

---

## Consultation Response

### European Commission consultation on EU Taxonomy delegated regulation

3 May 2023

---

AFME welcomes the opportunity to comment on the draft delegated regulation with technical screening criteria and reporting requirements underpinning the EU Taxonomy Regulation. We share below our members' comments on the amendments to the Article 8 Delegated Act concerning potential issues which should be addressed or clarified to ensure that financial undertakings can effectively implement the requirements.

#### 1. The application timeline for financial undertakings should be adjusted.

The proposed amendment to Article 10 of the Disclosures Delegated Act would require financial undertakings to disclose Taxonomy-eligibility against the four remaining environmental objectives and the newly added economic activities for climate objectives in 2024 for financial year 2023. The timing for the introduction of these requirements coincides with the proposed application timeline for non-financial undertakings. A requirement for financial undertakings to produce their reporting in absence of counterparties' disclosures would present significant operational challenges. Experience from the first year of eligibility reporting for the existing environmental objectives has demonstrated how challenging this has been and has not produced meaningful comparable information in the absence of counterparties' disclosures. We expect the challenge to be even more significant for the additional environmental objectives which are likely to be even less aligned with NACE codes. We therefore consider that phasing-in the requirements would ensure that the reporting is meaningful and not misleading.

**We recommend that the Commission amends Article 10(7) of the Article 8 Delegated Act by replacing "From 1 January 2024 until 31 December 2024" with "From 1 January 2025 until 31 December 2025".**

This adjustment would reconcile the application timeline of the requirements for non-financial and financial undertakings, respectively, and clarify what financial undertakings are expected to report in 2025, since the proposed wording only covers the reporting made until December 2024 and from January 2026. To the extent that the timing of the first eligibility reporting for financial undertakings is not amended as we propose above, clarification and guidance as to how financial undertakings should approach this would be needed.

In the absence of counterparty data in the first year, the eligibility reporting would be based on estimates such as NACE codes of the principal activity. However, since the regulation excludes double counting and only captures exposures against one of the environmental objectives, it is not clear how banks would report against the non-climate environmental objectives when they will be reporting the eligibility and alignment for climate objectives based on counterparty's reported KPIs. Furthermore, in the absence of data from companies, if eligibility has to be disclosed using internal NACE codes on a voluntary basis, as suggested by FAQs, it is unclear how financial entities would know how to attribute NACEs that are in more than one environmental objective.

We believe that the current text needs clarifying as Article 5(7) of the draft Delegated Regulation provides that financial undertakings shall disclose eligibility and qualitative information "from 1 January 2024 until 31 December 2024". However, in the paragraph that immediately follows, the KPIs and other disclosures apply from 1 January 2026. We assume that Article 5(7) should apply "from 1 January 2024 until 31 December 2025" and that this should be corrected.

#### Association for Financial Markets in Europe

London Office: 39<sup>th</sup> Floor, 25 Canada Square, London E14 5LQ, United Kingdom T: +44 (0)20 3828 2700

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 883 5540

Frankfurt Office: Neue Mainzer Straße 75, 60311 Frankfurt am Main T: +49 (0)69 710 456 660

[www.afme.eu](http://www.afme.eu)

It would also be helpful if the Commission could confirm the timing for the proposed eligibility reporting for financial undertakings and its intended application timeline. Below is our understanding but it would be helpful for this to be clearly articulated to firms:

- For the current Taxonomy, which covers climate change mitigation and adaptation for certain economic activities, we understand that there is no change to timelines for reporting (i.e., financial undertakings must disclose Taxonomy-eligibility in 2023 and produce Taxonomy alignment reports from 2024);
- With respect to the new economic activities that are being added to the current climate change mitigation and adaptation objectives, financial undertakings are only expected to disclose eligibility and qualitative info until end-2025 for those new economic activities and then alignment from 2026 (assuming as above that the current drafting is incorrect); and
- With respect to the new objectives, financial undertakings are expected to disclose eligibility and qualitative information until the end 2025 for those new objectives and then alignment from 2026 (assuming as above that the current drafting is incorrect).

## **2. Reporting on specialized lending exposures should be clarified.**

For Loans & Advances GAR calculation, credit institutions shall consider the gross carrying amount of the specialised lending exposures to the non-financial undertaking to the extent and proportion that they finance a taxonomy-aligned economic activity. According to the amendment proposed by the Commission, “Project finance” is replaced with “specialized lending”, referring to the definition in Art. 147 (8) of Regulation (EU) 575/2013 which includes the definition of Special Purpose Vehicles (SPVs). The assessment of whether that requirement has been met shall be based on information provided by the counterparty on the project or activities to which the proceeds will be applied. Credit institutions shall provide information on the type of economic activity that is financed and double counting shall not be allowed. Where the same specialised lending exposure is relevant for two environmental objectives, credit institutions shall allocate it to the most relevant objective.

