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Berlin, 21 September 2021

CC: Mr Nathan Fabian, Chairman, Platform on Sustainable Finance, c/o DG FISMA

Submission of requests regarding disclosures to be made according to the EU Taxonomy-Regulation

Dear Mr Berrigan, dear Mr Špolc

On behalf of the Accounting Standards Committee of Germany (ASCG) we are writing to submit a number of application issues arising from the requirements laid down in the Delegated Acts on the EU Taxonomy-Regulation (2020/852) for clarification by the European Commission and the Platform on Sustainable Finance. This letter is addressed to both, the Directorate General for Financial Stability, Financial Services & Capital Markets Union and the Platform on Sustainable Finance, since the latter is mandated by Article 20 paragraph 2 point c of the EU Taxonomy-Regulation to “assist the Commission in analysing requests from stakeholders”.

In our comment letter of 2 June 2021 on the draft Delegated Regulation of the European Commission regarding Article 8 of the EU Taxonomy-Regulation (Ares(2021)3080956) we noted that the requirements as worded in this delegated act lack in some parts a sufficient consideration of the companies’ perspective, as a number of constituents had brought to our attention previously. Therefore, we had announced that we would continue performing outreach to and collecting feedback from German companies in order to submit application issues to the Commission and the Platform for due consideration.

Although Article 8 of the EU Taxonomy-Regulation on “transparency of undertakings in non-financial statements” form the basis of our discussion, many of the issues discussed by our constituents are strongly linked to the assessments preceding the ultimate reporting, i.e. the application of the Technical Screening Criteria on the Articles 10 and 11 of the EU Taxonomy-Regulation. In other words, the reporting on taxonomy eligible (and – later on – taxonomy aligned) activities requires due consideration of the Technical Screening Criteria beforehand. In this regard, the question of whether or not a certain activity is eligible under the current legal text is of high importance, as the companies are required to report on their eligible activities

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including KPIs in the upcoming reporting season (i.e. from January 2022) according to Article 8 of the EU Taxonomy-Regulation.

We have since held several outreach events on this topic and have compiled the first set of essential questions for this submission. The issues are assigned to the sections 'Eligibility', 'Alignment', and 'Reporting'. The submission includes for each issue a brief outline of the problem and one or more possible solutions, including a rationale. Please find the issues in the appendix to this letter.

As we observe that companies are facing further uncertainties regarding other requirements of the Delegated Acts on the EU Taxonomy-Regulation, which are not yet addressed in this submission, the ASCG will continue collecting these to bring them to your attention later this year in a further letter. Moreover, it should be noted that the reporting season will be starting shortly. Therefore, we invite the Commission and the Platform to consider the issues submitted as soon as possible.

If you want to discuss these issues further, please do not hesitate to contact us.

Kind regards

Georg Lanfermann
President

Prof Dr Sven Morich
Vice President



Appendix

EU Taxonomy for Sustainable Activities

Reporting Requirements according to Article 8

Application Issues: Questions & Answers

This document focuses on several important unresolved issues concerning the application of article 8 of the EU Taxonomy Regulation. The issues included in this document result from discussions at the occasion of a number of fora organised by the Accounting Standards Committee of Germany (ASCG) on this subject matter. This is a living document which was not revisited by the ASCG's Technical Committees, and it may be complemented by further materials at a later stage.

This document is intended to help the European Commission and the Platform on Sustainable Finance to issue further guidance; in absence of such guidance this document may provide a reference point for companies applying the EU taxonomy requirements.

Status as of September 2021



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Background to this document

In 2020, the European legislators adopted the EU Taxonomy-Regulation (2020/852) which is a central piece of the European Union's legislation on sustainable finance. The classification system is key for future financing of economic activities of companies in the European Union. The Regulation (2020/852) also foresees in Article 8 a specific reporting requirement by these companies as part of their non-financial statements. This concerns so called taxonomy quotas for taxonomy aligned activities regarding turnover, capital expenditures and operating expenses. Article 8 also includes the possibility for the European Commission to issue a delegated act to further clarify the reporting requirements. The first non-financial statements containing taxonomy information will be due by beginning of 2022 for the financial year 2021.

In July 2021, the European Commission released the final delegated act¹ further detailing the reporting requirements for companies according to Article 8. This Commission Delegated Regulation gives further explanation of the reporting requirements but had been developed in a very short time frame. The Accounting Standards Committee of Germany (ASCG) published a briefing paper summarising the main contents of the regulation. Also, the ASCG commented during the short consultation period of one month pointing particularly to the fact that the delegated act still had not dealt with all important reporting issues.² The delegated act itself foresees inter alia a particular and very detailed reporting format which companies are required to follow. However, it should also be noted that the delegated act also includes some alleviations³ for the first reporting cycle for the year 2022 which allows for the reporting of taxonomy eligible information without the need to already assess taxonomy alignment of the respective economic activities. In addition, the question of eligibility and alignment of an economic activity also requires consideration of the Technical Screening Criteria set out under the Articles 10 and 11 of the Taxonomy-Regulation.⁴ Their interpretation has a direct effect on the presentation of the taxonomy quota according to Article 8.

