

DRAFT COMMISSION NOTICE

on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets (second Commission Notice)

The Regulation on the establishment of a framework to facilitate sustainable investment ('Taxonomy Regulation'), has created a unified EU classification system of environmentally sustainable economic activities and imposed transparency obligations on certain non-financial and financial undertakings with respect to those activities¹.

In June 2021, the Commission adopted the EU Taxonomy Climate Delegated Act² to implement the Taxonomy Regulation with respect to economic activities contributing substantially to climate change mitigation and adaptation objectives (referred to as 'Taxonomy-aligned activities'). In March 2022, the Commission amended the Climate Delegated Act by adding criteria for certain new energy activities³.

The Commission adopted in July 2021, a delegated act that specifies the disclosure obligations of undertakings under Article 8 of the Taxonomy Regulation with respect to the Taxonomy-eligibility and alignment of their activities ('Disclosures Delegated Act')⁴.

The Commission has already published three sets of guidance on the content of the Disclosures Delegated Act, namely:

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13–43)

² Commission Delegated Regulation (EU) 2021/2139 of 4 June 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 (OJ L 442, 9.12.2021, p. 1–349).

³ Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ L 188, 15.7.2022, p. 1).

⁴ Commission Delegated Regulation (EU) 2021/2178 of 6 July 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 (OJ L 443, 10.12.2021, p. 9).

- A Commission staff document ‘Frequently Asked Questions’ (FAQs) on ‘What is the EU Taxonomy Article 8 delegated act and how will it work in practice?’⁵
- A Commission staff document ‘Frequently Asked Questions’ (FAQs) on how financial and non-financial undertakings should report their Taxonomy-eligible economic activities and assets in accordance with the Disclosures Delegated Act⁶.
- A Commission Notice on the interpretation of certain legal provisions of the Disclosures Delegated Act on the reporting of Taxonomy-eligible economic activities⁷.

Non-financial undertakings will commence reporting their Taxonomy Key Performance Indicators (KPIs) as of 1 January 2023. The purpose of this Notice is to provide further interpretative and implementation guidance to these non-financial undertakings in the form of replies to Frequently Asked Questions (FAQs) on the reporting under the Disclosures Delegated Act. The Commission may update these FAQs where appropriate.

Financial undertakings will commence the reporting of their respective Green Asset Ratio (GAR)/Green Investment Ratio (GIR) as of 1 January 2024. Another Notice in the form of replies to FAQs concerning the reporting by financial undertakings under the Disclosures Delegated Act may be adopted in due course.

The Disclosures Delegated Act requires financial undertaking to use the KPIs disclosed by their counterparties (e.g. non-financial undertakings) when they calculate their GAR/GIR. In addition, the Sustainable Finance Disclosure Regulation (SFDR)⁸, requires financial market participants to use the KPIs disclosed by investee companies for assessing the level of environmental performance of marketed financial products.

This Notice is published alongside another Commission notice in the form of replies to FAQs concerning the technical screening criteria for Taxonomy-aligned economic activities set out in the Climate Delegated Act (Commission notice on the Climate Delegated Act⁹).

The replies to FAQs provided in this Notice clarify the provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the operators concerned and competent authorities. The replies to FAQs are merely intended to assist non-financial undertakings in the implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in

⁵ https://finance.ec.europa.eu/system/files/2021-07/sustainable-finance-taxonomy-article-8-faq_en.pdf.

⁶ https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/sustainable-finance-taxonomy-article-8-report-eligible-activities-assets-faq_en.pdf

⁷ 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 2022/C 385/01 (OJ C 385, 6.10.2022, p. 1–19).

⁸ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1–16).

⁹ [Add legal reference when available.]

this Notice cannot prejudge the position that the European Commission might take before the Union and national courts.

This draft has been approved in principle by the European Commission on 19 December 2022 and its formal adoption in all the official languages of the European Union will take place later on, as soon as the language versions are available.

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Appendix – Glossary of relevant terms and applicable legislation

| Regulation | Reference |
|-----------------------------------|---|
| Accounting Directive | Directive 2013/34/EU ¹⁰ |
| Annex I | Annex I to the Disclosures Delegated Act |
| Annex II | Annex II to the Disclosures Delegated Act |
| CapEx | Capital expenditure |
| CapEx KPI | Key performance indicator related to capital expenditure referred to in Section 1.1.2. of Annex I |
| Complementary Delegated Act (CDA) | Commission Delegated Regulation (EU) 2022/1214 ¹¹ |
| CSRD | Directive as regards corporate sustainability reporting ¹² |
| Climate change adaptation (CCA) | Climate change adaptation (CCA) referred to in point (b) of Article 9 of the Taxonomy Regulation |
| Climate change mitigation (CCM) | Climate change mitigation (CCM) referred to in point (a) of Article 9 of the Taxonomy Regulation |
| Climate Delegated Act (DA) | Commission Delegated Regulation (EU) 2021/2139 ¹³ |
| Disclosures Delegated Act | Commission Delegated Regulation (EU) 2021/2178 ¹⁴ |
| DNSH | Do no significant harm |

¹⁰ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19.)

¹¹ Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ L 188, 15.7.2022, p. 1–45.).

¹² Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting [Add OJ reference once available.]

¹³ Commission Delegated Regulation (EU) 2021/2139 of 4 June 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 (OJ L 442, 9.12.2021, p. 1–349).

¹⁴ Commission Delegated Regulation (EU) 2021/2178 of 6 July 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. (OJ L 443, 10.12.2021, p. 9–67.)

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| Enabling activities | Economic activities referred to in Article 16 of the Taxonomy Regulation |
| First Commission Notice | 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 ¹⁵ |
| First Commission staff document | Commission staff document “ <i>FAQs: What is the EU Taxonomy Article 8 delegated act and how will it work in practice?</i> ” ¹⁶ |
| IAS | International Accounting Standards |
| IFRS | International Financial Reporting Standards |
| Key Performance Indicators (KPIs) | Key Performance Indicators (KPIs) of non-financial undertakings referred to in Annex I |
| Non-climate environmental objectives | The environmental objectives referred to in points (c), (d), (e) and (f) of Article 9 of the Taxonomy Regulation (sustainable use and protection of water and marine resources; transition to a circular economy; pollution prevention and control; protection and restoration of biodiversity and ecosystems) |
| Non-Financial Reporting Directive (NFRD) | Directive 2014/95/EU ¹⁷ |
| OpEx | Operational expenditure |
| OpEx KPI | The key performance indicator related to operational expenditure referred to in Section 1.1.3. of Annex I |
| Reporting undertaking | A non-financial undertaking subject to a reporting obligation in accordance with Article 8(1) of the Taxonomy Regulation |
| Second Commission staff document | Commission staff document “ <i>FAQs: How should financial and non-financial undertakings report Taxonomy-eligible economic activities and assets in accordance with the Taxonomy Regulation Article 8 Disclosures Delegated Act?</i> ” ¹⁸ |
| Substantial contribution | A substantial contribution to one or more of the environmental objectives set out in Article 9 in accordance with Articles 10 to 16 of the Taxonomy Regulation |

¹⁵ 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 2022/C 385/01 (OJ C 385, 6.10.2022, p. 1–19).

¹⁶ https://finance.ec.europa.eu/system/files/2021-07/sustainable-finance-taxonomy-article-8-faq_en.pdf.

¹⁷ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1–9).

¹⁸ Commission staff document published online in December 2021 (updated January 2022).