Many dedicated deals with “known use of proceeds” are conducted with newly created vehicle (e.g., SPV) that by nature do not satisfy the NFRD criteria. We request that Commission clarify the inclusion of SPV structured financing (including project finance) in GAR numerator in case of dedicated financing with “known use of proceeds” towards a newly created vehicle (e.g., SPV), after verification of compliance with TSC of the specific economic activity underlying the financing. Moreover, it should be clarified in which row of the template should they be disclosed, as non-NFRD rows are closed for all columns except for carrying amount. We are of the view that a use-of-proceeds financing, granted to SPV controlled by NFRD-company or SPV not controlled by NFRD-company, with Taxonomy activities (e.g., wind parks), should be considered eligible/aligned.

## **3. The reporting templates should be consistent with the DAs’ requirements and wording.**

We note that under Article 7(3) of Disclosure Delegated Act “Exposures to undertakings that are not obliged to publish non-financial information pursuant to Article 19a or 29a of Directive 2013/34/EU shall be excluded from the numerator of key performance indicators of financial undertakings.” However, the template 1 related

to Assets for Calculation of GAR does not include a separate line item or category for financial undertakings not subject to NFRD disclosure obligations under the category" Other assets excluded from the numerator for GAR calculation (covered in the denominator)"

**We request that the commission clarifies reporting for these exposures.** Until further guidance is received banks will be forced to report these exposures within the same lines as non-financial undertakings not subject to NFRD and make this clear in a footnote or narrative.

We also note that column (a) of template 1 requires the Total Gross Carrying Amount to be reported. By definition, this would not include for example impairment allowances. However, row 63 of template 1 refers to the total amount as 'Total Assets'. Is the expectation that 'Total Assets' on Row 63 should agree to the reported FINREP balance sheet? If this is the case, the amount to be reported in Column (a) would need to be the Net Carrying amount and not the Gross Carrying amount.

We also note that the following disclosure items should better reflect the regulatory text and use terminology consistently and in line with accounting definitions:

- **Motor vehicles** vs. cars used interchangeably between Annex V and Annex VI. In the Climate DA, Motor vehicles are defined to include other types of vehicle so suggest to stay with that terminology
- **Other Assets:** this terminology has a specific accounting definition and should not be used as a generic phrase / sub-heading e.g. within line 32 of template 1 of Annex VI which captures balances such as loan exposures, derivatives, on demand interbank loans, cash and cash-related assets, and other assets.
- **Flow of financial guarantees and AUM:** requested in Annex V regulatory text but not included in the Annex VI templates.
- **Mortgages:** The Disclosures DA and templates indicate that mortgages (Activity: Acquisition and ownership of buildings) may only ever be considered towards the environmental objective of Climate Change Mitigation, however the Climate Delegated Act and Taxonomy Compass show that the same activity may also be considered for the environmental objective of Climate Change Adaptation.
  - **Mortgages DNSH, MSS:** To assess the Taxonomy alignment of mortgages, it is not realistic that a credit institution would have the expertise and data to assess DNSH and MSS criteria, which we recommend should be removed or introduced instead within the EPBD, such that information appears on the EPC.
- **Nuclear & Gas:** we ask the Commission to consider whether the templates should be updated to include the four new environmental objectives for which TSCs are being proposed, and whether these templates should be duplicated based on Turnover & CapEx KPIs.

For template 2 on the GAR sector information; we ask the Commission to clarify that the expectation is to break down exposures based upon the principal activity of the counterparty as per currently held NACE codes, filtered for sectors covered by the Taxonomy, instead of the principal Taxonomy eligible activities as per counterparty disclosure (which may not be the principal activity of the counterparty). For example, an oil and gas company who has begun to invest in renewables should be classified according to the principal activity being "B.6.10 Extraction of crude petroleum", instead of their main revenue generating Taxonomy eligible activity being "4.3 Electricity generation from wind power".

We also note that exposures to central governments, central banks and supranational issuers shall be excluded from the calculation of the numerator and denominator of key performance indicators of financial undertakings. However, it is unclear what is the Regulation's definition of supranational issuers and in which row of Template 1 of Annex VI of DDA 2021-2178 should this be reported (e.g., Row 51, 52).

Finally, for each of the templates included within Annex VI, we ask the Commission to clarify the timeline for disclosure. In particular for template 4 GAR KPI flow, that this is not required to be disclosed until 2025, based upon 2024 vs. 2023 data.

Due to the technical nature of the amendments, and the Commission seeking feedback on corrections of technical mistakes in Climate Delegated Act and Article 8 Delegated Act, we remain available to facilitate a discussion with our members.

\*\*\*

## Contacts

Oliver Moullin, Managing Director, Sustainable Finance and General Counsel

[Oliver.Moullin@afme.eu](mailto:Oliver.Moullin@afme.eu)

Giorgio Botta, Manager, Sustainable Finance

[Giorgio.Botta@afme.eu](mailto:Giorgio.Botta@afme.eu)

Arshdip Singh, Graduate, Sustainable Finance

[Arshdip.Singh@afme.eu](mailto:Arshdip.Singh@afme.eu)

## About AFME

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.<sup>1</sup>

---

<sup>1</sup> AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.