

Consultation of “Taxo-Four”-Delegated Acts

Opex

The publication of the OpEx KPI defined in Article 8 of the Taxonomy Regulation should not be mandatory. Despite the Commission's FAQs, there are still many open issues regarding the definition and calculation of this KPI. The collection of necessary data is a very complex exercise. In addition, this KPI is not relevant for many activities and investors are more interested in the CapEx KPI. Therefore, we consider that Annex I of Delegated Regulation (EU) 2021/2178 should be amended in the forthcoming Taxonomy Review: in paragraph 1.1.3.2 the last indent should be drafted as follows "Where the operational expenditure is not material or relevant for the business model of non-financial undertakings, those undertakings shall be exempted from the calculation of the OpEX KPI."

Reporting: Paragraph 6 Annex V Draft delegated regulation (Ares(2023)2481554)

Annex II Delegated Regulation (EU) 2021/2178

The templates for all three KPIs are replaced with an updated version. This version includes some visual as well as formal adjustments.

Proposal: The former reporting template shall be re-introduced since it supported a higher stringency and information level consistency.

Justification: The short-term nature of publications of new requirements and interpretation guidelines leads to additional effort in the reporting set up in practice. Therefore, the template issued previously is preferred at this stage of the implementation status.

More detailed feedback:

The fields containing "Y/N" or "EL, N/EL" shall be blackened. The reported figures shall be solely numeric, as determined in the former version of the reporting template (with a focus on percent), to support a stringent and systematic report set up.

The cells below 'A.1 Environmentally sustainable activities (Taxonomy-aligned)' shall entirely be reported in 'percent, %'. Hereinafter, when the same activity aligns with two objectives, one row is sufficient to report the data. Although less rows, the identical information is reported and the subtotal number in 'percent, %' below can be calculated. The report shall be comprehensible, not a long list.

The cells within the columns of the 'Substantial Contribution Criteria' within 'A.2 Taxonomy-Eligible but not environmentally sustainable activities (not Taxonomy aligned activities)' shall be black. The two different information categories ('A.1' displays 'SC', while 'A.2' displays 'E') within the same column, bear the risk of misinterpretation by report addressees. Furthermore, the information to be displayed in the fields "EL, N/EL" is covered already in the column 'code'.

The lines below 'A.2 Taxonomy-Eligible but not environmentally sustainable activities (not Taxonomy aligned activities)' shall consider a 'Code', alike the setup of 'A.1 Environmentally sustainable activities (Taxonomy-aligned)', to ensure consistency throughout the entire report.

Under the draft delegated regulation, the colour theme of the templates is foreseen to become mandatory. Without the provision of the exact colour codes it is impossible replicate the colouring scheme and the colours do not necessarily match the layout of the management report. Accordingly, the colouring scheme should not be mandatory.

The deletion of column (18) in the disclosure tables for all three key performance indicators is strongly supported as columns (18) and (4) contained the same information.

The amendments should be used to further simplify the disclosures table to reduce the complexity of the disclosure tables significantly and increase their readability. The cells for the DNSH criteria and for the minimum safeguards for taxonomy-aligned economic activities should be filled in black, as the DNSH criteria and requirements to the minimum safeguards are always met here. Otherwise, they would not be taxonomy- aligned economic activities. Alternatively, the columns on DNSH criteria and minimum safeguards could be removed, as there is no provision for them in the Delegated Regulation (EU) 2021/2178 and the meaningfulness of these columns for taxonomy-eligible and taxonomy-aligned economic activities is not given thereby reducing the complexity considerably. In case the columns on DNSH criteria would be not removed, the choice of options should not only include “Y/N” but also “N/A” or “left blank” as option since in some economic activities DNSH criteria are not outlined for all economic objectives (e.g. 6.5 Transportation by passenger cars, motorbikes and LCV).

The descriptions of the columns and lines in the disclosure tables should be identical to wording of the environmental objectives in the legal texts. For example: the name of the six environmental objectives in the columns informing about substantial contribution and DNSH compliance do not match the exact naming in the Taxonomy regulation. To improve readability, the columns (4) and (18) in the modified template should be next to each other to ease annual comparisons.

The deletion of the line containing the sum of A.1 and A.2 is supported.

The additions “(A.1)” and “(A.2)” to the cells for total taxonomy-eligible and taxonomy-aligned KPIs should be removed as they are no longer mentioned in the cell for the total KPI and have no use in the “year N-1”-cell. Alternatively, the addition “(B)” could be included in the cell for total taxonomy-non-eligible KPI and the addition “(A.1 + A.2 + B)” in the cell for the total KPI.

Regarding the additional lines and columns regarding “transitional” and “enabling” activities, it is still unclear for preparers and users what the benefit of this information would be. In this context, the amount reported as “transitional” and “enabling” would not sum up to the total amount of taxonomy aligned activities. Indeed, one activity can also be classified as “activities that in and of themselves contribute substantially to one of the six environmental objectives”. Based on the current template misinterpretations and misleading information are very probable as the financial year reporting of 2022 provide yet evidence by the preparers.

