

3 May 2023

## EUROPEAN BANKING FEDERATION RESPONSE TO THE EUROPEAN COMMISSION HAVE YOUR SAY ON THE EU ENVIRONMENTAL TAXONOMY

### Comments on the Taxonomy Environmental Delegated Act, Annex V-VII to Environmental Delegated Act (Art 8)

1. **Amendments to Delegated Regulation (EU) 2021/2178 (Article 5)** - Timing of disclosures:
  - Firstly, we would like to highlight that there is a contradiction within Article 5 regarding the application of the DA for financial institutions. The new paragraph (7) of Article 5 states that: *“From 1 January 2024 until 31 December 2024, financial undertakings shall only disclose: (a) the proportion in their covered assets of exposures to Taxonomy non-eligible and Taxonomy-eligible economic activities [...]. The key performance indicators of financial undertakings shall cover the economic activities [...] from 1 January 2026”*. On this basis, we conclude that from 1 January 2025 until 31 December 2025, financial companies will still report on the eligibility of their exposures/assets contributing to the new activities. We request the European Commission to correct the article as indicated: *“From 1 January 2024 until 31 December 2025, financial undertakings shall only disclose: (a) the proportion in their covered assets of exposures to Taxonomy non-eligible and Taxonomy-eligible economic activities”*.
  - In addition, we would like to highlight, with respect to **eligibility reporting**, the following: assuming that our interpretation is correct, and i.e., that financial institutions will be expected to report on eligibility both in 2024 and 2025, then the current draft suggests that credit institutions will need to report eligibility (on the new environmental objectives) as of 2024, i.e., the same year as NFCs, and therefore in the absence of data from companies. Although eligibility does not require checking the disclosures made by “counterparties”, asking only to understand if the counterparty is within one of the NACE Code considered in the delegated acts, first-year eligibility reporting with the climate DAs has proven to be extremely challenging, with lack of meaningful comparability, in the absence of counterparties’ disclosures. The problem experienced in 2022 for the two climate objectives would be even more significant, considering that the NACE codes on the 4

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other environmental ones are even less clear and less indicative of the environmental objectives than the CCM and CCA ones) and considering that as of 2024 we will be obliged to disclose using the reporting template, which, by definition, offers less flexibility than a “free” reporting format. We would propose financial institution reporting on eligibility to begin as of 2025.

- Finally, we would like to highlight, with respect to **alignment reporting**, the following: in 2024, financial and non-financial companies will only report on the eligibility of their activities that were newly added by both the proposed delegated acts. Nevertheless, all companies are expected to report, as soon as 2024, on the alignment of their activities already listed in the delegated act 2021/2139 (Climate DA), including those activities that will be amended by the proposed delegated act amending the Climate DA. This situation is problematic for banks because they will use the taxonomy reporting of their counterparties, published in 2023, to calculate their 2024 GAR. These taxonomy alignment reporting will be made using the current technical screening criteria prevailing in 2023 and not the new TSC proposed by the proposed delegated act amending the Climate DA. We recommend the European Commission to include a phase-in period of at least one year for financial institutions in respect of the proposed DA amending the Climate DA: in 2024 they should be able to use the reporting of their counterparties where the current technical screening criteria were used to assess the alignment of their new financing activities. If there is no phase-in, banks will be constrained to using estimates and will not be able to report the information in the templates.

2. **Annex V, Section (1)(c)(1)** - Although the concept of specialised lending has always generated doubts, the EBA in a Q&A clarified that the terms “specialised lending” and “known use of proceeds” does not create any distinction in the substance of the regulatory treatment in the context of specialised lending. The rationale is always to assess the final activity that is being financed.

“Project finance” has now been replaced in the DA with “specialised lending” for Loans & Advances GAR calculation, referring to the CRR definition. We would suggest replacing ‘*of which specialized lending*’ with ‘*of which known use of proceeds*’ not only to match the terminology used in Annex V of the delegated act (p.21), but also to ensure the inclusion of other forms of known-use-of-proceeds lending that do not qualify as specialised lending under the CRR (i.e. where SPVs are not involved, for example). This would also reflect the fact that for debt securities ‘known use of proceed’ products may also be included. The term specialised lending is too narrow and seems to refer to lending products only, even though Annex V specifically allows for the inclusion of known use of proceeds debt securities in the Annex V delegated act (p. 22). We understand that this change may have been intended to include other possible types of ‘specialised lending’ (object finance, commodity finance, income-producing real estate) in scope. Clarification from the Commission in line with the EBA would be appreciated.

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Connected to this element, we also deem important to clarify the treatment of Special Purpose Vehicles for the GAR Calculation and if the change in wording (from “specialised lending - project finance” to “specialised lending”) is intended to give further guidance on this topic.

