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**Executive Committee**

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Berlin, 25 October 2021

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

## **2<sup>nd</sup> 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 further 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.

We refer to our letter sent on 21 September 2021: In this letter we had brought the first set of application issues to your attention, as presented in the appendix to the letter. Furthermore, we had announced to continue collecting such application issues to address these for your consideration. In addition, the letter contained further explanations that are not reproduced here.

Furthermore, we would like to bring an additional aspect raised in our fora to your attention: We note that constituents increasingly expressed significant concerns regarding the compatibility of the reports to be prepared from 2022. They repeatedly reasoned that the guidance contained in the Delegated Acts on the EU Taxonomy Regulation is not considered lacking proper clarity, and will, therefore, result in significant diversity in application. In other words, there is a risk evolving that reports will not in every case contain the disclosures the Commission considers necessary for supporting the EU's political goals, i.e. redirecting capital flows to projects and companies that are considered sustainable.

The document in the appendix 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.

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We would like to point out that the ASCG fora do not involve a formal approval process and that the tentative solutions on the issues presented in the appendix to this letter are not the result of such a process. Therefore, these tentative solutions shall not be considered as the view of the German constituency as a whole. In addition, the tentative solutions do neither reflect the position of the ASCG's technical committees nor the thoughts of the ASCG secretariat. Potential future positions of the ASCG, if any, may differ from the tentative solutions expressed in the ASCG fora.

Please find the issues in the appendix to this letter; those not included in the appendix to our letter of 27 September are flagged as "NEW".

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*

## **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.*

*The tentative solutions to the issues shall not be considered as the view of German constituency as a whole. In addition, the tentative solutions do neither reflect the position of the ASCG's technical committees nor the thoughts of the ASCG secretariat. Potential future positions of the ASCG, if any, may differ from the tentative solutions expressed in the ASCG fora.*

*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 October 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 act<sup>1</sup> 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.<sup>2</sup> 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 alleviations<sup>3</sup> 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.<sup>4</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> ASCG comment letter of 2 June 2021, see

[https://www.drsc.de/app/uploads/2021/06/210602\\_DRSC\\_SN\\_Art8-TaxVO\\_final.pdf](https://www.drsc.de/app/uploads/2021/06/210602_DRSC_SN_Art8-TaxVO_final.pdf).

<sup>3</sup> 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](https://www.drsc.de/app/uploads/2021/04/210412_Bericht-DAX30-TVO-Umsetzung.pdf) (April 2021).

<sup>4</sup> 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'?

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|---|---|
| <b>Issue</b>  | 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. |
| <b>Question</b>                                     | What exactly is meant by ' <i>manufacture</i> '? To what extent must a pre-product be processed for this process to be considered 'manufacturing'?  |
| <b>View 1</b>                                       | 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> '.   |
| <b>View 2</b>                                       | 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.   |
| <b>Tentative solution as expressed in ASCG fora</b> | <p><b>View 1</b></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?

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|---|--|
| <b>Issue</b>  | <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 CO<sub>2</sub> higher than 50g per kilometre from being considered low carbon. (From 2026 only zero-emission cars will be considered low carbon.)</p> |
| <b>Question</b>                                     | <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 CO<sub>2</sub> emissions higher than 50g per kilometre?</p>  |
| <b>View 1</b>                                       | <p>No. Passenger cars with internal combustion engine and CO<sub>2</sub> emissions above the 50g per kilometre threshold cannot be ‘low carbon’ per se.</p>  |
| <b>View 2</b>                                       | <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 CO<sub>2</sub> 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>   |
| <b>Tentative solution as expressed in ASCG fora</b> | <p><b>View 2.</b></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