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| Sustainable Finance Disclosure Regulation (SFDR) | Regulation (EU) 2019/2088 ¹⁹ |
| Taxonomy-aligned economic activity | An economic activity defined in point (2) of Article 1 of Disclosures Delegated Act |
| Taxonomy-eligible economic activity | An economic activity defined in point (5) of Article 1 of Disclosures Delegated Act |
| Taxonomy-non-eligible economic activity | An economic activity defined in point (6) of Article 1 of Disclosures Delegated Act |
| Taxonomy Regulation (TR) | Regulation (EU) 2020/852 ²⁰ |
| TSC | Technical screening criteria |
| Transitional Activities | Economic activities referred to in Article 10(2) of the Taxonomy Regulation |
| Turnover KPI | The key performance indicator related to turnover referred to in Section 1.1.1. of Annex I |

¹⁹ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1–16).
roups (OJ L 330, 15.11.2014, p. 1–9).

²⁰ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1–16).

SECTION I - GENERAL FAQs

1. What is the envisioned timeline for the application of Taxonomy-related disclosures set out in the Complementary Delegated Act (CDA)²¹?

The CDA amends:

- the Climate Delegated Act (DA) by adding specific new nuclear energy and fossil gas related economic activities to the EU Taxonomy, and
- the Disclosures Delegated Act by providing specific disclosure obligations related to those activities in new Article 8(6), (7) and (8) of that Delegated Act.

Article 3 of the CDA provides that the amendments contained therein start applying as of 1 January 2023. This implies that non-financial undertakings should disclose eligibility, non-eligibility, and alignment of nuclear energy and fossil gas related activities in accordance with Article 8(6), (7) and (8) of the amended Disclosures Delegated Act as of 1 January 2023²². The first reporting period concerns the (financial) year of 2022 in accordance with Article 8(2) of the Disclosures Delegated Act.

2. What is the envisioned approach for Taxonomy-related reporting in relation to the environmental objectives?

At the time of publication of this Notice, the Commission has not adopted a delegated regulation in accordance with Articles 12(2), 13(2), 14(2) or 15(2) of the Taxonomy Regulation establishing the TSC for economic activities related to non-climate environmental objectives.

Pursuant to Article 27(2)(b) in connection with Articles 4 to 8 of the Taxonomy Regulation, disclosures of reporting undertakings related to non-climate environmental objectives should in principle apply from 1 January 2023. Reporting undertakings cannot apply those disclosures on Taxonomy-alignment and Taxonomy-eligibility in the absence of a delegated regulation establishing those TSC. This is because:

- Taxonomy-aligned economic activities are defined by reference to compliance, inter alia, with those criteria that should be established by the Commission in accordance with Article 10 (3),

Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ L 188, 15.7.2022, p. 1–45.).

²² In accordance with the timeline in Article 10 to the Disclosures Delegated Act, also with respect to nuclear energy and fossil gas related activities, until 31 December 2023 financial undertakings shall only disclose the elements required under Article 10(3) pertaining to Taxonomy-eligibility and non-eligibility of nuclear and fossil gas related activities in templates 1, 4 and 5 of Annex XII of Disclosures Delegated Act pertaining to the reporting of Taxonomy-eligibility as referred to in Article 8(8) of the Disclosures Delegated Act. Financial undertakings shall disclose as of 1 January 2024 also the ratios of Taxonomy-alignment of nuclear energy and fossil gas related activities in template 2 and 3 of Annex XII to the Disclosures Delegated Act as referred to in Article 8(8) of the Disclosures Delegated Act. Financial undertakings shall compute nuclear energy and fossil gas-related activities in their KPIs by using the most recently available data and key performance indicators of their counterparties in accordance with the second subparagraph of Article 8(4) of the Disclosures Delegated Act.

11(3), 12(2), 13(2), 14(2) or 15(2) as referred to in point (d) of Article 3 of the Taxonomy Regulation, and

- Taxonomy-eligible economic activities are defined by the description of the economic activities in the delegated acts adopted pursuant to the above mentioned Articles.

This implies that only the Taxonomy-eligibility and alignment of economic activities with climate objectives (CCM and CCA) may be considered, assessed and disclosed under the Disclosures Delegated Act before a delegated regulation adopted in accordance with Articles 12(2), 13(2), 14(2) or 15(2) of the Taxonomy Regulation becomes applicable.

Therefore, reporting eligibility and alignment by non-financial undertakings for the remaining four environmental objectives is not expected for reporting in 2023.

3. What is the impact of the CSRD on the scope of the reporting entities under the Disclosures Delegated Act?

In accordance with Article 8(1) of the Taxonomy Regulation, only undertakings which are subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29(a) of the Accounting Directive (provisions introduced by the Non-Financial Reporting Directive (NFRD)) -- are required to report their key performance indicators (KPIs) under Article 8 of the Taxonomy Regulation and the Disclosures Delegated Act²³.

Article 19a or Article 29a of the Accounting Directive have been amended by CSRD. Following the entry into force of the CSRD, the undertakings subject to the reporting obligation under Article 8 of the Taxonomy Regulation and Disclosures Delegated Act will be as follows²⁴:

- (i) For financial years starting on or after 1 January 2024 (with first publication in 2025):
 - large undertakings as defined in Article 3(4) of the Accounting Directive (“large undertakings”) that are Public-Interest Entities (“PIEs”) as defined in Article 2, point (1) of that Directive, exceeding on their balance sheet dates the average number of 500 employees during the financial year;
 - PIEs that are parent undertakings of a large group as defined in Article 3(7) of the Accounting Directive (“large group”), exceeding on their balance sheet dates, on a consolidated basis, the average number of 500 employees during the financial year.
- (ii) For financial years starting on or after 1 January 2025 (with first publication in 2026):
 - large undertakings and parent undertakings of a large group, other than those referred to in point (i) above.
- (iii) For financial years starting on or after 1 January 2026 (with first publication in 2027):
 - small and medium-sized undertakings as defined in Article 3(2) and Article 3(3) of the Accounting Directive, excluding micro-undertakings as defined in Article 3(1) of that

²³ For more details, reference is made to the response to question 1 of the first Commission Notice.

²⁴ See Article 5 on Transposition of the CSRD.

- Directive, with securities admitted to trading on the EU regulated markets (“listed SMEs excluding micro-undertakings”);
- small and non-complex institutions, as defined in Article 4(1), point (145) of Regulation (EU) No 575/2013²⁵, provided that they are large undertakings or that they are listed SMEs excluding micro-undertakings;
 - captive insurance undertakings as defined in Article 13, point (2) of Directive 2009/138/EC²⁶, and captive reinsurance undertakings as defined in Article 13, point (5) of that Directive, provided that they are large undertakings or that they are listed SMEs excluding micro-undertakings.
- (iv) For financial years starting on or after 1 January 2028 (with first publication in 2029):
- third-country undertakings that generated a net turnover of more than EUR 150 million in the Union for each of the last two consecutive financial years, and that have EU subsidiaries that are large undertakings or listed SMEs excluding micro undertakings, branches);
 - the same phased approach described above will apply to third-country undertakings with securities listed on the EU regulated markets, due to the fact that the CSRD has also amended Directive 2004/109/EC (Transparency Directive)²⁷.

4. When and how should the Taxonomy disclosures be verified by external reviewers? How will this change with the application of CSRD?

Currently, the rules of the Accounting Directive on verification laid down in Articles 19a and 29a of the Taxonomy Regulation apply to Taxonomy disclosures²⁸. A statutory auditor or audit firm should check, in accordance with national rules transposing the NFRD, whether the non-financial statement or the separate report referred to in paragraph (4) of Article 19a or paragraph (4) of Article 29(a) of NFRD, containing Taxonomy disclosures, has been provided. National legislation may require that this information is verified by an independent assurance services provider.

After the CSRD becomes applicable for financial years starting on or after 1 January 2024, following the phased timetable indicated in question 3, its rules on assurance pertaining to

²⁵ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337).

²⁶ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (OJ L 335, 17.12.2009, p. 1–155).

²⁷ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38–57).