In fact, 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 support a clarification aimed to specify the inclusion of SPV structured financing (including project finance) in the 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 they should 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. In conclusion, we would appreciate a clarification from the European Commission on the treatment of SPVs for the purpose of reporting.

3. **Annex V, Section 1.2.1.6** - states that GAR for commercial and residential repossessed real estate collateral held for sale must be reported for all the environmental objectives. However, section 1.2.1.5 of the same document states that credit institutions shall disclose the KPI of their commercial and residential repossessed real estate collaterals based on the compliance with the technical screening criteria in Section 7.7. of Annex I to Climate Delegated Act (which reports the TSC and DNSH for Climate Change Mitigation). Could the Commission confirm that this KPI has to be computed only for climate change mitigation, in line with the other real estate exposures?
4. **Annex V, Section 1.2.1.6:** modifies point 1.2.1.6 of Regulation (EU) 2021/2178 and requires financial institutions to include in their GAR,: 1) loans to local governments for house financing and other specialised lending, for all the environmental objectives; 2) commercial and residential repossessed real estate collateral held for sale, for all the environmental objectives. While the new templates take into account this new requirement, points 1.2.1.4 of Regulation (EU) 2021/2178 was not amended and only requires financial institutions to consider taxonomy-aligned exposures and assets contributing to the climate change mitigation objective. We recommend the European Commission to correct this incoherence.
5. **Annex II** - We are very positive about the adjustment in **Annex II** - the templates for non-financial undertakings. There were initially two inconsistencies relating to reporting on eligibility between the template for financial and non-financial undertakings. These inconsistencies concerned the split in environmental objectives for eligibility and the way the economic activity role (enabling and transitional) was reported by non-financial undertakings. The updates in the templates resolve these issues and should be maintained in the final version.

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6. **Annex VI** - We have noticed that in the previous version of the templates a wide variety of formula's were included. These formulas were included for template 3 - 5. These templates would be filled automatically with the use of formula's based on template 1. In the most recent version – **Annex VI: Revised Annex VI of the Disclosures Delegated Act** these formulas are no longer included. We recommend the EC to please reinsert these formulas.
7. **Annex VI** - Article 7 of Regulation (EU) 2021/2178 (Disclosures DA) requires financial institutions to disclose information on their exposures to counterparties and assets listed in paragraph 6. Financial institutions shall report this information using the templates of Annex VI. Nevertheless, we noted that the corrected set of templates (template 1, 3 and 4 – proposed in annex VI) still do not allow to include some of the information required in paragraph 6 such as:
  - On exposures to and investments in financial undertakings not subject to an obligation to publish a non-financial statement pursuant to Articles 19a and 29a of Directive 2013/34/EU;On the other hand, granular information is required on exposures towards non-NFRD non-financial counterparties in rows 35 to 39 and in rows 41 to 43. We believe that this level of granularity is not necessary given that these counterparties are not included in the numerator of the GAR. Therefore, to enhance transparency, we encourage the European Commission to amend the proposed templates:
  - a. To include one additional row so banks can report their exposures towards financial undertakings established in the Union that are not subject to an obligation to publish a non-financial statement pursuant to Articles 19a and 29a of Directive 2013/34/EU;
  - b. To include one additional row so banks can report their exposures towards financial undertakings established in a third country that are not subject to an obligation to publish a non-financial statement pursuant to Articles 19a and 29a of Directive 2013/34/EU; and
  - c. To delete rows 35 to 39 and 41 to 43
8. **Annex VI**: We note that in the new set of templates, and especially templates 1, 3 and 4 in row 20 (Non-Financial Corporation) the addition of the precision "NFCs subject to NFRD disclosure obligations". We suggest doing likewise in row 2 for "Financial Corporations" by adding "(FCs subject to NFRD disclosure obligations)".
9. We also noticed that the template has not marked in black the '*of which specialised lending*' cells for financial undertakings, nor for assets under management, financial guarantees. Our understanding stems from **Annex V** of the delegated act (p.25, p. 28-29) where reference is only made to KPIs, not to any known use of proceeds methodology. More precisely,
  - In the Taxonomy Regulation, two methodologies are laid out for non-financial NFRD undertakings. For the purpose of products with a 'known use of proceeds', we must apply the TSC at the activity level and perform a full assessment based on bilateral information. For the purpose of 'unknown use of proceeds' we must simply determine the percentage of Taxonomy alignment by looking at the KPIs reported in the Annual Report of the clients.

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This can be read on page 21. Our understanding of the template is that the term 'specialised lending' refers to the methodology for 'known use of proceeds'.