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|---|--|
| <b>Issue</b>  | <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>   |
| <b>Question</b>                                     | <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>   |
| <b>View 1</b>                                       | <p>Chapter 3.3 comprises the activities of a supplier for vehicle manufacturers.</p>   |
| <b>View 2</b>                                       | <p>Chapter 3.3 does not comprise the activities of a supplier for vehicle manufacturers but instead chapter 3.6 comprises these activities.</p>  |
| <b>Tentative solution as expressed in ASCG fora</b> | <p><b>View 2.</b></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

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|---|--|
| <b>Issue</b>  | <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> |
| <b>Question</b>                                     | <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>   |
| <b>View 1</b>                                       | <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>  |
| <b>View 2</b>                                       | <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>  |
| <b>Tentative solution as expressed in ASCG fora</b> | <b>View 2.</b>   |



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

|   |  |
|---|--|
| <b>Issue</b>  | <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> |
| <b>Question</b>                                     | <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>   |
| <b>View 1</b>                                       | <p>The minimum safeguards shall be considered met if they have been audited when implemented.</p>  |
| <b>View 2</b>                                       | <p>The level of aspiration underlying the Taxonomy-Regulation requires additional regular on-site audits.</p>  |
| <b>Tentative solution as expressed in ASCG fora</b> | <p><b>View 1.</b></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?

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|---|---|
| <b>Issue</b>  | <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> |
| <b>Question</b>                                     | How shall (1) the best performing alternative technology/product/solution and (2) its life-cycle GHG emission savings be identified?  |
| <b>View 1</b>                                       | The European Commission will develop detailed guidance and criteria on this issue.  |
| <b>View 2</b>                                       | 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.  |
| <b>Tentative solution as expressed in ASCG fora</b> | <p><b>View 2.</b></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 NEW: How will taxonomy-aligned group internal revenues be disclosed?

##### Issue

According to Article 8 paragraph 2 point a of the of the Taxonomy Regulation (EU/2020/852) companies are required to disclose the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable. In Annex I chapter 1.1.1. of the Commission Delegated Regulation as of 6 July 2021 supplementing the Taxonomy Regulation (Commission Delegated Regulation on Art. 8) the term turnover is defined by reference to Article 2 point (5) of the Accounting Directive (EU/2013/34) and by paragraph 82 point (a) of IAS 1 Presentation of Financial Statements. (This paragraph requires revenue to be presented as a separate line item in the statement of profit or loss.) Furthermore, the Commission Delegated Regulation on Article 8 requires companies to present the KPIs by using the reporting templates as shown in Annex II of that Commission Delegated Regulation on Article 8. Furthermore, the relevant reporting entity is that entity which prepares and publishes a non-financial statement according to Article 8 paragraph 1 of the Taxonomy Regulation.

In addition, chapter 1.2.3.1. of Annex I of the Commission Delegated Regulation on Article 8 requires companies to provide contextual information about amounts of turnover related to taxonomy-aligned activities pursued of own internal consumption. The Commission Delegated Regulation on Article 8 is, however, silent on the presentation of that information, in particular with regard to circumstances in which the internal consumption is of fundamental significance related to nature and amounts.