The following issues concerning the interpretation of the taxonomy reporting requirements have been derived from discussions between DRSC members at the occasion of a series of internal fora over the past months. These issues are presented in a questions and answers format giving also an indication for a potential solution for them. As companies are facing their

¹ Commission Delegated Regulation of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

² ASCG comment letter of 2 June 2021, see

https://www.drsc.de/app/uploads/2021/06/210602_DRSC_SN_Art8-TaxVO_final.pdf.

³ ASCG has conducted in March 2021 a survey among German Dax30 companies which showed difficulties in fully meeting the originally foreseen timelines, see

https://www.drsc.de/app/uploads/2021/04/210412_Bericht-DAX30-TVO-Umsetzung.pdf (April 2021).

⁴ Commission Delegated Regulation of 4.6.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives



first reporting cycle by the beginning of 2022 they focus on particular challenges in this period, e.g. whether an economic activity can be presented as part of eligible activities. Further fora will complement this first set of Q&As and may result into updates of this document.



1 Presentation of an economic activity as eligible under Article 8

1.1 What processes are covered by the notion 'manufacturing'?

Issue	The annexes of the delegated regulation supplementing Regulation (EU) 2020/852 regarding technical screening criteria for climate change mitigation and adaptation contain and describe a number of different economic activities for manufacturing in chapter 3 ' <i>Manufacturing</i> '. However, in most cases the 'Description of the activity' does not address the extent of the process of transformation, also known as vertical integration, for example ' <i>Manufacture of organic basic chemicals</i> ' (Annex 1 No. 3.14 of the delegated regulation supplementing Regulation (EU) 2020/852 regarding technical screening criteria for climate change mitigation and adaptation). In other words, it is unclear as to whether or not the notion 'manufacturing' is meant to be aligned to a certain vertical integration and, if yes, what minimum extent is expected.
Question	What exactly is meant by ' <i>manufacture</i> '? To what extent must a pre-product be processed for this process to be considered 'manufacturing'?
View 1	Only those activities that involve a significant transformation process of pre-products can be considered ' <i>manufacture</i> '. The significance of the transformation process is based on the level of changes made to the pre-product. As – for example – filling/bottling of a pre-product does not change its characteristics, this activity shall not be considered as ' <i>manufacturing</i> '.
View 2	Even minor activities may be considered ' <i>manufacturing</i> '. This includes, for example, mixing, assembly, dilution, filling/bottling as these activities involve a significant change in a pre-product's characteristics. For example, the change in the pre-product by filling/bottling is characterised by portioning the pre-product as required by users/customers.
Tentative solution as expressed in ASCG fora	<p>View 1</p> <p>The notion 'Manufacturing' is to be interpreted narrowly, i.e. for a process to be considered manufacturing the characteristics of a pre-product have to undergo a transformation or change. Filling or bottling mean changing the nature of a product's storage without changing the product's characteristics or features.</p>