- But for Financial undertakings, reference is only made to the KPI methodology: "The numerator of the GAR for financial undertakings shall be calculated based on the counterparties' KPIs calculated under this Regulation. The amount of loans and advances, debt securities and equity holdings of relevant accounting portfolios to financial undertakings to be considered in the numerator of the ratio shall be the sum of their gross carrying amount, weighted by the proportion of taxonomy-aligned economic activities with breakdown for transition, adaptation and enabling activities for each counterparty". For the assets under management and financial guarantees, the same reference to the counterparty KPIs is provided. Hence, we are of the opinion that the cells for the 'specialised lending' towards financial undertakings and related to assets under management and financial guarantees should be marked black in template 1, and removed from template 5 as the methodology for 'known use of proceeds' is not applicable for these products and may cause confusion.

In essence, for the purpose of template 1 we propose to mark these cells black. For the purpose of template 5 we propose to remove the 'of which specialised lending' column, as is done for the fees and commission income and the trading book.

10. **Annex VI** - The **reporting template** refers to the term 'sovereigns'. This terminology deviates from the delegated act, where reference is made to exposures to 'Central governments' and 'Supranational issuers'. We recommend aligning the definition in the template with the Delegated Act and include exposures to 'Central governments' and to 'Supranational issuers' under separate line items.
11. **Annex VI** - From **template 0** it becomes clear that a split must be provided in the KPIs between Capex and Turnover from the KPI\*\*\*\*/KPI\*\*\*\*\* reference. However, for **template 1-7** it becomes unclear whether to include reporting on Turnover or Capex, or report twice on both. We recommend requesting that template 1-7 be reported on Turnover only, whilst reporting the summary of the KPIs on both Turnover and Capex – as currently done in template 0.
12. The classification of financial undertakings from the Taxonomy differs from the Taxonomy classification. Could the EC please clarify whether the 'other financial undertakings' should be included under the 'non-financial undertakings'.
13. **Annex V, Section 1.2.1. fifth paragraph** – We cannot find any dedicated space in the templates in Annex VI for the disclosure of the percentage of total assets excluded from the numerator of the GAR in 7(2), 7(3) DDA or point 1.1.2. of Annex V. Can it please be clarified where in the templates these percentages should be disclosed. We would also propose to add a similar ratio in respect of item 7(1) in order to provide more clarity on the bank balance sheet structure.

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14. **Annex VI \_GAR KPI flow** - it would be helpful to get clarity on whether banks should disclose the template in 2025 with the flows for the period 31.12.2023 to 31.12.2024 as the alignment should be reported for 31.12.2023 for the first time and there are no alignment values for the reference date 31.12.2022.
15. In relation to the **numerator of the GAR**:  
Financial counterparties: contrary to NFCs, it is not specified that the row FC should only include NFRD counterparties. Does it mean that the NFRD filter does not apply to FCs? If in fact the NFRD filter does apply to FCs, it would be helpful to include in the template (as for NFCs) in which row the non-NFRD FC exposures are expected to be reported. Would it be under "*Other assets*"?
16. **Annex VI - Households** – rows "*of which loans collateralized by residential immovable property*" and "*of which building renovation loans*": In practice renovation loans can be collateralized or uncollateralized therefore it would be helpful to have additional guidance on whether it is expected to double count the collateralized building renovation or whether only uncollateralized renovation loans should be included in the row "*of which building renovation loans*".
17. **Annex VI – Households**: Regulation (EU) 2021/2178 states that financial institutions can report the amount of their exposures financing household's aligned activities (residential real estate lending and credits consumptions loans for cars). These activities are only eligible if contributing to the climate mitigation objective. In template 1: we noted that financial institutions are able to report this amount in the "Climate Change Mitigation part (column "b" to "f" - Disclosure reference date T)" and in the "Total' (CCM + CCA + WMR + CE + P + BE)" part (column "bp" to "bt" Disclosure reference date T-1). But there are not able to report this information in the "total (CCM + CCA + WMR + CE + P + BE)" part (column "af" to "aj" Disclosure reference date T) "Climate Change Mitigation" part (column "al" to "ap" - Disclosure reference date T-1) and the "total (CCM + CCA + WMR + CE + P + BE)" part (column "af" to "aj"). The same problem appears in template 3 and 4. We strongly recommend the Commission correct this mistake by removing the black cells in the concerned templates.
18. **Green debt instruments**: in line with FAQ 31 of Commission Notice on the interpretation of certain legal provisions of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of eligible economic activities and assets (October 22), Financial counterparties are expected to include in their numerator their investment into non-NFRD green debt instruments. However, there is no row dedicated to such reporting (if we assume that only NFRD FC and NFC should be included in the numerator of the GAR).
19. **Column "of which specialized lending" / "of which enabling"**: it would be helpful to have additional guidance on whether it is expected to double count specialized lending exposure which are financing "enabling/transitional" activities or whether these columns should be mutually exclusive. Ideally, we would propose removing the column "*of which specialized lending*" as we do not see the complementarity with the columns "*of which transitional*" and "*of which enabling*".