²⁸ Article 8(1) of the Taxonomy Regulation clarifies that ‘any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking’s activities are associated with economic activities that qualify as environmentally sustainable [...]’.

sustainability reporting under CSRD apply to the same extent to disclosures in accordance with the Disclosures Delegated Act.

According to the CSRD²⁹, the statutory auditor or audit firm (or the independent assurance services provider, where allowed by the Member State concerned) should express an opinion based on a limited assurance engagement regarding the compliance of the sustainability reporting with the requirements of the CSRD, including, the compliance with the reporting requirements of Article 8 of the Taxonomy Regulation.

In addition, the Climate Delegated Act requires specifically that for some activities compliance with TSC should be verified by an independent third party due to their complexity. For instance, quantified life-cycle greenhouse gas (GHG) emissions for several economic activities should be verified by an independent third party³⁰.

5. Are undertakings established in EEA-countries obliged to report the Taxonomy-alignment of their economic activities?

The free movement of goods, services, capital, and persons is assured in the Single Market. The European Economic Area (EEA) is an area of free trade and free movement of people made up of the EU Member States, Norway, Iceland and Liechtenstein. In principle, throughout the EEA, the same rules are applied to maintain a homogeneous market. Therefore, in the case of Taxonomy-reporting the same requirements should apply, subject to the incorporation of the rules in the EEA acquis.

6. How can entities ensure that their voluntary reporting of Taxonomy-alignment of their economic activities does not contradict or misrepresent mandatory disclosures set out in the Disclosures Delegated Act?

Voluntary reporting³¹ of Taxonomy-alignment by entities is a generic expression that may identify different possible situations, including but not limited to:

- anticipated reporting of Taxonomy-alignment by entities not yet subject to mandatory Taxonomy-alignment reporting, but subject only to Taxonomy-eligibility reporting (e.g. reporting of Taxonomy-alignment ahead of the timeline provided in Article 10 of the Disclosures Delegated Act);
- reporting by entities not subject to any mandatory Taxonomy-reporting requirement under Article 8 of the Taxonomy Regulation, that is reporting by an entity not subject to obligation to publish non-financial information under NFRD/CSRD.

²⁹ Please see the response to Question 3 in this Notice which details phase-in of reporting standards under the CSRD.

³⁰ See, for instance, recital (11) of the Climate Delegated Act and sections 3.6, 3.10, 3.13, 4.5, 4.6, 4.7, 4.18, 4.19, 4.22, 4.23 of Annex I to the Climate Delegated Act concerning manufacturing and energy related activities.

³¹ Please see Question 7 of the first Commission Notice for more information about the concept of voluntary reporting.

Reporting entities that are subject to Article 8 of the Taxonomy Regulation should clarify in all these cases the basis of preparation of the voluntary reporting, including that the anticipated reporting complies otherwise with the requirements set out in the Disclosures Delegated Act³².

As regards reporting entities that are not subject to Article 8 of the Taxonomy Regulation, they are recommended to follow the same approach as for those subject to Article 8 of the Taxonomy Regulation (as set out above).

When an undertaking makes publicly available this voluntary reporting in addition to mandatory reporting, it should be made clear how the two differ. As indicated in the response to question 7 of the first Commission Notice, voluntary reporting should not be given more prominence than the mandatory reporting and it should be prepared on a basis that does not contradict or misrepresent the mandatory information pursuant to the Disclosures Delegated Act³³.

When entities make reference in their mandatory reporting to information from the voluntary Taxonomy-alignment reporting, they should, where available, also indicate the corresponding qualitative and/or quantitative information relating to the mandatory reporting.

In publishing the voluntary Taxonomy reporting, entities should also take into account the content of ESMA's Guidelines on Alternative Performance Measures (APM)³⁴ and the related Q&As³⁵.

7. How are reporting undertakings expected to disclose comparative information in the disclosures under the Disclosures Delegated Act?

In accordance with Article 8(3) of the Disclosures Delegated Act, in year N, the reporting undertaking must disclose the KPIs published in that year N and the KPIs published in year N-1. Furthermore, the second subparagraph of that provision clarifies that N-1, for which the first KPIs are published by non-financial undertakings, starts with year 2023.

In accordance with Article 10(4) of the Disclosures Delegated Act, in 2023, reporting non-financial undertakings must disclose the first KPIs only, that is the KPIs relating to the reporting period 2022.

In 2024, the reporting non-financial undertakings must disclose the KPIs for the reporting period 2023 and, as comparative information, the KPIs published in 2023 for the reporting period 2022.

³² For further detail see the Commission staff document "*FAQs: How should financial and non-financial undertakings report Taxonomy-eligible economic activities and assets in accordance with the Taxonomy Regulation Article 8 Disclosures Delegated Act?*", in particular footnote 35 as part of the answer to Question 31.

³³ Further guidance on voluntary reporting and use of estimates for eligibility reporting in the first year(s) of reporting is provided by the Platform on Sustainable Finance in its Appendix: https://finance.ec.europa.eu/system/files/2021-12/sustainable-finance-taxonomy-eligibility-reporting-voluntary-information_en.pdf

³⁴ [ESMA/2015/1415](https://www.esma.europa.eu/press/news/1415)en – ESMA Guidelines on Alternative Performance Measures (APMs).

³⁵ [ESMA32-51-370](https://www.esma.europa.eu/press/news/32-51-370) – Questions and answers on ESMA Guidelines on Alternative Performance Measures (APMs) – 1 April 2022 (please note that this document may be updated and therefore reference should always be made to the latest version of it available on the ESMA website at <https://www.esma.europa.eu/>).

In 2024, the reporting financial undertaking must disclose the KPIs for the reporting period 2023 without comparative information. In 2025, the reporting financial and non-financial undertaking must publish the KPIs for the reporting period 2024 along with the previous year's comparative KPIs i.e. KPIs published in 2024 for reporting period 2023 and so forth.

8. How should reporting undertakings address 'double-counting' in the context of business activities contributing to multiple environmental objectives?

Contribution to climate change mitigation (CCM) and climate change adaptation (CCA)

Before TSC for substantial contribution of activities to non-climate environmental objectives are established by future delegated acts, only Taxonomy-alignment with climate-related objectives may be assessed and disclosed (CCM) and CCA).

The contribution of a given activity to CCM or CCA should be assessed based on the nature of that activity.

Regarding the CapEx KPI, and as mentioned in the last paragraph of Section 1.1.2.2 of Annex I to the Disclosures Delegated Act, the nature and scope of CapEx in an activity that contributes substantially to CCM could in some cases be differentiated – and hence easy to distinguish – from CapEx that make that activity adapted to climate change. This could be the case in situations where the adaptation solution is external to the CCM-aligned asset (i.e. a separately identifiable and implemented measure/project) or where a solution is specified in the adaptation plan of the existing activity/asset. For example, the CapEx to build an on-shore wind farm that is located near the sea shore, which should be assessed for CCM, should be distinguished from the CapEx to protect this wind farm from sea rises or sea-shore erosion, which should be assessed for CCA.

On the other hand, where the adaptation solution is an inherent part of the design of the new asset that is itself CCM aligned³⁶, it could be difficult to distinguish CCA related CapEx from CCM related CapEx. In that case, CapEx under CCM could also cover the CapEx on the inherent adaptation solution. For example, a new off-shore wind farm would need to be designed to be resilient to the impacts of the rising seas (i.e. to fulfil DNSH to CCA) in order to be CCM aligned. It might be difficult for the operator to have knowledge of comparative CapEx of an off-shore windfarm that is not adapted to rising seas. In such situations, the CapEx should be reported under CCM objective only.

