, available at https://eur-lex.europa.eu/eli/reg_del/2021/2139/oj.

[10] See FAQs *supra* note 1, at Question 3.

[11] Transitional activities refer to those for which low-carbon alternatives are not yet available and that have greenhouse gas emission levels that correspond to the best performance in the sector or industry, which fulfill the two following conditions: (i) they should not hamper the development and deployment of low-carbon alternatives and (ii) they should not lead to a lock-in of carbon-intensive assets, considering the economic lifetime of those assets. Enabling activities are defined as activities that directly enable others to make a substantial contribution to an environmental objective. See Taxonomy Regulation, *supra* note 3, at Articles 10(2) and 16.

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

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

[14] An enabling activity providing adaptation solutions that, in addition to satisfying the conditions set out in Article 16 of the Taxonomy Regulation, contribute substantially to preventing or reducing the risk of the adverse impact of the current climate and the expected future climate on people, nature or assets, without increasing the risk of an adverse impact on other people, nature or assets. See Taxonomy Regulation, *supra* note 13, at Article 11 (1b).

[15] An adaptation activity including adaptation solutions that either substantially reduces the risk of the adverse impact of the current climate and the expected future climate on that economic activity or substantially reduce that adverse impact, without increasing the risk of an adverse impact on people, nature or assets. See Taxonomy Regulation, *supra* note 3, at Article 11(1a).

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

[17] See FAQs, *supra* note 1, at Question 13.

[18] See FAQs, *supra* note 1, at Question 18.

[19] See Disclosures Delegated Act, *supra* note 2, at Annex I, Section 1.2.

[20] See FAQs, *supra* note 1, at Question 24.

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

[22] See FAQs, *supra* note 1, at Question 33.

[23] 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 [33509], dated 28 April 2021, available at <https://www.ici.org/memo33509>.

[24] See December FAQs, *supra* note 8, at Question 7.

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