The separate information on eligibility or non-eligibility of economic activities under A.2 seems unnecessary as the information on eligibility or non-eligibility needs to be disclosed under the column “Code”.

A.2 Taxonomy-Eligible but not environmentally sustainable activities (not Taxonomy-aligned activities)									
				EL; N/EL (f)	EL; N/EL (f)	EL; N/EL (f)	EL; N/EL (f)	EL; N/EL (f)	EL; N/EL (f)
Activity 1 (e)			%						

Criteria for DNSH to pollution prevention and control regarding use and presence of chemicals

Regarding Appendix C which defines generic criteria for DNSH to the objective of pollution prevention and control regarding use and presence of chemicals, issuers acknowledge the changes put forward to address legal issues related to the concept of 'use essential for the society'. These changes however do not solve the issue and raise new ones (e.g.: how should the assessment that there is no other suitable substance be documented, the definition of 'controlled conditions'...). The proposed clarification would require a high degree of transparency regarding the use of substances, which are currently not prohibited under existing legislation.

This would present a challenge for manufacturing sectors and along the supply chain. Considering the quantity of substances, the complexity of value chains and the timeframe provided by the EU Taxonomy, the application of criteria f) and g) would still be very difficult for manufacturers. Companies are concerned that these changes if implemented will produce the same results as the current wording: exclude many activities. Therefore, companies consider that the best way forward would be, as a first step, to simply require, in indent (f) of Appendix C, compliance with existing EU legislations without additional requirements and remove the requirement laid down in indent (g). Compliance with REACH regulation already includes an independent expert screening and evaluation process regarding the substances of concern, before the regulatory body decides on further limitations in use of these substances.

The Commission could then reflect in cooperation with the industry on how the assessment of alternative substances and technologies should be documented and on the definition of 'controlled conditions' before introducing new requirements. The first sentence should also be reviewed as unintentional manufacturing, placing on the market and/or use would lead to disqualification and 'Placing on the market' can have different interpretations.

Pharmaceuticals

Regarding the activities about pharmaceuticals (included in the consultation) and chemicals (postponed and thus excluded from the consultation), we see a worrisome tendency: High costs for third party verification and limited data availability about competitors' products pose high hindrances for proving alignment, since third party verification is required for TSC (verifying equivalence to a non-polluting alternative on the market), DNSH Climate Change Mitigation (verifying comparison of own Carbon Footprint to the Carbon Footprint of the alternative) and DNSH Water (verifying non-contribution to water scarcity). These hindrances seem unreasonably high and come on top of already very long lists of TSC and DNSH. All in all, this leads to very high costs and effort for proving alignment and will probably prevent small companies or companies with diverse portfolios from proving (all) alignment.

The current draft excludes all pharmaceuticals (and similarly chemicals, according to the previous draft) from alignment with the environmental goal "Pollution prevention and control" if there is not a more polluting (for pharmaceuticals: non-biodegradable, for chemicals: hazardous) alternative still on the market. Consequently, alignment is impossible if all alternatives on the market fulfill the goal of pollution prevention. This does seem counterintuitive and will make it difficult for financial institutions to understand and utilize the taxonomy data provided by pharmaceutical and chemical companies.

Furthermore, the Technical Screening Criteria regarding the environmental goal "Pollution prevention and control" far surpass the existing Best Available Techniques Reference Documents and Best Available Techniques and are not consistent with the Industrial Emissions Directive (IED). A

consistency with existing law (especially IED) would be preferable and a comparable approach for locations outside the EU needs to be clarified.

Manufacturing of electrical equipment

The criteria set in the DNSH for (5) Pollution prevention and control require that “the equipment does not contain lead, mercury, hexavalent chromium and cadmium.” This criterion was not part of the recommendation of the Sustainable Finance Platform and has been added in the draft proposal of the European Commission. It bans substances without making any references to existing legislations.

In the EU, restrictions on the use of substances need to result from a proper regulatory process initiated by ECHA based on a scientific assessment and involving different steps such as the stakeholder consultation or committee opinion.

It contradicts Appendix C which recognizes the exemptions under the RoHS Directive 2011/65/EU for lead and cadmium. RoHS exemptions are evaluated regularly and renewed only when alternative solutions are not yet technically available.

We therefore recommend removing the sentence from the DNSH (5) Pollution prevention and control.

Aviation criteria from air cargo perspective

We support the inclusion of aviation in the Taxonomy. Nevertheless, we have concerns regarding the limitation of potentially qualifying aircraft in air cargo as well as the suggested limitation on fleet growth that would impede any expansion of air cargo operations in times of increasing demand (e.g. COVID-19 pandemic). We also recommend to de-couple the use of Sustainable Aviation Fuel (SAF) from the aircraft used. This could be done through a separate climate change mitigation criterion for the use of SAF, either directly or through “book & claim”, or through dedicated rules for air cargo. This would reward air cargo companies for their SAF purchases and thereby help create incentives to drive up the European SAF supply, support the decarbonization of aviation especially in the air cargo business, contribute to the EU’s ambition to become the first climate neutral continent by 2050, and send the important signal to investors and financial markets that green technologies in aviation exist.