Regarding the turnover KPI, in accordance with the second paragraph of Section 1.1.1. of Annex I to the Disclosures Delegated Act, the revenue generated from an activity that is adapted to climate

³⁶ DNSH TSC to CCA require that, for new activities and existing activities using newly-built physical assets, the economic operator integrates the adaptation solutions that reduce the most important identified physical climate risks that are material to that activity at the time of design and construction and has implemented them before the start of operations.

change may not be computed in the numerator of the turnover KPI of the undertaking unless that activity:

- is an activity enabling CCA³⁷, or;
- is aligned with CCM or any non-climate environmental objective.

Thus, the turnover generated from an on-shore wind farm that is adapted to climate change may only be counted in the turnover KPI of the undertaking where that wind farm is Taxonomy-aligned with respect to CCM and should be reported under the CCM objective. The turnover KPI for adaptation would not be reported for activities that are only adapted.

For adapted activities enabling a substantial contribution to CCA, the undertaking could count that respective turnover in the numerator of the turnover KPI under the CCA objective (column 6) with an E tag (column 20). Where such an activity also contributes substantially to CCM (e.g. afforestation), the undertaking could count that respective turnover in the numerator of the turnover KPI under the CCM objective (column 5)³⁸. For example, a non-financial undertaking could report turnover from an afforestation activity in a location prone to risk of droughts with climate adapted trees (e.g. drought resistant trees) under the CCM objective (column 5) and report turnover from selling drought resistant seeds and saplings under the CCA objective (column 6). The undertaking should apply a similar approach to OpEx and report OpEx related to afforestation under CCM objective and OpEx related to selling adapted seeds and saplings under CCA objective.

For activities contributing substantially to CCM, treatment of CapEx³⁹ to meet DNSH criteria for non-climate environmental objectives

For activities contributing substantially to CCM, reporting undertakings may incur CapEx to meet DNSH criteria for non-climate environmental objectives. For example, a car manufacturer, which is operating a factory producing electric vehicles⁴⁰, which meet substantial contribution (SC) criteria for CCM, may need to incur CapEx to meet DNSH criteria for the objectives of circular economy or pollution prevention in order to make the production of those vehicles Taxonomy-aligned. That CapEx should not be reported under those environmental objectives (column 8 or 9 of the template in Annex II) because, for those objectives, the activity only meets DNSH level of performance and no TSC for substantial contribution has yet been established for those objectives⁴¹. Instead, that CapEx should be reported under the CCM objective (column 5 of the

³⁷Activities enabling substantial contribution to climate change adaptation such as certain types of engineering, insurance and education could report the turnover KPI for CCA but not for CCM because there are no SC criteria for CCM for such activities.

³⁸ Where the activity referred to in the previous sentence is not enabling, the turnover KPI under CCM objective should be reported on a separate line without the E tag. In all cases, the undertaking should avoid double counting in accordance with Section 1.2.2.2 of Annex I. KPI reported in column 4 should be the same figure as in column 18.

³⁹ Turnover of such an activity would be recognised in the numerator of the turnover KPI only after the activity becomes Taxonomy-aligned.

⁴⁰ See Climate Delegated Act, Annex I, Section 3.3. 'Manufacture of low carbon technologies for transport'.

⁴¹ Once TSC are established for SC towards those objectives, additional CapEx might be needed to make the activity contribute substantially towards those objectives.

template in Annex II), because it is incurred in the context of making an activity contributing substantially to CCM a Taxonomy-aligned activity by meeting DNSH criteria for other objectives.

Treatment of an activity making substantial contribution to multiple environmental objectives (other than only to CCM and CCA)

After TSC for economic activities contributing to environmental objectives are established in a future delegated act, some economic activities may be able to make a substantial contribution to multiple environmental objectives, other than only to CCM and CCA.

The reporting of such activities under the Disclosures Delegated Act, in particular under Section 1.2.2.2. of Annex I, may be further clarified once the relevant TSC are established.

9. What should be the level of consolidation of KPIs of a parent undertaking with respect to (i) their third country subsidiaries and (ii) their activities/assets in third countries, or those of their EU subsidiaries? Where should KPIs be disclosed?

In accordance with point 2(f) of Annex I, the KPIs of undertakings shall be provided at the level of the individual undertaking where that undertaking prepares only individual non-financial statements, or at the level of the group where the undertaking prepares consolidated non-financial statements.

Articles 19a and 29a of NFRD determine whether reporting undertakings should prepare an individual or a consolidated non-financial statement, which shall include Taxonomy disclosures⁴². A reporting undertaking shall prepare an individual non-financial statement unless its parent undertaking prepares a non-financial statement at consolidated level that includes that undertaking. A parent undertaking shall prepare a consolidated non-financial statement unless its own parent includes that parent undertaking and its subsidiaries in a consolidated non-financial statement.

Thus, for the purpose of providing consolidated KPIs, parent entities should consolidate:

- all their subsidiaries, including third country subsidiaries, as per Chapter 6 of the Accounting Directive;
- all their activities (i.e. turnover, CapEx, OpEx) and assets and those of their EU and non-EU subsidiaries/entities, including those performed in third countries.

This implies that the consolidated net turnover, CapEx, OpEx pursuant to the Accounting Directive, should be used for the KPIs disclosed at the consolidated group level regardless of whether some portion of that net turnover, CapEx, OpEx take place in the EU or in a third country.

This approach to consolidation does not change under the CSRD, which allows for a subsidiary undertaking to be exempted from preparing and publishing its sustainability reporting if that subsidiary undertaking and its subsidiary undertakings are included in the consolidated sustainability reporting of a parent undertaking prepared in accordance with ESRS or standards considered equivalent by a Commission implementing act. However, point (10) of Article 19a and

⁴² See Question 1 of the first Commission Notice for more detail.

point (9) of 29a of the CSRD explicitly exclude from this exemption large undertakings with securities admitted to trading on EU regulated markets.

In addition, paragraph (1) of Article 19a and paragraph (1) of Article 29a of CSRD require that undertakings disclose their sustainability reporting in a clearly identified dedicated section of their management report or consolidated management report, respectively. The undertakings subject to CSRD will have to disclose their Taxonomy KPIs within that same dedicated section of the management report or consolidated management report. Under the new Article 29d of CSRD, undertakings subject to CSRD will have to prepare their management report in the machine-readable format specified by Commission Delegated Regulation 2019/815⁴³ on the European Single Electronic Format ('ESEF Regulation'), and mark-up the sustainability reporting section within their management report - including their Taxonomy KPIs – in accordance with the digital taxonomy to be adopted via an amendment to the ESEF Regulation.

10. What is the level of consolidation of KPIs of non-EU groups with a NFRD subsidiary in the EU?

Currently, a reporting undertaking that is a subsidiary of a non-EU parent should provide individual non-consolidated KPIs in its individual non-financial statement, pursuant to Article 19 a of NFRD. Where such subsidiary undertaking is a parent of other subsidiaries, it should provide KPIs that consolidate its subsidiaries in the consolidated non-financial statement pursuant to Article 29a of NFRD. Exemptions in paragraph (3) of Article 19a and paragraph (3) of Article 29a of NFRD only apply if the ultimate non-EU parent undertaking publishes a consolidated management report or a separate report, prepared in accordance with Article 29 and 19a or 29a of NFRD, including all relevant subsidiaries.

Following the entry into application of CSRD⁴⁴, a subsidiary undertaking of a non-EU parent that is subject to Articles 19a and 29a will have to publish its sustainability reporting at a consolidated level, if that subsidiary is also a parent undertaking. This subsidiary undertaking will be exempt from publishing its sustainability reporting if that subsidiary undertaking and its subsidiary undertakings are included in the consolidated sustainability reporting of that non-EU parent undertaking prepared in accordance with EU Sustainability Reporting Standards (ESRS) or standards considered equivalent by a Commission implementing act. However, point (10) of Article 19a and point (9) of Article 29a of CSRD explicitly exclude from this exemption the large undertakings with securities admitted to trading on EU regulated markets.