##### Fact pattern and discussion

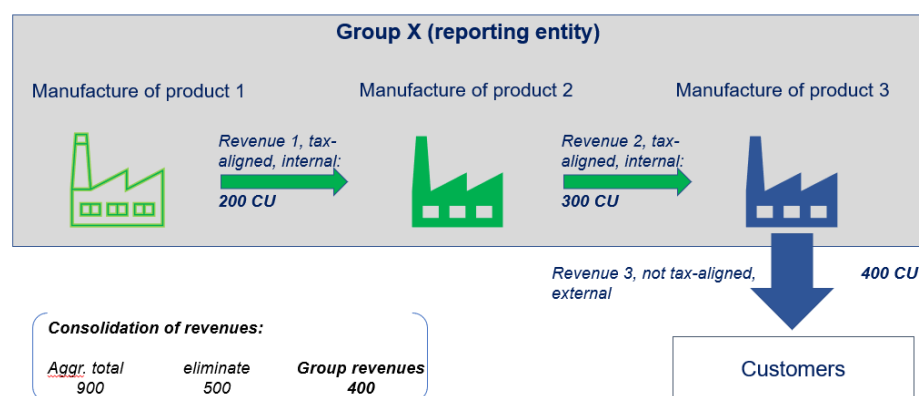
The reporting entity is a group X comprising a parent company and a number of several subsidiaries. The group is covering a significant part of its value chain by the activities of its subsidiaries. Subsidiary 1 manufactures the product 1. This product is taxonomy-aligned according to the Commission Technical Screening Criteria.<sup>5</sup> Subsidiary 1 sells this product to subsidiary 2 exclusively. Subsidiary 2 uses this product as an input for a process resulting in product 2 that is also taxonomy-aligned according to the Commission Technical Screening Criteria. The subsidiary 2 sell the product 2 to subsidiary 3 exclusively that uses the product 2 as an input for manufacturing product 3. This product is sold to the group's customer and does not qualify for being considered economically sustainable as per the Technical Screening Criteria.

The chart below presents the flow of products and contains figures for revenues made internally (i.e. between subsidiaries) and externally (to the group's customers that are all not part of the group). The amounts mentioned shall indicate that the transactions made internally involve significant amounts of revenue. These amounts are, however, not presented on the face of the reporting entity's (=group)

<sup>5</sup> As set out in the Commission Delegated Regulation as of 4 June 2021 supplementing the Taxonomy Regulation 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.



statement of profit or loss as group internal transactions are eliminated in full for purposes of preparing the group financial statements according to paragraph B86 of IFRS 10 *Consolidated Financial Statements*. Concluding, only the (non-taxonomy-aligned) revenues incurred from transactions with the group's customers will be subject to the disclosures in the reporting template, regardless of significant taxonomy-aligned revenues incurred internally. This may, however, create a misleading picture of the sustainability of the group's activities because the internal revenue amounting to 500 currency units (CU, see chart below) would only be presented as economically sustainable in case it had been incurred through the sale to external customers instead of internal ones.



**Question** How may group X report in accordance with the requirements of the Taxonomy Regulation and the supplementing delegated acts on their significant group taxonomy-aligned internal revenues? More precisely, may group X disclose their group taxonomy-aligned internal revenues by using the reporting template on the basis of chapter 1.2.3.1. of the Commission Delegated Regulation on Article 8 (regarding amounts of turnover related to taxonomy-aligned activities pursued of own internal consumption) containing unconsolidated revenue figures? This unconsolidated reporting template would be disclosed in addition to the reporting template containing consolidated group figures. Moreover, a reconciliation from unconsolidated to consolidated amounts might accompany the disclosures.

**View 1** **Yes.**

Company X incurs a significant amount of group internal revenues that are taxonomy-aligned but not presented on the face of the (consolidated) group statement of profit or loss due to their internal nature. In addition to the reporting template containing consolidated group figures, the company presents in equal prominence a further reporting template. This further template contains unconsolidated revenue figures to depict the company's taxonomy-aligned revenues and quotas that otherwise would be presented in the consolidated reporting template, hadn't these revenues been incurred from transactions between group companies.

**View 2** **No.**

The requirements set out in the Taxonomy Regulation and the supplementing delegated acts preclude a reporting entity from disclosing a second reporting template that contains turnover and turnover KPIs based on unconsolidated



amounts and that is presented in a prominence equal to the reporting template required by the Commission to contain consolidated amounts.

**Tentative solution as expressed in ASCG fora**

**View 1.**

Basically, reporting entities are allowed to present additional disclosures as long as these are considered useful from the users' perspective. Notwithstanding this, chapter 1.2.3.1. of the Commission Delegated Regulation on Article 8 requires companies to report on "own internal consumption" in addition. Any disclosure on such internal consumption will involve reporting on internal revenues. As the delegated regulation is silent on the presentation of these disclosures on internal consumption, it is at the discretion of the company how it reports on it. Therefore, the additional reporting template containing unconsolidated figures may be presented equally prominent. This view is not contrary to the ESMA Guidelines on Alternative Performance Measures of 30 June 2015 (see Annex IV, para 35).