1.2 Is the activity “manufacture of passenger cars with combustion engine” eligible?

Issue	<p>Art. 1 para. 5 of the delegated regulation supplementing Regulation (EU) 2020/852 specifying the content and presentation of information to be disclosed contains a definition of taxonomy-eligible economic activities. According to this definition a taxonomy-eligible economic activity is “<i>an economic activity that is described in the delegated acts adopted pursuant to Article 10(3), Article 11(3), Article 12(2), Article 13(2), Article 14(2), and Article 15(2), of Regulation (EU) 2020/852, irrespective of whether that economic activity meets any or all of the technical screening criteria laid down in those delegated acts</i>”.</p> <p>The production of passenger cars is an activity addressed by section 3.3 (No. 3.3 of the two annexes of the delegated regulation supplementing Regulation (EU) 2020/852 regarding technical screening criteria for climate change mitigation and adaptation). In Annex I the activity is described as “<i>manufacture, repair, maintenance, retrofitting, repurposing and upgrade of low carbon transport vehicles, rolling stock and vessels.</i>” The regulation states further that the economic activities in this category “<i>could be associated with several NACE codes, in particular C29.1, C30.1, C30.2, C30.9, C33.15, C33.17 in accordance with the statistical classification of economic activities established by Regulation (EC) No 1893/2006.</i>” However, the text in Annex I (on “climate change mitigation”) is silent on what the notion ‘low-carbon’ means.</p> <p>Section 3.3 of Annex II (on “climate change adaption”) describes the activity more detailed. In particular, the description contains a subparagraph that precludes passenger cars with specific emissions of CO₂ higher than 50g per kilometre from being considered low carbon. (From 2026 only zero-emission cars will be considered low carbon.)</p>
Question	<p>Is the production of passenger cars with internal combustion engine a taxonomy-eligible economic activity considering the environmental objective ‘climate change mitigation’ in case of CO₂ emissions higher than 50g per kilometre?</p>
View 1	<p>No. Passenger cars with internal combustion engine and CO₂ emissions above the 50g per kilometre threshold cannot be ‘low carbon’ per se.</p>
View 2	<p>Yes. The description of activity in section 3.3 of Annex I contains an explicit reference to the NACE code C29.1. The NACE code C29.1 refers to ‘Manufacture of motor vehicles’. As section 3.3. does not contain additional explanation on what low carbon means, the activity is not precluded from being considered low carbon.</p> <p>The fact that passenger cars with internal combustion engine and CO₂ emissions higher than 50g per kilometre are not taxonomy-aligned (as per the Technical Screening Criteria) does not play any role on the eligibility.</p>
Tentative solution as expressed in ASCG fora	<p>View 2.</p> <p>As the legal text (in Annex I) describes the activity by referring to the ‘manufacture of motor vehicles’ without adding a certain condition, the emissions are not relevant for determining the taxonomy eligibility for the environmental objective ‘climate change mitigation’. This view is in line with the European Commission’s approach of</p>



first identifying the sectors that generate the greatest carbon emissions. Then, in a second step, these sectors are considered in terms of their sustainability.

1.3 Eligibility of activities performed by suppliers for vehicle manufacturers

Issue	<p>The undertaking manufactures solutions for vehicles, machinery, traffic, and transportation. Most of the solutions are supplied to vehicle manufacturers, some to end-customers. These solutions do neither comprise the engine of a vehicle nor components of it.</p> <p>The customers of the undertaking produce and sell both zero tailpipe emissions vehicles (ZTEV) as well as vehicles with internal combustion engines with a certain level of carbon emissions.</p> <p>The undertaking is able to identify the solutions that go into a ZTEV according to the definition in the taxonomy regulation under chapter 3.6 of Annex 1.</p>
Question	<p>Are the activities of suppliers for vehicle manufacturers in general eligible under the chapter “3.3 Manufacture of low carbon technologies for transport” or “3.6 Manufacture of other low carbon technologies”?</p>
View 1	<p>Chapter 3.3 comprises the activities of a supplier for vehicle manufacturers.</p>
View 2	<p>Chapter 3.3 does not comprise the activities of a supplier for vehicle manufacturers but instead chapter 3.6 comprises these activities.</p>
Tentative solution as expressed in ASCG fora	<p>View 2.</p> <p>Although the draft Annex I issued by the Commission on 20 November 2020 [Ref. Ares(2020)6979284 - 20/11/2020] included the production of key components according to the wording section 3.3 of this draft, the manufacture of key components is not mentioned in the final version anymore.</p> <p>Therefore, manufacturing activities that clearly aim “at substantial GHG emission reductions in other sectors of the economy” (as stipulated in section 3.6 of Annex I), are eligible under 3.6 instead and they are aligned if they meet the defined technical screening criteria (especially the proof of “substantial life-cycle GHG emission savings compared to the best performing alternative technology/product/solution available on the market”.)</p>



2 Presentation of an economic activity as aligned under Article 8

2.1 Compliance with national requirements of non-EU jurisdictions

Issue	<p>The Technical Screening Criteria very often refer to other requirements or guidelines. For example, the Technical Screening Criteria for the activity 'Afforestation' in section 1.1 of Annex I of delegated regulation supplementing Regulation (EU) 2020/852 specifying the content and presentation of information to be disclosed refer to the Commission Delegated Regulation (EU) No 807/2014 as well as to the Pan-European Guidelines for Afforestation and Reforestation with a special focus on the provisions of the UNFCCC.</p> <p>Many requirements and guidelines referred to by the Technical Screening Criteria do not apply in Non-EU jurisdictions. However, many companies covered by the EU-Taxonomy Regulation are operating globally, i.e. via subsidiaries in Non-EU countries. Most of these countries have their own specific requirements and guidelines addressing the same or comparable matters, which may be equivalent to those referred to in the Technical Screening Criteria. Application of the Technical Screening Criteria in addition to the local requirements in these cases would be inefficient and create the risk of establishing double standards.</p>
Question	<p>How can a group's activities that are carried out in jurisdictions other than the EU be assessed efficiently for compliance with the Technical Screening Criteria by reference to the local requirements or guidelines?</p>
View 1	<p>The European Commission will develop principles regarding the equivalence, i.e. whether or not certain local requirements and guidelines are in line with requirements and guidelines referred to in the Technical Screening Criteria.</p>
View 2	<p>Since national requirements serve to protect people and the environment, operating in line with these requirements can be considered as "no significant harm" and meeting of the DNSH Criteria where the requirements refer to the respective objective of the EU Taxonomy. In all other cases, the undertaking needs to judge whether a national requirement applicable in a jurisdiction other than the EU is equivalent to an EU requirement referred to in the Technical Screening Criteria.</p>
Tentative solution as expressed in ASCG fora	View 2.