During a 7-year transition period from the entry into force of CSRD, a reporting undertaking that is subject to Articles 19a or 29a of CSRD and that is a subsidiary of a non-EU parent may provide KPIs that consolidate all EU subsidiaries of the ultimate non-EU parent which are subject to Articles 19a or 29a in a consolidated sustainability report. This reporting undertaking must be one of the Union subsidiary undertakings of the group that generated the greatest turnover in the Union

⁴³ Commission Delegated Regulation (EU) 2020/1989 of 6 November 2020 amending Delegated Regulation (EU) 2019/815 as regards the 2020 update of the taxonomy laid down in the regulatory technical standards for the single electronic reporting format (OJ L 429, 18.12.2020, p. 1–723).

⁴⁴ Reference is made to the description of the phased application in the reply to question 3 of this Notice.

in at least one of the preceding five financial years (on a consolidated basis where applicable). After that transition period, the reporting EU subsidiary of a non-EU parent⁴⁵ will not be able to be exempted from publishing its sustainability reporting (at its own consolidated level if such subsidiary undertaking is also a parent) unless its non-EU parent publishes a consolidated sustainability reporting at the level of that non-EU parent (i.e. providing KPIs at the consolidated level of that non-EU parent), prepared in accordance with ESRS or equivalent standards.

11. Can a subsidiary falling within scope of the NFRD/CSRD be exempted from making Taxonomy related disclosures if its parent undertaking discloses Taxonomy-related information at consolidated level where required or on a voluntary basis?

Currently, undertakings that are exempt from publishing non-financial information pursuant to paragraph (3) of Article 19a and paragraph (3) of Article 29a of NFRD are also exempted from making Taxonomy related disclosures under Article 8(1) of the Taxonomy Regulation, if the conditions in those provisions are met (i.e. the Taxonomy-related disclosure of the exempted undertaking is included in the consolidated non-financial statement, or a separate report, of another (parent) undertaking).

Where the parent undertaking is not required to prepare a consolidated non-financial statement, or separate report, and only prepares it on a voluntary basis, the subsidiary cannot be exempted from making Taxonomy-related disclosures under the Disclosures Delegated Act, unless the parent undertaking publishes a consolidated management report that includes that subsidiary and that is prepared in accordance with Article 29 and 19a (or 29a if that undertaking is a parent undertaking).

The CSRD contains similar exemptions in paragraph (9) of Article 19a and paragraph (8) of Article 29a:

- a subsidiary undertaking is exempted if that undertaking and its subsidiary undertakings are included in the consolidated management report of a parent undertaking drawn up in accordance with the provisions of CSRD, and if the additional conditions set out in point (9) of Article 19a are met. The exemption also covers the case where the subsidiary undertaking is a subsidiary of a non-EU undertaking.
- a parent undertaking is exempted if that parent undertaking and its subsidiaries are included in the consolidated management report of another undertaking, drawn up in accordance with the provisions of CSRD and additional requirements set out in point (8) of Article 29(a) are met. The exemption also covers the case where the parent undertaking is a subsidiary of a non-EU undertaking.

Large undertakings with securities admitted to trading on EU regulated markets are excluded from the exemption (paragraph (10) of Article 19a and paragraph (9) of Article 29a to the CSRD).

⁴⁵ Under the third subparagraph of Article 40a(1) of CSRD.

12. Where a reporting undertaking is required to provide consolidated KPIs, should it also provide KPIs of its subsidiaries?

Article 29a of the Accounting Directive requires parent undertakings of large groups to publish a consolidated sustainability reporting at the level of the group. The objective is to report information necessary to understand the group's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the group's development, performance and position.

Under paragraph (4) of Article 29a of the CSRD, if the parent undertaking identifies significant differences between the risks or impacts of the group and the risks or impacts of one or more of its subsidiaries, the parent must provide an adequate understanding of the risks and impacts of these subsidiaries. The parent undertakings must also indicate which subsidiaries included in the consolidation are exempted from annual or consolidated sustainability reporting pursuant to paragraph (9) of Article 19a or paragraph (8) of Article 29a respectively. In such situations, the consolidated sustainability reporting should also provide subsidiary level Taxonomy KPIs in the contextual information.

13. Is there any minimum turnover, CapEx and OpEx threshold below which undertakings are not obliged to report Taxonomy-eligibility or alignment of their economic activities ('materiality thresholds')?

According to Article 8(2) of the Taxonomy Regulation, undertakings subject to the NFRD/ CSRD) are under the obligation to report the proportion of their turnover, CapEx and OpEx associated with Taxonomy-aligned economic activities. The Disclosures Delegated Act specifies further the content and presentation of the relevant information to be reported. No exemption is foreseen from the obligation to report.

Section 1.1.3.2. of Annex I provides for a certain degree of flexibility in the reporting of the OpEx KPI where the OpEx is considered as "*not material*" for the business model of a non-financial undertaking. In this situation, the reporting undertaking:

- is exempted from the calculation of the numerator of the OpEx KPI and disclose that numerator as being equal to zero;
- disclose the total value of the OpEx denominator;
- explain the absence of materiality of OpEx (i.e. of the total OpEx, corresponding to the denominator, as defined by Disclosures Delegated Act) in their business model.

As a result, companies with no or little eligible OpEx (numerator) but with significant total OpEx (denominator) should not use the exemption.

The exemption from the calculation of the OpEx KPI does not, however, amount to an exemption to disclose information in its entirety, given that reporting undertakings are still required to provide an explanation about the absence of materiality of OpEx in their particular business model.

14. How should turnover, CapEx, OpEx of joint ventures be treated for the reporting of Taxonomy-related KPIs?

In accordance with IFRS 11, a joint venture is a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement. In accordance with IFRS 11, interest in joint ventures is recognised as an investment and accounted for using the equity method in accordance with IAS 28 *Investments in Associates and Joint Ventures*, unless the entity is exempted from applying the equity method as specified in that standard (IFRS 11, paragraph 24).

However, to help reporting undertakings provide an accurate picture of their Taxonomy-aligned investments, and in accordance with Section 1.2.3 of Annex I, non-financial undertakings may disclose, on a voluntary basis, additional KPIs based on turnover, CapEx, OpEx that include investments in equity accounted in joint ventures, pursuant to IFRS 11 or IAS 28, on a pro rata basis corresponding to their share in the equity of the joint venture.

15. How should reporting undertakings account for hedging instruments (including forward sales of power)?

The turnover amount reported should be the same as that accounted for under IAS 1.82(a). Changes in fair value of hedging instruments used under a qualified hedging relationship under IFRS 9 can affect the amount of the turnover where the hedged item is the turnover. This adjustment, however, is not accounted as part of IAS 1.82(a), but is a gain or loss from hedging instrument and therefore it is not part of the turnover KPI.

16. How should the KPIs be adjusted by non-financial undertakings to take account of the environmentally sustainable bonds that they issued with the view of avoiding ‘double-counting’? How should environmentally sustainable bonds / debt securities and the linked double counting issues be treated?

The Disclosures Delegated Act requires financial undertakings to use KPIs of non-financial undertakings when including exposures to those non-financial companies in their GAR/GIR, except for certain exposures where the use of proceeds is known to be Taxonomy-aligned, e.g. sustainability bonds issued by the non-financial undertakings. Sustainability bonds can count in the numerator of GAR/GIR up to the amount of Taxonomy-aligned expenditures paid from the bond proceeds, i.e. above the company level KPI percentage and potentially up to 100% of the exposure to sustainability bonds.