3.2 NEW: Excluding additions from being considered CapEx if the reporting outcome is misleading (reference: discontinued operations/disposal groups)?

**Issue**

The Commission's understanding of CapEx

According to Article 8 paragraph 2 point b of the Taxonomy Regulation (EU/2020/852) companies are required to disclose the proportion of capital expenditures (CapEx) associated with ecologically sustainable economic activities. Chapter 1.1.2. of Annex I to the Commission Delegated Regulation on Article 8<sup>6</sup> includes a definition of CapEx. According to that, CapEx is defined as additions (including those resulting from business combinations) to tangible and intangible assets during the financial year considered before depreciation, amortisation, and any re-measurements, including those resulting from revaluations and impairments. Furthermore, Annex I contain detailed references to a number of IFRS Standards and relevant paragraphs, e.g., to paragraph 73(e)(i) of IAS 16 *Property, Plant and Equipment* (PPE). This paragraph addresses the "additions" figure to be reported within a single notes disclosure which is also known as "statement of changes in fixed assets" or "statement of changes in PPE" in this case. The disclosure is designed to provide additional information on fixed assets or PPE, e.g. on the effects causing changes in the amount recognised on the face of the balance sheet for property, plant and equipment in the financial year.

Fact pattern and discussion

Management decisions on restructurings, such as acquisitions or a discontinuation of a certain part of the business, are taken for various reasons. Also, the transition of the European economy to a sustainable economy as envisaged by the European Commission will lead to more such restructuring measures at European companies. Therefore, questions about discontinued operations and disposal groups are highly relevant.

A parent company preparing group financial statements decides to dispose of a part of the group's operations. The decision is taken in October (financial year equals the calendar year). According to IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations* the company is required to reclassify all assets and liabilities associated with the operation intended to be disposed of. It identifies and recognises the total of these assets and liabilities as *discontinued operations* within one line item of the balance sheet. The reclassification from the statement of changes in PPE is accounted for by posting a movement entry defined in paragraph 73(e)(ii) of IAS 16 ("assets classified as held for sale or included in a disposal group classified as held for sale in accordance with IFRS 5 and other disposals").

Capital expenditures for the purchase of assets, e.g. PPE, may be incurred before and after the time of the decision to dispose and the reclassification. For example, it may be assumed that an amount of 15 was invested prior to October, i.e. before the divestment decision regarding the discontinued operation or disposal group was made. From a full financial year perspective, these additions will remain presented

<sup>6</sup> COMMISSION DELEGATED REGULATION (EU) as 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



