Brussels, 2nd June 2021

# EACB answer EC Consultation Delegated Act of the Taxonomy Regulation (EU/2020/852) – Article 8

## General comments

Although the EACB welcomes the phased in approach proposed by the EU Commission in the proposed Art. 8 delegated act of the Taxonomy Regulation, we would like to raise remaining concerns.

The first one regards the **availability of data as the many of the obligations require clients data that are particularly difficult to obtain** for financial undertakings. In order to address the issue, the EACB suggests that the obligations for financial undertakings are further staged between 2023 to 2025 to allow gathering the relevant data. Indeed in 2023 financial institutions will not have the data of their counterparties to feed their own Article 8 ratios disclosure. The financial sector starts to receive the taxonomy information from investee and client companies only starting from the 2023 reporting. To address that situation, we deem it necessary to introduce **a one-year reporting gap between non financial and financial companies**, whereby **financial institutions would start disclosing their Article 8 KPIs in 2024**. The one-year reporting gap period is also in line with the EFRAG PTF's recommendation (January 2021). In addition, as financial institutions' disclosures would take place at the same time, the inclusion of exposures to financial institutions needs to be phased-in in 2025 to allow for information collection.

As a fall-back solution, we would ask for the possibility to comply with Art. 8 on a best-effort basis in 2023 and 2024. Finally, the unavailability of non-financial companies' data on their taxonomy-alignment in 2023 will further be an issue for reporting requirements under the SFDR (requirement to disclose investment products' alignment with the taxonomy as of January 2022) and for reporting under Pillar 3 (the draft EBA ITS provides for disclosure in June 2023 on 2022 data). Alignment with Article 8 Taxonomy timelines will also be required for clients to be able to determine the "minimum proportion" of their investments in environmentally sustainable investments as defined in Article 2(1) Taxonomy as required under the ESG amending delegated acts to MiFID II and IDD (applicable as from 1 October 2022); as well as, to comply with the minimum alignment of the "portfolio greenness" formula of the upcoming EU Ecolabel for Financial Products with the Taxonomy (final criteria to be adopted by September 2021, and labelling regime to become applicable from 2022).

Credit institutions need data from the real economy in a standardised audited format. The data has to be quality checked by an external examiner assigned by the real company (CSRD proposal)

Another concern is that many smaller clients and smaller investee companies do not disclose this taxonomy data at all as they do not fall in the NFRD's perimeter. For this reason, we believe it necessary to include a **materiality threshold in the Delegated Regulation,** so that loans and investments would only be subject to the reporting requirements if they exceed a certain threshold e.g. 10 million EUR, only then should they be included in the KPI denominators This


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would at least allow to focus on most important data about Green Asset Ratio (GAR) of Credit institutions and AUM and Green Investment Ratio (GIR) of Asset Managers. Thereby, especially in relation to SMEs and households the reporting requirements for credit institutions would become more feasible.

Large parts of the investments – relating to asset managers and investment firms - and some parts of client lending within credit institutions are also outside of EU, so there will be no taxonomy information of these financial assets also after 2022 when EU taxonomy starts to apply in EU. Therefore, these taxonomy eligibility percentages may vary between financial service providers based on the percentage how much these investments or loan portfolios are inside and outside of EU.

We would also note that, with regard to non-financial undertakings, there is a general assumption in the proposed approach that companies with 500 employees know how to distribute turnover, CapEx and OpEx across their different activities. This may not be true for many companies, as having different activities does not mean having different income statements by activity. Lacking a separate income statement per activity (and balance sheet as CapEx requires changes in tangible fixed assets for that activity) it would be particularly difficult to translate this into consistent disclosure.

More in general, according to Art 11 Para 5 of the Draft Delegated Regulation, exposures and investments in undertakings that are not subject to NFRD and provide non-financial information *voluntarily, may be included in the numerators of KPIs of financial undertakings from 1 January 2025* subject to a positive assessment/review indicated in Article 10 lit c of the Draft Delegated Regulation. With no regulatory incentive for SMEs or other non-NFRD companies to provide the information, financial institutions will be dependent on their SME clients' choice to disclose the relevant data. Banks or financial undertakings whose clients do not provide that data will therefore be penalised. This would also decrease the comparability of the ratios as there would be no consistency in the scope of the ratios from one bank to the other. Therefore, **we would ask for SMEs to be excluded from the GAR until the review foreseen in art. 10 of the draft DA is done**.