Where the proceeds from the sustainability bond are used to pay for Taxonomy-aligned CapEx, such Capex is already reflected in the GAR/GIR⁴⁶ of the financial undertaking. On the other hand, this CapEx is part of the undertaking’s CapEx KPI and would be counted in the GAR/GIR of the financial undertaking for a second time as part of calculation of the financial undertaking’s KPI

⁴⁶ The financial undertaking discloses GAR/GIR are based on turnover KPIs of investee undertakings and GAR/GIR based on CapEx KPIs of those undertakings in accordance with Section 1.2 of Annex III, point (a) of the fourth paragraph of section 1.2.1 of Annex V, first paragraph.

based on the CapEx KPIs of investee undertakings. To avoid double counting, financial undertakings should use an adjusted CapEx KPI that the non-financial undertaking should disclose alongside their non-adjusted KPIs⁴⁷.

This Taxonomy-aligned CapEx, that was paid from the proceeds of the sustainable bond, represents creation of, or addition to, Taxonomy-aligned assets/equipment that could be used in the production process to produce Taxonomy-aligned output and hence turnover. That Taxonomy-aligned turnover would be part of the non-financial undertaking's turnover KPI. Consequently, the same Taxonomy-aligned turnover would be reflected in financial undertaking's GAR/GIR on the one hand through the inclusion of the sustainability bond directly in the GAR/GIR and, on the other hand, would be counted in the GAR/GIR a second time by including other exposures, multiplied by the turnover KPI, to that non-financial undertaking. To avoid double counting, financial undertakings should use an adjusted turnover KPI that the non-financial undertaking should, until the maturity of the sustainable bond, disclose alongside their non-adjusted KPIs.

Regarding the disclosure of CapEx and/or OpEx KPIs, non-financial undertakings that issued use of proceeds sustainable bond(s) that finance part or all of their CapEx and/or, where relevant, OpEx during the reporting period, should disclose also adjusted CapEx and/or OpEx KPIs so that financial undertakings avoid double-counting that CapEx and/or OpEx in their other exposures to non-financial undertaking⁴⁸. In the adjusted CapEx and OpEx KPIs, a portion of Taxonomy-aligned CapEx and/or OpEx, incurred during the reporting period, that is paid with the proceeds from the issuance of use of proceeds sustainable bonds should be deducted from the numerator of the adjusted CapEx and/or OpEx KPIs.

Similarly for turnover KPIs, non-financial undertakings that issue use of proceeds sustainable bond(s) that fund (a portion of) Taxonomy-aligned assets (and their associated CapEx and OpEx) that are employed in production of Taxonomy-aligned turnover during the reporting period, should, until the maturity of the sustainable bond(s), disclose also adjusted turnover KPIs⁴⁹. In the adjusted turnover KPI, a portion of Taxonomy-aligned turnover should be deducted from the numerator of the turnover KPI which corresponds to the proportion of Taxonomy-aligned assets that were funded with the proceeds of sustainable bond(s).

17. How should a reporting undertaking treat the turnover and CapEx from disposal groups and discontinued operations and in the context of IFRS 5?

The accounting treatment referred to in Sections 1.1.1. and 1.1.2. of Annex I should be applied. While revenue from discontinued operations needs to be presented separately from continuing operations (IFRS 5.33) and, therefore, cannot be included in the revenue line item as required by IAS 1.82(a), revenue from non-current assets or disposal groups classified as held for sale remains

⁴⁷ last paragraph of Article 7(4) of the Disclosures Delegated Act.

⁴⁸ See the last paragraphs of section 1.2.3.2 of Annex I

⁴⁹ See the last paragraph of section 1.2.3.1. of Annex I

part of the continuing operations and, therefore, is included in the revenue line item as required by IAS 1.82(a).

Assets that are part of non-current assets or disposal groups classified as held for sale or a discontinued operation must be reclassified according to IFRS 5 and reported together in a separate balance sheet item. Until the date of IFRS 5 classification or, in the case of non-current assets or disposal groups classified as held for sale, also after this date, additions to the balance sheet that generally meet the CapEx definition, can be made within the financial year. In the case of non-current assets or disposal groups classified as held for sale and discontinued operation, all additions that meet the Capex definition must be taken into account in the calculation of the CapEx KPI.

In addition, the reporting entities should provide contextual information pursuant to Section 1.2.3. of Annex I concerning any current and future impact from non-current assets or disposal groups classified as held for sale and discontinued operations on the turnover KPI and CapEx KPI.

18. How should reporting undertakings assess the Taxonomy-eligibility of economic activities for climate change adaptation (CCA) under Article 11(1)(a) of the Taxonomy Regulation?

The Taxonomy-eligibility of activities for climate change mitigation (CCM) or enabling climate change adaptation (see question 19 of this Notice), may be assessed solely based on the description of the activity, irrespective of whether the activity meets the TSC (in line with the replies to questions 3 and 9 of the first Commission Notice).

With respect to adapted activities (see questions 8 and 19 of this Notice), for assessing the Taxonomy-eligibility of activities for CCA in accordance with Article 11(1)(a) of the Taxonomy Regulation, the title or the description of the economic activity spelled out in Annex II to the Climate Delegated Act is not decisive in itself for making a substantial contribution to CCA. A reporting undertaking should rather consider the adaptation solutions that it puts in place that could make the economic activity adapted/more resilient to climate change. In line with the reply to question 5 of the first Commission Notice, to demonstrate the Taxonomy-eligibility of an activity, an undertaking has to perform a climate risk and vulnerabilities assessment of the most important physical climate risks that are material to its economic activity. In addition, the undertaking must put in place a plan outlining how and by when adaptation solutions will be put in place to counter these physical risks. For instance, if a manufacturer of cement identifies that its manufacturing site is prone to avalanches, the entity may put in place a plan to install structural protection measures to hold back avalanches, such as avalanche barriers or snow racks. The existence of such a plan based on a climate risk and vulnerabilities assessment makes the economic activity Taxonomy-eligible for CCA. This Taxonomy-eligibility does not require the economic activity to meet all the TSC for CCA, i.e. to ensure that the adaptation solutions have already been implemented.

19. What is the Taxonomy-aligned share of turnover and corresponding CapEx/OpEx from activities listed in Annex II to the Climate Delegated Act?

Annex II to the Climate Delegated Act distinguishes between three types of economic activities eligible for climate change adaptation (CCA):

1) Adapted activities:

These are economic activities that can make a substantial contribution to CCA by being made climate resilient/adapted. This implies putting in place adaptation solutions that can counter the most important physical climate risks that threaten the activity, as identified in a climate risk and vulnerability assessment. These activities qualify as Taxonomy-aligned where they meet points 1 to 4 in the generic substantial contribution criteria for adaptation. For instance, if a manufacture of cement identifies that its manufacturing site is prone to avalanches, the entity may put in place a plan to install structural protection measures to hold back avalanches, such as avalanche barriers or snow racks. For these activities, only the CapEx and OpEx associated with putting in place the adaptation solutions can count as Taxonomy-aligned. The turnover of that activity may only be considered as Taxonomy-aligned if the activity itself is also Taxonomy-aligned (see Section 1.1.1 of Annex I) with respect to climate change mitigation (CCM) and then it should be counted towards the CCM objective only, or, when a delegated regulation adopted in accordance with Articles 12(2), 13(2), 14(2) or 15(2) of the Taxonomy Regulation enters into force, any other environmental objective (see replies to questions 5 and 8 of the first Commission Notice). Otherwise, these activities can only be reported under CapEx and OpEx KPIs.

2) Enabling activities:

These are activities that can make a substantial contribution by providing adaptation solutions themselves that can enable another economic activity to reach a substantial contribution to one of the six environmental objectives referred to in Article 9 of the Taxonomy Regulation. The enabling character of these activities is explicitly stated in their description⁵⁰. In addition, they do not follow the generic criteria of substantial contribution to CCA. These activities are limited to the following activities listed in Annex II to the Climate Delegated Act:

- 9.1. *Engineering activities and related technical consultancy dedicated to adaptation to climate change;*
- 9.2. *Close to market research, development and innovation;*
- 10.1. *Non-life insurance: underwriting of climate-related perils;*
- 10.2. *Reinsurance.*

For these activities the turnover, CapEx and OpEx associated with meeting the TSC set out in Annex II to the Climate Delegated Act can count as Taxonomy-aligned.