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|                              | <p>as additions in the statements of changes in PPE for the full financial year according to IFRS standards.</p> <p>Given the activity of the discontinued operation in the example is considered taxonomy-eligible as per the technical screening criteria, the additions of 15 will be reported as taxonomy-eligible CapEx in the reporting template according to the requirements of Annex I and II to the Commission Delegated Regulation on Article 8 and IFRS 5/IAS 16.</p> <p>However, as the discontinued operation will cease to be part of the company's economic activities, it is doubtful that the investment (15) was taken with a view to maintain, develop or perform a taxonomy-eligible or taxonomy-aligned economic activity in the group.</p> <p>Therefore, and, <u>without questioning the meaningfulness of the IFRS 5/IAS 16 requirements for financial reporting</u>, the reporting outcome arising from the requirements of the Taxonomy Regulation does <u>not seem consistent with that Regulation's rationale</u> that is redirecting capital flows to projects and companies that are considered sustainable.</p> |
| <b>Question</b>              | <p>Even if the formal requirements as laid down in the Commission Delegated Regulation on Article 8 may give indication to the contrary, may a company exclude additions to fixed assets in a financial year from being considered CapEx for this financial year if the investments resulting in these additions were incurred in relation to a part of the company that is intended to be disposed of, and therefore, is classified as a discontinued operation or disposal group?</p>  |
| <b>View 1</b>                | <p><b>Yes</b></p> <p>The rationale behind the Taxonomy Regulation, i.e. redirecting capital flows to sustainable projects and companies, shall be given priority in cases of doubt. In this very narrow case described the strict adherence to the requirements as laid down in the Commission Delegated Regulation on Article 8 might cause a misleading reporting outcome against the rationale behind the Taxonomy Regulation. The company would report sustainable CapEx although these were incurred with the view to dispose of the operation for which these expenditures were incurred. From a reporting entity's perspective these CapEx do not represent any intention to develop or perform a taxonomy-eligible or taxonomy-aligned economic activity in the group.</p> <p>The company shall duly consider the deviation and provide detailed explanation on and the reason for that deviation in the nonfinancial statement that includes the reporting under Article 8.</p>   |
| <b>View 2</b>                | <p><b>No</b></p> <p>All single reporting requirements set out in the Commission Delegated Regulation on Article 8 must be complied with, irrespective of whether companies have doubts as to whether these requirements are consistent with the rationale of the Taxonomy Regulation.</p>  |
| <b>Tentative solution as</b> | <p><b>View 1.</b></p>  |



**expressed  
in ASCG  
fora**



### 3.3 NEW: Equal treatment of revenues and expenses from Discontinued Operations and Disposal Groups for Taxonomy Reporting purposes even if IFRS Standards do not support this?

#### Issue

#### The Commission's understanding of turnover

According to Article 8 paragraph 2 point a of the Taxonomy Regulation (EU/2020/852) companies are required to disclose the portion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable. Chapter 1.1.1. of Annex I of the Commission Delegated Regulation on Article 8<sup>7</sup> includes a definition of that figure by reference to the Accounting Directive (2013/34/EU) as well as to paragraph 82 point (a) of IAS 1 *Presentation of Financial Statements*. The Taxonomy Regulation includes similar reporting requirements for operating expenditures related to assets or processes associated with economic activities that qualify as environmentally sustainable. However, the definition of OpEx (not reproduced here) is neither linked to the Accounting Directive nor to IFRS Standards.

#### Fact pattern and discussion

A parent company preparing group financial statements decides to sell a part of the group's operations. The decision is taken in October (financial year equals the calendar year). Paragraph 33 of IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations* requires the company to present in a single (total) amount all revenues, expenses, gains, and losses etc. associated with the operation intended to be discontinued or/and to be sold. It identifies and recognises this single amount as result from discontinued operations within one line item of the statement of comprehensive income. Regardless of the point in time the decision was taken to discontinue the operation (e.g. in October), all revenues, expenses etc. of the financial year associated with the discontinued operation are presented in the single amount, even the revenues, expenses etc. were recognised before October of that year. Therefore, even if these revenues are associated with economic activities that qualify as environmentally sustainable, they are not relevant for the turnover KPI according to the Taxonomy Regulation as they are not presented according to IAS 1.82(a).

IFRS 5 distinguishes between *discontinued operations* and *disposal groups*. With regard to the term *operation* IFRS 5.31 refers to the notion of a company's component comprising operations and cash flows that can be clearly distinguished, operationally and for financial reporting purposes, from the rest of the entity. According to IFRS 5.4 a disposal group is defined as group of assets, possibly with some directly associated liabilities. A disposal group may further be a group of cash generating units subject to an intended disposal. However, distinguishing between a discontinued operation and a disposal group is not always straightforward and, therefore, subject to judgement very often. (Sometimes this distinction is seen arbitrary.)