Should the Commission decide to keep its proposed voluntary approach from 1 January 2025, we would ask the Commission to clarify what is expected of financial institutions. On the one hand, the draft DA provides very clearly that non-NFRD companies are excluded from the numerator (art. 8(3): "shall be excluded") but on the other hand it provides that the exposures/investments in non-NFRD companies which provide information on a voluntary basis may be included in the KPIs (art. 11(5)). Where SMEs voluntarily provide information, it should be clarified whether financial institutions must include them or may include them. Finally, **if** exposures and investments in **non-NFRD undertakings should be included in the numerators of KPIs, then the use of proxies and estimates** (such as the JRC´s sector-based coefficient methodology recommended in ESMA´s technical advice) **should be explicitly allowed.**

Since the technical screening criteria (TSC) - defining environmentally sustainable activities - will evolve over time, this would require a constant reassessment and recalibration of the GAR and GIR by financial companies, which would highly complicate the reporting under Art 8 of the Taxonomy Regulation. **Hence, it is important that financial instruments which are considered Taxonomy-aligned at issuance don't lose their status as Taxonomy-aligned when the TSC are adapted** (especially when considering the long maturity of certain portfolio holdings and lending activities). On the other hand, economic activities and assets may not be Taxonomy-aligned at the inception of the **financing operation but are upgraded during the**

**lifetime of the loan** so that they reach Taxonomy-alignment. In this case the Draft Delegated Regulation should give financial companies the **opportunity to reassess the GAR.**

It is also unclear based on the Commission's proposal what exactly should be disclosed by financial undertakings in their consolidated statements in 2022 regarding the year 2021. We would welcome if in Article 11(2)(a), it would **be further specified what exactly "the share of exposures to Taxonomy non-eligible and Taxonomy-eligible economic activities in total assets" refers to as regards the activities of credit institutions, investment firms and insurance undertakings, respectively**, and how this relates to their respective KPIs which are to be disclosed later. Otherwise, the actual scope of activities covered by the initial requirement and what is to be included in the nominator and denominator at this stage would remain unclear and at most, based on assumptions, as it can now only be assumed that the same scope and limitations would apply for this requirement as for the KPIs that are defined in Annexes I-XI. While it is clear that the KPIs, according to Article 11(3) shall be applied, reviewed and disclosed from 1 January 2023, more clarity is needed on their relation with the initial requirement laid down in Article 11(2)(a).

We have some more detailed comments about these annexes and KPIs, but as a general remark we would like to **highlight issues of consistencies in the calculation**. Should certain exposures, products and services be excluded from the nominators of the KPIs, but not from the denominators, this **would affect the KPIs (lowering them) and how they would be interpreted, and hence, also their usability**. Also, even where possible, institutions would nevertheless have no possibility to showcase the taxonomy-eligibility of these components should they wish to so, but would instead be obliged to weaken their KPIs by the calculation in the denominators.

Finally, we would like to warn about the general complexities of the templates. For example, the GAR template for banks consist of 43 rows by 38 columns (Annex VI of the proposed DA) Would this really ensure the data reported is clear and understandable for the end user?

## Comments relating to banking and credit institutions

### a) Exclusion of stock of loans.

According to the Draft Delegated Regulation credit institutions should disclose the Green Asset Ratio (GAR) as the main KPI under Art 8 of the Taxonomy Regulation. Draft DA provides that the KPIs should cover the previous five reporting periods (art. 9(3)). However, in order to disclose and calculate the GAR credit institutions are dependent on comprehensive information from their customers. This information can only be available after 2022 Indeed, a **retroactive application would not be feasible** as the taxonomy is not applicable before 1 January 2022 and financial institutions can only take into account the taxonomy framework after that date. Thus It should be clarified that **the cut off date, or the 1st of these 5 reporting periods is 2022** so that there is no retroactive application. Financial institutions can only start constituting a stock of taxonomy-aligned exposures using the flows from 1 January 2022 (1 June 2023 for retail exposures) meaning that **only financings granted from the date of application of the disclosure requirements should be considered, for both stock and flow**. This is particularly necessary for mortgage exposures (especially older buildings) and car loans as there is no national public database of energy performance certificates yet. Moreover, the **stock of loans should be excluded from the calculation of the GAR (**before 2023**)**, also in order to safeguard existing financing and follow-up financing, especially in light of the still ongoing COVID-19-crisis.


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**b) Complete alignment of GAR disclosure under Art 8 Taxonomy and the EBA ITS.**
From our point of view, a complete **alignment of GAR disclosure under Art 8 of the Taxonomy and the EBA ITS has to be achieved.** Given that the templates do not have the same format (e.g. EU Taxonomy Art 8, Annex VI, Template 1, raw 60, columns b-f for CCM environmental objective=> requires information on Taxonomy eligibility/alignment of off BS exposure, whereas for EBA ITS this is not covered in the templates), we fear that this could lead to a parallel disclosure of sustainability information. Such a disclosure under the two frameworks would not achieve the needed transparency but would rather confuse investors. It would also result in extra complexity, inefficiency and duplications.

