

SUMMARY OF THE PUBLIC FEEDBACK ON THE DRAFT DELEGATED ACT

[Excerpt from the Explanatory Memorandum of the Delegated Act on climate change mitigation and adaptation - CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT]

In accordance with the Better Regulation rules, the draft delegated act was published on the Better Regulation portal for a **four-week feedback period between 20 November and 18 December 2020**. In total, 46591 stakeholders provided feedback¹. The draft delegated act was also discussed with the Platform on Sustainable Finance on 4 December 2020. Furthermore, the draft delegated act was presented to and discussed with the Member States' experts and observers from the European Parliament, at several meetings of the Member States Expert Group on 10 December 2020, on 26 January 2021, 26 February 2021 and 24 March 2021.

Overall, the large volume of feedback received confirmed the importance of the Taxonomy as a tool to help finance flow towards more sustainable economic activities and accelerate the transition under the European Green Deal. Several concerns were also expressed, with a large polarisation between those proposing more or less ambitious criteria. Some considered the calibration of some of the criteria for various activities as insufficiently ambitious. On the other hand, others considered some of the criteria as too ambitious, complex or narrow. Concerns were also raised as to the potential implications for stakeholders whose activities would not qualify under the Taxonomy as environmentally sustainable. Many also focused on usability of the criteria and technical clarifications.

Based on careful examination of the feedback received, a targeted recalibration of some of the criteria, as well as other improvements and modifications, have been made throughout the Delegated Regulation. These concern numerous technical clarifications and simplification of the criteria, greater consistency with existing sectoral legislation, including references to upcoming reviews, and relevant national requirements to reflect subsidiarity, as well as improved coherence in the definition and presentation of various activities, including those labelled as transitional and enabling activities.

The energy sector criteria were the most commented on, followed by agriculture and transport. Many comments were also related to the criteria for forestry, manufacturing, and buildings. A complete summary of the feedback and main changes across different sectors is set out in Annex 2.10 of the impact assessment accompanying this Delegated Regulation.

Agriculture

It was decided to remove the criteria on this occasion for agriculture activities from the Delegated Regulation pending further progress on the negotiations underway on the Common agricultural policy (CAP), and in order to achieve greater coherence across the different instruments to achieve the environmental and climate ambitions of the Green Deal.

Forestry

Based on the feedback provided, changes were introduced to reduce complexity and burdens notably for smaller forest holdings, extend the timeframe for demonstrating the climate benefits

¹ All comments received are available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12302-Climate-change-mitigation-and-adaptation-taxonomy/feedback?p_id=16015203.

of forestry, rely more on existing sustainability criteria under the recast Renewable Energy Directive, and clarify key concepts designed to ensure a substantial environmental contribution. Future developments in sustainability criteria for forestry will be taken into account in revisions of this Delegated Regulation.

Manufacturing

Feedback mostly focused on the criteria for the manufacture of iron and steel, aluminium, plastics, chemicals and other low carbon technologies. Notably, upon reflection, the use of EU emissions trading scheme (ETS) benchmarks was confirmed, in the absence of objective alternatives to ensure environmental ambition. Future revisions of the criteria will examine whether the technical screening criteria should be based on other relevant standards, considering life-cycle emissions and technological developments. Adjustments were introduced, for example, to better recognise different manufacturing processes and delineate distinct activities, widen the scope of some activities e.g. revise the emissions threshold for the production of hydrogen and allow sustainably sourced food and feed crops in the manufacturing of plastics and organic chemicals.

Energy

The cross-cutting 100gCO₂e/kWh lifecycle emissions threshold for energy activities was maintained, except where evidence clearly shows relevant technologies to be well below this level. Bioenergy is no longer labelled as transitional and the criteria for bioenergy were aligned more closely with applicable EU legislation, while those of hydropower were made more context-specific and likewise more aligned with existing EU law.

Transport

Based on the wide range and diversity of the feedback, changes were mostly technical. For example, electrified rail and zero tailpipe emission transport is no longer labelled “transitional”, the inclusion of waterway infrastructure in the climate change adaptation annex is broadened, the criteria for DNSH to biodiversity for maritime transport activities are improved, and the criteria for interurban coaches were adjusted to reflect its role in modal shift.