<sup>7</sup> COMMISSION DELEGATED REGULATION (EU) as 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

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|   | IFRS 5 does not contain a requirement for disposal groups similar to the requirement for discontinued operations regarding the presentation of revenues, expenses etc. As a result, even after a disposal group was identified, revenue associated with the disposal group will continue being recognised as revenue in the statement of comprehensive income in some cases. The same will apply to expenses that qualify as OpEx under Article 8 of the Taxonomy Regulation.   |
| <b>Question</b>                                     | Do revenues and expenses associated with a disposal group, different from revenues and expenses associated with a discontinued operation, qualify for the calculation of the turnover KPI and the OpEx KPI.   |
| <b>View 1</b>                                       | <p><b>No.</b></p> <p>A treatment of disposal groups similar to the accounting for discontinued operations with regard to the associated revenues and expenses seems appropriate for the reporting purpose of the Taxonomy Regulation. Both notions (discontinued operation, and disposal group) represent a part of a company that is subject to a disposal in many circumstances. Therefore, the accounting for revenues and expenses associated with disposal groups shall follow the accounting for revenues and expenses associated discontinued operations. Concluding, these revenues and expenses do not qualify as being considered for the calculation of the turnover KPI and the OpEx KPI.</p> |
| <b>View 2</b>                                       | <p><b>Yes.</b></p> <p>IFRS 5 does not contain a requirement to present revenues and expenses associated with a disposal group differently from revenues and expenses incurred through the normal business activities. As long as the part of the company to be disposed of is not classified by management as discontinued operation the revenues and expenses incurred are presented as required by IAS 1. Concluding, these revenues and expenses qualify as being considered for the calculation of the turnover KPI as well as the OpEx KPI.</p>  |
| <b>Tentative solution as expressed in ASCG fora</b> | <b>View 1.</b>  |

### 3.4 NEW: CapEx incurred by a subsidiary which the parent ceases to control

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| <b>Issue</b> | <p><u>The Commission’s understanding of CapEx</u></p> <p>According to Article 8 paragraph 2 point b of the Taxonomy Regulation (EU/2020/852) companies are required to disclose the proportion of capital expenditures (CapEx) associated with ecologically sustainable economic activities. Chapter 1.1.2. of Annex I to the Commission Delegated Regulation on Article 8<sup>8</sup> includes a definition of CapEx. According to that, CapEx is defined as additions (including those resulting from business combinations) to tangible and intangible assets during the financial year considered before depreciation, amortisation, and any re-measurements, including those resulting from revaluations and impairments. Furthermore, Annex I contains detailed references to a number of IFRS Standards and relevant paragraphs, for example, to paragraph 73(e)(i) of IAS 16 <i>Property, Plant and Equipment</i> (PPE). This paragraph addresses the “additions” figure to be reported within a single note disclosure, which is also known as the “statement of changes in fixed assets” or “statement of changes in PPE” in this case. The disclosure is designed to provide additional information on fixed assets or PPE, e.g. on the effects causing changes in the amount recognised on the face of the balance sheet for property, plant and equipment in the financial year.</p> <p><u>Fact pattern and discussion</u></p> <p>Management decisions on restructurings, such as acquisitions or a discontinuation of a certain part of the business, are taken for various reasons. Also, the transition of the European economy to a sustainable economy as envisaged by the European Commission will lead to more such restructuring measures at European companies. Therefore, questions about the loss of control over subsidiaries are highly relevant.</p> <p>A parent company preparing group financial statements ceases to have control over one of its subsidiaries in October (financial year equals the calendar year) as it disposes of a major stake. (Many different circumstances may result in a loss of control; the most prevalent case is a full or partial sale of the subsidiary.) Paragraph 20 of IFRS 10 <i>Consolidated Financial Statements</i> requires parent companies to consolidate another entity’s (i.e. a subsidiary’s) financial statements as long as the parent company controls this entity. In case of a “loss of control” IFRS 10 contains further requirements with respect to deconsolidation procedures, e.g. for assets and liabilities as well as revenues, other income and expenses that were consolidated before. In addition, IAS 16 contains requirements on how to account for deconsolidation issues within the statement of changes in PPE relating to the subsidiary which the parent ceases to control.</p> <p>The effect from deconsolidating that part of PPE in the statement of changes in PPE is accounted for by posting a movement entry defined in paragraph 73(e)(ii) of IAS 16 (“assets classified as held for sale or included in a disposal group classified as held for sale in accordance with IFRS 5 and <u>other disposals</u>”, emphasis added).</p> |
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<sup>8</sup> COMMISSION DELEGATED REGULATION (EU) as 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