**c) Exclusion of sovereign exposures from GAR calculation**
In case of exposures to sovereigns tied to specific projects, the EU Taxonomy eligibility or alignment can indeed be verified. Hence, it is not clear why they should be excluded from the GAR calculation based on the argument: "This delegated act excludes sovereign exposures of financial institutions from both the denominator and the numerator of their green ratios in the absence of a robust methodology for assessing the environmental performance (taxonomy-alignment) of sovereign debt" [Ref: FAQ: What is the EU Taxonomy Article 8 delegated act and how will it work in practice? – 9.]. **Hence, there should be the possibility to include exposures to sovereigns tied to specific projects in the calculation of the GAR on a voluntary basis**.

**d) Clarity on the criterion to be used for the calculation of the taxonomy alignment**
There should be more clarity on the criterion to be used for the calculation of the level **of taxonomy alignment of banks' exposures in case of unknown use of proceeds.** The sections in the FAQ and the Draft Delegated Regulation seem to suggest the use of "CapEX KPI" as an alternative (in which case the additional question arises: => **under what circumstance should one or the other KPI be used?**).

Please find below the misleading sections:

[Ref: FAQ: What is the EU Taxonomy Article 8 delegated act and how will it work in practice? – 7.] *"The level of taxonomy alignment of banks' exposures should be given by either the **turnover KPI or the CapEx KPI** of the non-financial companies that banks are financing or investing in."*

[Ref: Delegated Draft Act, section 1.2.1. on Green asset ratio (GAR)] *"(a) the numerator, which shall cover the loans and advances, debt securities, equities and repossessed collaterals, financing Taxonomy-aligned economic activities **based on turnover KPI and CapEx KPI** of underlying assets;"*
[Ref: Delegated Draft Act, section 1.2.1.1. on GAR applying to exposures of non-financial undertakings] *"For (1)(c)(2), **credit institutions shall rely on the turnover KPI** that the counterparty shall disclose for each environmental objective in accordance with Article 2 of this Regulation"*

**e) <u>Clarification regarding the calculation of the GAR</u>**

Template 0 "Summary of KPIs" suggests that the **GAR needs to be calculated twice** (raw 5, column F and G): once using KPI=**Taxonomy alignment based on turnover of counterparty** and second **based on KPI= Taxonomy alignment based on CapEx of counterparty**.


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**This needs to be clarified in the text.** As this implies that all templates would need to be filled in twice, the format of Annex 6 (xlsx templates) needs to be amended.

**f) Clarification regarding residential real estate lending**

Furthermore, we note that the KPI for real estate should include assets, which comply with the Technical screening criteria for buildings Sections 7.2., 7.3., 7.4., 7.5., 7.6. and 7.7. of Annex I to the Climate Change Mitigation DA. This means that compliance with the DNSH criteria is required. However, **assessing compliance with the DNSH criteria for buildings cannot be the responsibility of the bank**. The bank can neither ask its client to provide all the requested information to make the DNSH assessment nor make that assessment itself. Therefore, **the required relative 30% improvement report must be established by an accredited third party**, an expert professional, based on actual diagnosis at the beginning and at the end of the work. The bank would then rely on the documents provided by the professionals in charge of the works. **Until such professional expertise is available, we believe that the taxonomy-alignment of the real estate asset should be based on the substantial contribution criteria only** while compliance with DNSH and MSS would be assumed. In a similar line of thoughts, in its advice to the Commission EBA proposed that the assessment of the asset be based on the energy performance certificate (EPC), in line with the screening criteria proposed in the Taxonomy for buildings (Opinion: EBA/Rep/2021/03 p. 6). No reference to the DNSH and MSS assessment is made.

Finally, we note inconsistencies in the references to the Climate Change objectives that should be used for assessing taxonomy alignment. Under paragraph 1.2.1.3, it is stated that only investments relevant for climate change mitigation should be considered while the following references are to either "climate DA" or "DA climate change mitigation and climate change adaptation". In our view, **investments for the purpose of both climate change mitigation and climate change adaptation should be eligible,** as we don't see why climate change adaptation purposes should be left out.

