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Consultation of "Taxo-Four"-Delegated Acts

Dear Mr Spolc,

As organisation of German listed and capital market-oriented companies, Deutsches Aktieninstitut welcomes the opportunity of commenting on the draft delegated acts for the non-climate objectives of the Taxonomy. Irrespective of their size and business model, German companies are eager to achieve a successful transition to a carbon-neutral economy. In general, we consider the Taxonomy as an important step for the assessment of environmentally sustainable economic activities and navigation tool for target setting and tracking.

However, in its present form and for some sectors, the Taxonomy falls short of addressing the true needs of capital markets participants. Preparers need more clarity, reliability and pragmatism regarding the implementation of the Delegated Acts. Its technical screening criteria on "substantial contribution" and "do no significant harm" have left numerous issues unsolved, led to legal uncertainties and caused confusion for all stakeholders involved. Moreover, an excessive level of complexity has been produced, which has overburdened data preparers on the one hand and gone far beyond the needs of investors on the other hand. Consequently, investors at present prefer the Principles of Responsible Investments (PRIs) to the Taxonomy for determining the sustainability degree of their investments. At the same time, the Taxonomy is already having a steering effect through broad application in current/upcoming legislative procedures.

The extremely short consultation period is to be criticized, as the drafts were published shortly before the Easter holidays and feedback could only be provided until 3 May. Due to this short time frame, the draft delegated acts could not be assessed in a thorough manner before providing feedback to the European Commission. In order to assess the drafts, companies have to involve a wide range of specialist departments and experts. Due to the tight schedule, companies in their assessment are forced to prioritize economic activities in the drafts instead of being able to carry out an all-encompassing assessment. Companies are unable to provide a thorough feedback of their analysis due to the tight time schedule.

Some of the draft delegated acts on the four other environmental goals contain very ambitious screening criteria and DNSH criteria, which reduces the incentive for companies to help shape the transformation under the mandatory application of the Taxonomy. In addition, there are inconsistencies within the Technical Screening Criteria.

Furthermore, we call for the principle of materiality to be included as an opening clause in the Taxonomy, analogous to financial reporting under IAS/IFRS. According to the legislator, the Taxonomy should support companies in the transition to a sustainable economy and climate neutrality, help investors identify environmentally sustainable activities and direct financial flows to these activities. This goal runs counter to companies having to evaluate activities that do not make a significant contribution to either the overall Taxonomy goals or the company's success. The proportionality of the costs of obtaining information and the benefits of Taxonomy reporting must be maintained - analogously to other components in reporting.

For competitive reasons, companies per se have an interest in "green financing models" and the risk of low Taxonomy capability and compliance thus lies with the companies themselves. According to our findings and in exchanges with other stakeholders, the lack of legal anchoring of materiality considerations in the 2022 audit has also led to uncertainty among auditors, which in turn has resulted in unreasonable effort on the part of both auditors and companies. Following the idea that the Taxonomy should link the measurement of sustainable issues with financial reporting, it would be obvious in practice to refer to the denominator of the respective Taxonomy KPI as the base value of materiality.

In conjunction with the Taxonomy, the present regulatory environment on sustainability issues must be duly taken note of. Further to implementing the Taxonomy, companies are confronted with the challenge of having to implement an entirely new system of sustainability reporting (CSRD and ESRS) at the same time. In addition, European due diligence obligations on value chains loom on the horizon. Implementing the frameworks mentioned is a highly complex exercise pushing companies either to the brink or even beyond their available resources. In order to not put corporate existences at stake, phase-in approaches of the regulatory frameworks mentioned should be duly considered. Simplifying the existing system of Technical Screening Criteria could significantly contribute to cutting red tape, which will help to create some much-needed room for manoeuvre for fostering technical innovation – an essential prerequisite for the desired economic transition. At present, we see many companies relocating their R&D departments to Asia or the Americas. European regulation should be designed to create an innovation-friendly environment.

According to the draft, reporting on the Taxonomy eligibility of the four additional environmental targets is already required for fiscal year 2023. Reporting on Taxonomy alignment is envisioned for 2024. Generally, we welcome the two-stage reporting requirement for the introduction of the four other environmental goals. However, depending on the timing of the final publication, companies will again only have a few months to collect Taxonomy-eligible revenue, capital expenditures (CapEx) and operating expenditures (OpEx). Based on companies' experience with the short-term implementation of the first two climate targets in 2021, companies consider this narrow time frame to be extremely challenging. Also in the light of the above-mentioned implementation challenges of the CSRD and the ESRS requirements, we deem it necessary that disclosures related to alignment of new activities and environmental objectives should not apply to the 2023 reporting year in 2024, but only for the 2025 reporting year in 2026. Consequently, the reporting obligations for financial companies have to be delayed for an additional year to enable them to use the data reported by corporates.

Independent of the current consultation, a thorough review of the Taxonomy should be considered in order to eliminate shortcomings and improve the Taxonomy's usefulness. Screening criteria and screening processes should be simplified. Moreover, a 'Transition Taxonomy' on the basis of the existing Taxonomy Regulation should be duly considered.

We kindly ask you to take our general remarks and detailed comments enclosed into consideration in the forthcoming adoption process and remain at your disposal in case of questions.

Yours faithfully

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Head of Communications, Head of Sustainability Department

Enclosure