Capital expenditures for the purchase of PPE may, however, be incurred before the parent ceases to control the subsidiary. For example, it may be assumed that an amount of 15 was invested prior to October. From a full financial year perspective, these additions (15) will remain presented as additions in the statements of changes in PPE for the full financial year according to the aforementioned IFRS standards.

In a purely formal adherence to the requirements of the Taxonomy Regulation in conjunction with the IFRS Standards referred to in that Regulation and given the activity of the subsidiary in the example is considered taxonomy-eligible or even taxonomy-aligned, the additions of 15 will be reported as taxonomy-eligible or taxonomy-aligned CapEx in the reporting template in Annex II to the Commission Delegated Regulation on Article 8 and according to the requirements of IFRS 10/IAS 16.

The aforementioned reporting outcome seems misleading in this case. The rationale of the Taxonomy Regulation is to support the goals of the EU Action Plan on Financing Sustainable Growth, in particular redirecting capital flows to projects and to companies that are considered sustainable. Therefore, the disclosure requirements of the Taxonomy Regulation are designed to support financial market participants such as insurance companies, asset managers etc. in identifying such projects and companies to which they will provide funding. However, it seems questionable if the information provided under the Taxonomy Regulation is useful in the aforementioned case.

As the discontinued operation will cease to be part of the company's economic activities, it is doubtful that the investment (15) was taken with a view to maintain, develop or perform a taxonomy-eligible or taxonomy-aligned economic activity in the group.

Therefore, and, without questioning the meaningfulness of the IFRS 10/IAS 16 requirements for financial reporting, the reporting outcome arising from the requirements of the Taxonomy Regulation in conjunction with the IFRS Standards referred to does not seem consistent with that Regulation's rationale that is redirecting capital flows to projects and companies that are considered sustainable.

**Question** Even if the formal requirements as laid down in the Commission Delegated Regulation on Article 8 may give indication to the contrary, may a parent company exclude additions to fixed assets in a financial year from being considered CapEx for this financial year if the investments resulting in these additions were incurred in relation to a subsidiary or business that the parent company ceases to control during that financial year?

**View 1** **Yes.**

The rationale behind the Taxonomy Regulation, i.e. redirecting capital flows to sustainable projects and companies shall be given priority in cases of doubt. In this very narrow case described the strict adherence to the requirements as laid down in the Commission Delegated Regulation on Article 8 might cause a misleading reporting outcome against the rationale behind the Taxonomy Regulation. The company would report sustainable CapEx although these were incurred with the view to dispose of the operation for which these expenditures were incurred. From a reporting entity's perspective these CapEx do not represent any intention to



develop or perform a taxonomy-eligible or taxonomy-aligned economic activity in the group.

The company shall duly consider the deviation and provide detailed explanation on and the reason for that deviation in the nonfinancial statement that includes the reporting under Article 8.

**View 2**

**No.**

All single reporting requirements set out in the Commission Delegated Regulation on Article 8 must be complied with strictly in a formal manner, irrespective of whether companies have doubts as to whether these requirements are consistent with the rationale of the Taxonomy Regulation.

**Tentative  
solution as  
expressed  
in ASCG  
fora**

**View 1**