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20. **Annex V to Delegated Regulation (EU) 2021/2178; amendment to section 1.2.1.** In addition to GAR, credit institutions shall disclose the percentage of **their total assets** that are excluded from the numerator of the GAR in accordance with Article 7(2) and (3) of this Regulation and point 1.1.2 of this Annex.  
Comment: The text refers to the financial term "*total assets*". The text should be more precise as it is not clear whether total assets in this respect refer to GAR assets (**total covered assets**) or total assets as defined in the regulatory reporting FINREP.
21. **Template 2. GAR - Sector information.** Water and marine resources (WMR), Circular economy (CE), Pollution (P), Biodiversity and Ecosystems (BE) sections include a "of which" that does not match with the objective itself: Of which environmentally sustainable (CCM) instead of (WMR) and so on.

### **Comments on activity criteria of the Taxonomy Environmental Delegated Act**

1. **Annex II to Environmental Delegated Act (CE), 3.1 Construction of new building:** Under point 4. (c) the technical screening criteria describes the threshold for "biobased products", and that "a maximum of 80% of the total material come from primary raw material". We would ask for clarity as to whether "biobased products" also include wood, which we understood would be a concern in some countries where wooden construction materials are encouraged to be used, as an alternative to more CO2 intensive materials.
2. **Annex I to Environmental Delegated Act (WTR), E36 – Water collection, treatment and supply amending Annex 1, specifically 2.1 Water supply:** Our comment regards water and waste management and Remediation Activities, focusing on water purification for daily use such as drinking or cooking. Specifically, purification solutions such as filters and water purifiers to provide water free of particles, soil, sediments and heavy metals aiming at domestic use (drinking, cooking). The solutions would be directly installed at homes, not in the origin of the water supply and can be particularly relevant in third countries such as Mexico. We consider that the activity contributes to the objective "Sustainable Use and Protection of Water and Marine Resources" and therefore our proposal is to complete the Annex 1, specifically 2.1 Water Supply with these solutions for domestic use. The rationale is the same used in the case of technologies as the activity is not in source but located where the consumption of the water is, such as homes; so, we are not proposing a change of criteria but to increase the scope to consider these kinds of activities.

### **General comments**

- Consolidation of text: to make the Taxonomy usable amongst the ~21 EC FAQs, scrutiny notes, TEG and PSF guides, ~9 delegated acts and annexes across the Climate Delegated Act, EU Taxonomy Framework and Disclosures Delegated acts and their amendments, in addition to the 6 new consultation documents that reference new templates, it would be extremely helpful to have a single

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consolidated document that can be read end to end to understand an institution's obligations. Ideally, we would also be provided with an additional draft showing track changes so the firms could immediately identify changes to the existing text. As additional non-EU firms begin reporting under CSRD, this will be critical.

- As a general comment, we would like to ask that published templates be updated and maintained in order to fully reflect regulatory text e.g. terminology such as motor vehicles and cars is used interchangeably within Annex V and Annex VI templates, include the stated formulas e.g. templates 3, 4, 5 and 7 and provide an intuitive breakdown of figures e.g. as non-financial corporations are split between those that are NFRD and non-NFRD, so should financial corporations.
- We would also like to highlight outstanding operational issues and questions for clarification not related to this particular consultation, but important for financial institutions to fulfill their reporting obligations and for improving consistency and comparability of the reporting (as listed in our document sent to the EC on 16 March 2023, to which we would appreciate clarification as soon as possible).

#### **Technical issues and mistakes**

- Banks with non-EU subsidiary should provide information separately for exposures towards non-EU counterparties. For non-EU exposures, while there are additional challenges in terms of absence of common disclosure requirements and methodology, as the EU taxonomy and the NFRD apply only at EU level, given the relevance of these exposures for those credit institutions with non-EU subsidiaries, these institutions should disclose a separate GAR for non-EU exposures, on a best effort basis, in the form of estimates and ranges, using proxies, and explaining the assumptions, caveats and limitations. However, there is no timeline attached to this requirement. Are the disclosures on a best effort basis expected in 2023 (in line with GAR) or is there a phase in period (in line with BTAR)?
- Regarding **conflicts between regulatory texts**: to ensure that institutions are able to apply the regulations consistently, sustainable regulations should be cross read for consistency, e.g:
  - a. Templates: Where a disclosure is required within the regulatory text, e.g., flow on financial guarantees and AUM, this should be reflected within the templates;
  - b. 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 (should be corrected – of course avoiding double counting applies).
- Regarding **inconsistencies**: For the metrics to be consistent with the financial accounts in which the disclosures sit, they should use accounting terminology wherever it is practical to do so and be reconcilable with the financial accounts, e.g.,:

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- a. **Other Assets:** this terminology has a specific accounting definition and should not be used as a generic phrase e.g., within line 32 of template 1 which captures balances such as loan exposures, derivatives, on demand interbank loans, cash and cash-related assets, and other assets.

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