Buildings

Based on the feedback provided, notably on the acquisition and ownership of buildings, it was decided to follow the TEG proposal and include also the buildings within the top 15% in terms of energy performance on a national or regional scale. Technical adjustments were also introduced e.g. for water consumption criteria and energy efficiency equipment of buildings.

Horizontal issue – use of criteria to determine what counts as taxonomy-aligned

A key concern in the feedback involved how and when economic operators can count their activities as taxonomy-aligned. This also springs from the need to clarify how the taxonomy framework and the broader sustainable finance framework could enable financing the transition of companies at different starting points, a topic addressed further in the Communication accompanying the Delegated Regulation.

Article 8 of the Taxonomy Regulation requires undertakings subject to the Non-Financial Reporting Directive (NFRD) to disclose information on how and to what extent their activities are associated with environmentally sustainable economic activities according to the technical screening criteria. Paragraph 2 of Article 8 specifies that in particular non-financial undertakings

shall disclose the proportion of their turnover, capital expenditures (capex) and operational expenditures (opex) associated with activities included in the taxonomy. Paragraph 4 of Article 8 empowers the Commission to adopt a delegated act to specify the content, presentation and methodology of the information to be disclosed by non-financial undertakings and to define equivalent and appropriate information requirements for financial undertakings subject to the NFRD. The forthcoming delegated act under Article 8(4) will therefore set out when and how relevant turnover and expenditures associated with activities included in this Delegated Regulation count as taxonomy-aligned. The following paragraphs provide an indicative explanation, with some examples, but do not concern changes made to the technical screening criteria in this Delegated Regulation as a result of the feedback.

When an activity complies with the technical screening criteria in this Delegated Regulation, the undertaking should be able to count as taxonomy-aligned both the turnover from these activities as well as any capital expenditure (and specific operational expenditure) related to expanding these activities and maintaining these activities as taxonomy-aligned. Thus, an undertaking could count turnover from the sale of a taxonomy-aligned product or service, as well as expenditure related to the maintenance and/or expansion of the service or production process as taxonomy-aligned. However, for the environmental objective of climate change adaptation (unless for enabling activities), only expenditures related to making an activity climate-resilient should count, not the turnover associated with that activity, unless it also qualifies as environmentally sustainable for its substantial contribution to another environmental objective. This is because allowing for turnover from an entire “adapted” activity to count without including any further criteria would be misleading: once the “substantial contribution” to adaptation of an activity is made (i.e. it has been made resilient to climate change), in most cases it is unlikely that the turnover associated with that activity (which may or may not have environmental benefits) would count as green. Thus, for example, a manufacturing plant which does not comply with the criteria for substantial contribution to climate change mitigation but is being renovated to improve its resilience against climate change could count expenditure linked to that renovation but not the turnover linked to its activity as a manufacturer, even after the plant has been made climate-resilient.

Further, when an undertaking performing an activity which does not yet comply with the technical screening criteria for substantial contribution sets out an investment plan to achieve compliance with the criteria over a defined time period, the undertaking could count the expenditure (capex and relevant opex) related to the improvements in the environmental performance of the activity set out in the plan as Taxonomy-aligned. This helps undertakings communicate credibly to investors and lenders regarding their plans to reach taxonomy-alignment, allowing for the recognition of efforts aimed at upgrading activities from their current environmental performance to the level of performance set by taxonomy criteria. Until an activity complies with the criteria, however, the turnover from the activity cannot be counted as taxonomy-aligned. Such turnover could only be counted once the activity complies with the criteria, that is once the plan has been successfully implemented. Finally, undertakings active in sectors that are not included in taxonomy could also disclose as taxonomy-aligned their expenditure in the purchase of the outputs of other activities that are taxonomy-aligned. Thus any undertaking whose activities are not covered by the taxonomy could count and disclose as taxonomy-aligned relevant expenditures in, for example, the purchase and installation of solar panels, energy efficient heating systems or energy efficient windows from manufacturers that comply with taxonomy criteria for these activities.