3) Adapted-enabling activities:

These are economic activities that combine the types 1 and 2 outlined above as they can make a substantial contribution to CCA by:

⁵⁰ The following sentence is added in the description of the activity: *"An economic activity in this category is an enabling activity as referred to in Article 11(1) point (b) of Regulation (EU) 2020/852 where it meets the technical screening criteria set out this section."*

- becoming adapted themselves (adapted activity), and
- enabling other activities to make a substantial contribution (enabling activity).

These activities are identified by the following sentence in the description of the activity “*Where an economic activity in this category complies with the substantial contribution criterion specified in point 5, the activity is an enabling activity as referred to in Article 11(1), point (b), of Regulation (EU) 2020/852, provided that it meets the technical screening criteria set out in this Section*”. The activities that fall under this type must comply with the generic criteria for substantial contribution to CCA set out in Annex II to the Climate Delegated Act with additional criteria related to the enabling character. Therefore, if the activity meets points 1 to 4 of the criteria for substantial contribution, it can qualify as an adapted activity. If it meets, in addition, point 5 of those criteria, the activity can also qualify as enabling. However, the activity first needs to be adapted itself to qualify as enabling. For instance, a school that is prone to subsidence may put in place concrete underpinning or jet grouting to make it resilient to climate change, therefore qualifying as an adapted activity. In addition, the school may offer some climate-related courses, which may stimulate individual climate action.

For these activities, the CapEx and OpEx associated with putting in place the adaptation solutions to make it climate resilient can count as Taxonomy-aligned with respect to CCA⁵¹ (in the above example, the CapEx for the concrete underpinning or jet grouting). In addition, the turnover and associated CapEx and OpEx of providing the adaptation solution itself (e.g. climate related courses) can count as Taxonomy-aligned with respect to CCA.

SECTION II - FAQs ON TURNOVER KPI

20. When should an undertaking be required to report under the Disclosures Delegated Act an economic activity that has not been performed by the reporting entity itself but by a subcontractor?

Reporting entities must report turnover from the activities performed by a subcontractor in accordance with the accounting treatment referred to in Section 1.1.1. of Annex I of the Disclosures Delegated Act. Therefore, the reporting entity should determine whether it recognises revenue arising from that activity as its own revenue under the principles set out in the applicable IFRS 15. Where revenue generated by a subcontractor is recognised as the revenue of the reporting entity, it must be included in the calculation of the turnover KPI.

As an example: An entity is an actor in the logistics industry, and it provides freight transport services by road to its customers (activity 6.6 “*freight transport services by road*” described in the Climate Delegated Act as “*purchase, financing, leasing, rental and operation of vehicles designated as...*”). To deliver such transportation services, the entity either owns directly and operates some vehicles, or it outsources a portion of its activities by contracting with

⁵¹ Sections 1.1.2.2, final paragraph, and Section 1.1.3.2, fourth paragraph of Annex I.

subcontractors or third party transport providers to provide the transport services to its customers, without purchasing, leasing, or operating directly the designated vehicles.

Turnover is generated for the whole activity of transportation services independently of how (by whom) the services are performed; an outsourced activity is part of the general activity 6.6 “*freight transport services by road*” even if the entity does not purchase, rent nor directly operate the vehicles. For this outsourced portion of activities, the turnover KPI to be considered for Taxonomy disclosures is the one derived from the financial statements in accordance with IFRS 15.34 to B3.

Where the entity is determined as being a principal in the satisfaction of the performance obligations in the financial statements, it recognises revenue in the gross amount of consideration to which it expects to be entitled in exchange for the specified good or service transferred. When an entity that is an agent satisfies the performance obligation, it recognises revenue in the amount of any fee or commission to which it expects to be entitled in exchange for arranging for the specified goods or services to be provided by the other party. As indicated in Section 1.1.1 of Annex 1 of the Disclosures Delegated Act, the turnover shall cover the revenue recognised pursuant to IAS 1.82 (a).

21. How should reporting undertakings disclose turnover from Taxonomy-aligned economic activities whose output is used or consumed internally?

The disclosure of data under Section 1.2.3.1 point (b) of Annex I on “*the amounts related to taxonomy aligned activities pursued for non-financial undertakings’ own internal consumption*”, is an element of contextual information allowing reporting undertakings to explain whether and how the outputs of internal sales or consumption of Taxonomy-aligned economic activities have evolved over the reporting period, alongside the main drivers and elements of change in their turnover KPI⁵². This information allows reporting undertakings to disclose where and how outputs of Taxonomy-aligned economic activities (e.g. Taxonomy-aligned renewable energy) may have been diverted for internal consumption and consequently, do not feature in their turnover KPI, which only records external sales.

22. How should reporting undertakings allocate the turnover to economic activities which provide multiple services or products to customers?

The accounting treatment referred to in Section 1.1.1. of Annex I must be applied. In particular, IFRS 15 sets out criteria for the recognition of revenue on the basis of the performance obligations satisfied by the reporting entity, including cases in which multiple performance obligations constitute one single bundle to which revenue is entirely allocated. For the purpose of reporting the turnover KPI, those criteria should be followed to determine how to allocate revenue to different economic activities when multiple performance obligations are satisfied for the same customer or group of customers.

For example, an entity enters a contract to build a renewable energy production infrastructure for a customer. The entity is responsible for the overall management of the project and identifies

⁵² The cost of internal sales/consumption of Taxonomy-aligned activities may qualify as OpEx under point (c) of section 1.1.3.2 of Annex I.

various promised good or services, including engineering, site clearance, foundation, procurement, construction of the structure, installation of equipment and technologies, and finishing. The allocation of the turnover from this project to different economic activities follows the analysis that has been made in the financial statements in accordance with IFRS 15, i.e. depending on whether the goods and services are distinct or not from the accounting perspective. If the goods and services are distinct, the turnover is split into and allocated to the corresponding underlying economic activities.

SECTION III - FAQs ON CAPEX KPI

23. How should reporting undertakings treat public funding and subsidies received to finance their CapEx?

The source of financing (e.g. public or private, external or internal to the undertaking, or their combination) of the CapEx of non-financial undertakings has no relevance for the purpose of assessing the Taxonomy-alignment of that CapEx. Reporting undertakings should consider all their CapEx for the purpose of assessing its Taxonomy-alignment regardless of the source of its financing.

24. At what point in time does the five to ten year-period of the CapEx plan commence for non-financial undertakings for the purposes of reporting? Does this time period apply both to a plan to expand a Taxonomy-aligned economic activity as well as to upgrade a Taxonomy-eligible economic activity into a Taxonomy-aligned economic activity?

The five to ten-year time period for the CapEx plan referred to in Section 1.1.2.2 of Annex I should start from its approval by the management body, or by another body approving it by delegation. The time period applies both to a plan to expand an undertaking's Taxonomy-aligned economic activities and to a plan to upgrade or commence Taxonomy-eligible economic activities with a view to rendering them Taxonomy-aligned.

25. What is the beginning of the 18 month-period for the completion of individual measures referred to in point (c) of Section 1.1.2.2 of Annex I?

The start date of individual measures referred to in point (c) of Section 1.1.2.2 of Annex I should be aligned with the moment in time when accounting rules (for example, in IAS 16(7) for tangible assets and IAS 38(21) for intangible assets) recognise the associated CapEx in the financial statement and not at the point when the contract for the delivery of the Taxonomy-aligned output, service or measure is concluded.