2.2 Are the minimum safeguards met though group-wide and global commitments and systems?

Issue	<p>Article 18 of the Regulation 2020/852 (Taxonomy-Regulation) defines the minimum safeguards as “procedures implemented by an undertaking that is carrying out an economic activity to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights”. In other word, the aforementioned procedures are designed to ensure compliance of company behaviour with certain standards on Human Rights and labour.</p> <p>Most entities have committed to adhere to these standards and provide information about their compliance in their management reports. This includes – for example – disclosure on entity specific guidelines approved by management, management systems implemented, and certification of these.</p> <p>The Taxonomy-Regulation does not contain guidance on the reliability of assessments made by the entity. Reliability of information is often confirmed by an external audit.</p>
Question	<p>Can minimum safeguards (according to Article 18 of the aforementioned regulation) in a reporting entity’s (international) subsidiaries, branches etc. considered to be met if the entity’s existing commitment and procedures as disclosed in its management reports have been audited externally? Or does the Taxonomy-regulation trigger additional external (on-site) audits in order to meet the minimum safeguards conditions?</p>
View 1	<p>The minimum safeguards shall be considered met if they have been audited when implemented.</p>
View 2	<p>The level of aspiration underlying the Taxonomy-Regulation requires additional regular on-site audits.</p>
Tentative solution as expressed in ASCG fora	<p>View 1.</p> <p>The Taxonomy-Regulation does not contain any requirement to have the compliance with the minimum safeguards audited. Article 8 of the Taxonomy-Regulation requires entities that are subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU to include in its non-financial statement information on how and to what extent the undertaking’s activities are associated with economic activities that qualify as environmentally sustainable under the Taxonomy-Regulation. In addition, the Directive 2013/34/EU does not require non-financial statements to be subject to a statutory audit. Concluding, a requirement to have compliance with the minimum conditions audited cannot be derived from the text of the legislation.</p>

2.3 How shall the best performing alternative be identified?

Issue	<p>Annex I of the Delegated Regulation supplementing Regulation (EU) 2020/852 by establishing the technical screening criteria addresses the criteria for the activity “Manufacture of other low carbon technologies” in section 3.6. A significant criterion for an activity under 3.6 to be classified sustainable is described by the condition “<i>The economic activity manufactures technologies that are aimed at and demonstrate substantial life-cycle GHG emission savings compared to the <u>best performing alternative technology/product/solution</u> available on the market.</i>” (emphasis added)</p> <p>Thus, the economic activity under review can be classified sustainable, i.e. taxonomy-aligned, only if its emission savings are at a level higher than the savings achieved by the best performing alternative technology/product/solution. In addition, the economic activity under review must aim at achieving this relative savings level. Concluding, for a reporting entity to assess its activity 3.6 it has to identify (1) the best performing alternative technology/product/solution, and (2) the life-cycle GHG emissions of this alternative technology/product/solution.</p> <p>However, the regulation does not contain any guidance or requirement on how to identify the best performing alternative technology/product/solution. In addition, even if the best performing alternative technology/product/solution can be identified, in the very most cases the life-cycle GHG emission savings of this alternative technology/product/solution is unknown to the reporting entity.</p>
Question	How shall (1) the best performing alternative technology/product/solution and (2) its life-cycle GHG emission savings be identified?
View 1	The European Commission will develop detailed guidance and criteria on this issue.
View 2	Both the identification of the (1) the best performing alternative technology/product/solution, and (2) the life-cycle GHG emissions of this alternative technology/product/solution is based on judgement by the reporting entity’s management.
Tentative solution as expressed in ASCG fora	<p>View 2.</p> <p>The Delegated Regulation supplementing Regulation (EU) 2020/852 by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU contains a requirement in Annex I according to which non-financial undertakings shall explain “how they assessed compliance with the criteria set out in Article 3 of Regulation (EU) 2020/852 and the associated technical screening criteria.” The wording of this disclosure requirement contains the notion “to assess compliance” which indicates a certain level of judgement. Even if the European Commission plans to develop guidance on this issue, the answer whether or not certain criteria are met must be based on judgement by the entities’ management.</p>



3 Other issues concerning the reporting under Article 8

3.1 [Submission to come]

3.2 [Submission to come]