**g) Clarifications about derivatives, trading books and fees and commission**

According to Article 8(2), derivatives shall be excluded from the numerator of key performance indicators of financial undertakings. However, financial undertakings shall, according to Article 8(5), also provide a breakdown in the numerator and denominator of the key performance indicators for exposures and investments in, i.a. derivatives. These two, the exclusion and the breakdown requirement, seem inconsistent with each other. Furthermore, in the trading portfolio GAR described in section 1.2.4., the KPI is described as consisting of the total trading in Taxonomy-aligned instruments and total trading of securities. While the last paragraph on page 44 would indicate that this refers to debt securities and equity instruments, the definition of the KPI does not seem to exclude other instruments such as derivatives.

As regards the KPI for fees and commissions, the list of services would apparently not be exhaustive, meaning that all services other than lending and asset management, even deposit services, would be included. The scope then already being challenging, and requiring granular, not necessarily pre-existing data, the scope should at least not, whether intended or not, be broadened further.
At an even more overarching level, the idea that banks know as part of their daily business the fees obtained from every individual client might not actually be realistic. Some banks run their business based on client profitability and some other banks focus on product profitability, or even on the overall profitability, having a single income statement as well. Banks have hundreds of


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products and services, many of them running on core systems that were designed even 20 years ago. Obligations pertain currently to MIFID to report investment fees to clients for instance, or obligations to ensure that a loan is not given below cost (including credit risks). Without having first a full view on the fees and commissions from each individual client it would not be possible to aggregate the information and complete the table on fees & commissions. This table should rather be deleted.

### h) Banks operating in non-EU geographies

Banks operating in non-EU geographies could risk being differently treated compared to those that are only EU-based due to different level of GAR data availability. There is a risk that investors compare banks with different profiles of activities and draw the wrong conclusions. Hence, we would like to suggest calculating GAR for EU and non-EU assets separately.

## Comments relating to investments (asset management, investment firms, securities markets etc.)

### a) Consistency with ESMA's advice

ESMA published a final report "Advice on Article 8 of the Taxonomy Regulation" on 26 February 2021. In the report, there were obligations to non-financial undertakings and asset managers. The financial sector relating to MiFID and investment services was covered mainly by taking into account asset managers and their AUMs (assets under management) in taxonomy reporting. Commission has also included to May 7 proposal the asset managers obligations relating to AUM and Green Investment Ratio (GIR). However, the Commission has added to this also obligations, in Article 6 and Annex VII, relating to investment firms dealing on own account and investment firms not dealing on own account.

Generally, the obligation relating to AUM and GIR of asset managers is more understandable than obligations of investment firms. There are some assets in asset managers' GIR calculations that are not considered in the Commission-s proposal. One is packaged products and investment funds. As many of funds are from outside the EU, we propose that these funds and packaged products are not included in GIR calculations. It should be clear whether these packaged products are inside or outside of the scope for GIR calculations.

The new obligations added by the Commission relating to investment firms dealing on own account or firms not dealing on own accounts are more challenging for financial undertakings as such. The variety of e.g. MiFID investment services and activities is extensive. The information collected is totally new, compared to many asset managers who assess their AUMs more in general. Investment firms usually do not categorise for example if their execution of orders are relating to sustainable investments or other investments. The variety of products relating to execution of orders is extensive. Some products can be sold short etc. Therefore, the **obligations and percentage of taxonomy eligibility of investment services is a debatable and unclear obligation.** It can be impossible to compare these between different service providers. This same applies to dealing on own account in various financial products.

### b) Scope and reporting for entities with multiple business lines

It may well also be a bit unclear based on the Commission-s proposal from 7 May, whether the obligations of investment firms also apply to banks (credit institutions) that offer MiFID

investment services and activities and asset management services. On one hand these banks do have to already disclose Green Asset Ratio and according to Annex V "proportion of the credit institution's fees and commission income from undertakings, derived from products or services other than lending associated with Taxonomy-aligned economic activities, compared to total fees and commissions from undertakings from products or services other than lending." Therefore, it should be clearly mentioned that obligations related to investment firms and asset managers do not apply to credit institutions that offer these services. These obligations may seem a bit overlapping and unclear to credit institutions offering asset management or MiFID investment services, also regarding dealing on own account and not dealing on own account.

There are financial co-operative groups consisting of credit institutions, insurance companies, asset managers and they need to prepare consolidated reports based on Article 8 of the Taxonomy Regulation. What if the group's asset manager is doing portfolio management on assets of e.g. life insurance company, and trades one European equity of a NFRD company (15% taxonomy of Capex/OpEx etc) and one US equity of fairly sustainable company, not reporting under the EU taxonomy. Then this asset manager sends the order to execute these trades to the group's credit institution which executes these trades and the equities are two months in the life insurance companies assets before being sold. Who reports and what in this case and relating to what KPIs? This reporting can be complex.


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