26. How comprehensive and precise should a CapEx plan be to be counted in the numerator of the CapEx KPI? Would the expansion of an existing Taxonomy-aligned economic activity in the same facility count as CapEx under point (a) or (b) of Section 1.1.2.2. of Annex I?

The CapEx plan referred to in Section 1.1.2.2. of Annex I should identify all planned measures that are necessary to ensure compliance of the economic activity with the TSC and include a

description of those measures, expenditures related to those measures and their timing, including significant intermediary milestones, to allow effective monitoring by investors of the implementation of the investment plan⁵³. Expenditures which are not related to ensuring that the activity meets the criteria, e.g. decorative aspects of the facility in which the activity is performed with no bearing on environmental performance should not be included. OpEx which is necessary to ensure the effective functioning and day-to-day servicing of Taxonomy-aligned assets should be included as relevant in the OpEx plan in accordance with points (a) and (b) of Section 1.1.3.2 of Annex I.

In order to determine whether the expansion of an existing Taxonomy-aligned economic activity would count as CapEx under point (a) or (b) of Section 1.1.2.2. of Annex I, one should consider when the expansion would be completed and become operational in relation to the moment where its related CapEx is incurred. If the expansion becomes operational in the same financial period when all the CapEx related to it is incurred, it could be counted under point (a) of Section 1.1.2.2. (i.e. there is no need to use the CapEx plan for the expansion). On the other hand, where the expansion takes place over several financial periods, CapEx will be incurred in financial periods before the expansion is completed. In order to count that CapEx as Taxonomy-aligned in the financial period when it was incurred while the expansion is not yet completed, the undertaking should use the CapEx plan under point (b) of Section 1.1.2.2. The purpose of the CapEx plan is to provide a degree of assurance that the expanded activity will be Taxonomy-aligned when completed and allow, on that basis, to count CapEx as already Taxonomy-aligned while incurred in the periods before the expansion is completed. In both cases, after completion, the expanded activity needs to meet the relevant TSCs.

27. How should the Taxonomy-aligned value of CapEx be presented on points (a), (b) and (c) of Section 1.1.2.2 of Annex I?

In line with Section 1.2.3.2. “*Contextual information about CapEx KPI*” of Annex I, different CapEx items under points (a), (b) and (c) of Section 1.1.2.2 of Annex I related to Taxonomy-aligned economic activities must be presented at activity-level. This means that relevant values of different CapEx items are to be presented in an aggregate form with respect to an activity. In the case of an undertaking with multiple Taxonomy-eligible/aligned economic activities, the presentation must make clear to which activity a CapEx item relates. Where individual values of relevant Taxonomy-aligned CapEx according to points (a), (b) and (c) of Section 1.1.2.2 of Annex I could be distinguished, reporting undertakings could choose to itemise them as such in the template in Annex II under one relevant activity. The total value of relevant Taxonomy-aligned CapEx for a relevant activity must be the sum of the items in points (a), (b) and (c) of Section 1.1.2.2 across relevant Taxonomy-aligned activities. The values of the different items should also be appropriately explained as part of the specifications and contextual information required under Section 1.2 of Annex I.

⁵³ It is recommended that undertakings integrate their CapEx plans into their transition plans referred to in CSRD.

28. What is the scope of the CapEx and OpEx referred to in points (c) of Section 1.1.2.2 and Section 1.1.3.2 of Annex I, i.e. purchase of Taxonomy-aligned output and individual measures?

Reference is made to explanations provided in the reply to the question 11 of the first Commission Notice concerning the activities/measures that are in the scope of the CapEx and OpEx referred to in point (c) of Section 1.1.2.2 and Section 1.1.3.2, respectively⁵⁴. For the purpose of this question in this Notice, the references to Taxonomy-eligibility in that reply should be read as references to Taxonomy-alignment.

As economic activities listed 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 the Taxonomy Regulation are added over time to the EU Taxonomy, the scope of the relevant activities/measures may expand.

29. How should CapEx and OpEx integrated in value chains be disclosed in the situation where the reporting undertaking is performing both the upstream and the downstream Taxonomy-eligible economic activity?

In the situation where an intermediate upstream activity is defined in the Climate Delegated Act as a standalone activity, the CapEx or OpEx associated with that activity should be assessed independently from the use of the output resulting from that activity for another downstream activity that is also defined in the Climate Delegated Act. For instance, if an undertaking produces cement (activity listed in Section 3.7 of Annex I to Climate Delegated Act) and it is using that cement for the construction of a building, the CapEx associated with meeting the TSC for cement is Taxonomy-aligned regardless of whether the construction of the building is Taxonomy-aligned. Reference is also made to question 21 of this Notice regarding how undertakings should disclose turnover from Taxonomy-aligned economic activities whose output is used or consumed internally.

30. How should CapEx be assessed with regard to Taxonomy-alignment if the asset that the CapEx is financing might be used for various projects?

To avoid greenwashing and provide for an accurate reporting, it is necessary to only allocate the proportion of CapEx which is effectively assisting Taxonomy-aligned economic activities. Reporting entities should use a non-financial metric that provides for an accurate allocation of the CapEx to a Taxonomy-aligned activity. For instance, if the asset that is financed by CapEx produces 100 units of output that are Taxonomy-aligned and 100 units of output that are not Taxonomy-aligned, the reporting undertaking could report 50% of that CapEx as Taxonomy-aligned. The methodology used to allocate CapEx to Taxonomy-aligned activities should be based on verifiable evidence.

The reporting undertaking should also provide contextual information under Section 1.2.3 of Annex I concerning:

⁵⁴ In the third paragraph of the response to the question 11 of the First Commission Notice, the reference to Section 1.1.3.2 is meant to refer to Section 1.1.2.2 of Annex I.

- the allocation of CapEx to multiple projects, and
- the methodology to allocate the CapEx to Taxonomy-aligned activities.

31. Can prepayments be counted as part of Taxonomy-aligned CapEx?

The costs to be considered for inclusion in the CapEx KPI are those listed in Section 1.1.2. of Annex I. The inclusion of these costs shall follow the timing of the recognition requirements as per the related accounting standards, as such prepayments should not be considered as giving rise to costs that are Taxonomy-eligible or aligned until the related elements of CapEx are recognised pursuant to the relevant accounting standards.

SECTION IV - FAQs ON OPEX KPI

32. How should research and development be accounted in the numerator of the OpEx KPI where it cannot be linked to specific activities?

Point (a) of Section 1.1.3.2 of Annex I requires that the OpEx concerning research and development must be “*associated with Taxonomy-aligned economic activities*” to be included in the numerator of the OpEx KPI. Therefore, if research and development cannot be associated with Taxonomy-aligned economic activities, it may not be accounted in the numerator of the OpEx KPI. If R&D is used for both Taxonomy-aligned and non Taxonomy-aligned activities, the costs for R&D should be included in the numerator of the OpEx KPI based on its pro-rata contribution to the Taxonomy-aligned activities (see reply to question 26 in this Notice).

33. How should OpEx categories referred to in points (a) to (c) in Section 1.1.3.2. of Annex I (OpEx Numerator) be understood and treated in the numerator and denominator of the OpEx KPI?

The OpEx categories referred to in points (a) to (c) in Section 1.1.3.2 of Annex I that are part of the numerator of the OpEx KPI should also be accounted for in the denominator of the OpEx KPI.

34. To which elements of the definition of the denominator of OpEx KPI does the notion of “*maintenance and repair, and any other direct expenditures relating to the day-to-day servicing of assets of property, plant and equipment*” refer under Section 1.1.3.1 of Annex I?

Maintenance and repair, and any other direct expenditures in the denominator of the OpEx KPI relate principally to physical assets. However, maintenance and repair or other direct costs could be also relevant for intangible assets (e.g. right-of-use assets, software). As such, all those costs should be part of the denominator of the OpEx KPI.