

European Commission
DG FISMA (Financial Stability, Financial
Services and Capital Markets Union (Sustainable
Finance)
Martin Spolk (Head of Unit)
CC. M. McGuinness (Commissioner)



Secretariaat:
Antonio Vivaldistraat 2, 1083 GR Amsterdam
Postbus 7984, 1008 AD Amsterdam

Re. Feedback on EU Taxonomy Delegated Acts
(online/by email)

T +31(0)20 301 03 91
secretariaat@rjnet.nl
www.rjnet.nl

Our ref: RJ-Div. 6062
Direct dial: Tel.: (+31) 20 301 039
Date: Amsterdam, May 3, 2023
Re: Feedback on the EU Taxonomy Delegated Acts (Tax04)

Dear Mr. Spolk,

The Dutch Accounting Standards Board (DASB) appreciates the opportunity to express its views on the new set of EU Taxonomy criteria and the proposed targeted amendments to the Taxonomy Climate Delegated Act and to the Taxonomy Disclosures Delegated Act, as issued by the European Commission on 5 April 2023 (hereafter: Tax04). Being the Dutch standard setter for corporate reporting, the DASB will limit its response to corporate reporting aspects, and only respond to a number of key issues on the new set of EU Taxonomy criteria.

The DASB is positive about the developments in the field of sustainability reporting. The DASB fully supports the climate and energy targets of the EU for 2030 and beyond, and believes that sustainability reporting is a vital element to meet these targets and steer direct investment towards sustainable projects. The objective of the EU Taxonomy is to provide companies, investors and policymakers with appropriate definitions of economic activities that can be considered environmentally sustainable. The DASB believes that reporting on environmentally sustainable economic activities entices companies to increase sustainable activities to gain a competitive edge and contribute to the EU sustainability targets.

However, given the first experiences of applying the EU Taxonomy in practice and the current state of affairs in the field of corporate sustainability reporting with the development of the CSRD and ESRS, the DASB has serious concerns on the position of the EU Taxonomy in the emerging sustainability information landscape. Based on the experiences so far with the EU Taxonomy there are significant challenges in respect of reliability, comparability and useability of the reported information. Financial institutions and investors even indicate that the EU Taxonomy reporting in its current state is hardly usable for their purpose. The DASB finds it difficult to see how the Tax04 addresses these concerns and is of the opinion these concerns will only increase when the widening of the reporting on the four other environmental objectives will materialize.

In addition, the complex sustainability reporting requirements under development, including CSRD and ESRS, will result in uncertainty and operational burden for companies due to regular adjustments on the internal systems and evolving requirements. Therefore, the DASB is also concerned that the very ambitious timeframe of implementing requirements of CSRD-ESRS in concurrence with the Tax04 will be too burdensome and not result in useful information for investors. This can result in the risk of lack of required quality of such reporting in the short term. Consequently, we suggest addressing the concerns in respect of reliability, comparability and useability first and revisiting its

role in the entire new EU sustainability reporting framework first. We suggest to consult with relevant stakeholders on a proposal to postpone the implementation of the Tax04 by at least one year.

The DASB fully supports the policy objectives of sustainability reporting. Our comments below aim to point out concerns that we believe of most priority given their significant impact on the reporting quality.

1. Usability of data presented

The first experiences of reporting on the EU Taxonomy evidence that due to various interpretations by the reporters and auditors the comparability of the provided information is under pressure. Financial institutions and investors even indicate that the EU Taxonomy reporting in its current state is hardly usable for its purpose. Reason for this lack of insight is the unclarity in the scope of the EU Taxonomy and activity coverage. For example, energy efficiency is not mentioned in the EU Taxonomy, therewith leaving out an important aspect of sustainability information. Also, several relevant sectors are missing in the Tax04, for example in the biodiversity objective. In fact, the most impactful activities related to Agriculture and Food and Beverage are not included, making not clear the contribution of the EU Taxonomy to the biodiversity loss prevention ambition of the EU.

An incomplete EU Taxonomy hampers the ability of financial institutions and investors to offer products meant to support (the transition toward) sustainable business, and consequently, a more sustainable European society. The iterative approach of adding incremental activities to the criteria adds to the reporting burden of companies, who are then required to reassess their full portfolios on the newly added criteria, without delivering value to society of a complete EU Taxonomy.

The DASB suggests improving the comparability of the current legislation to ensure it provides usable and relevant data, before expanding it. Concretely, we suggest an evaluation of the use of the first Delegated Act and addressing the issues that result in incompatible information before implementing the Tax04.

2. Complex and unclear definitions

The EU Taxonomy and also the Tax04 are, even by the most advanced reporting companies and audit firms, perceived as difficult to understand due to its complexity, lack of guidance and use of unclear definitions. And although the answers to the FAQs provided by the Commission are helpful, many fundamental questions remain unsolved. Consequently, scope and applicability are interpreted differently by companies in the same industry resulting in inconsistent reporting. Examples of unclarity are the terms: “circularity”, “energy efficient” and “low carbon emission”. As a result, companies will define by themselves what is meant by one of those terms.

Complexity is further increased by apparent contradictions in the Tax04, for example, a battery electric car is aligned if it is produced, but not aligned if it is leased, also depending on the source of financing. The environmental performance of the car is identical in all cases. Therefore, we believe that such complexity of requirements is excessive for both preparers and users of information. However, in other parts the level of detail is not sufficient, as for example spare parts for hybrid vehicles are not considered in the eligibility list.

There are more examples of such complex and unclear definitions, which in our view does not yet allow the drafts to meet the quality requirements expected from EU legislation. The DASB suggests removing complex wording and defining undefined terms to make sure that used wording and definitions are clear and consistently applied.

3. Conflicting requirements with EU legislation

In Tax04 and the appendices, various clauses conflict with existing EU regulation. For example, the EU has very stringent chemicals legislations (ROHS, REACH, POP), and companies are only allowed to use specific substances if they have obtained an exemption from the EU. Furthermore, ecofriendly alternatives are not always available. For example, for medical equipment certain specific chemicals are mandated by regulators when there is contact with the human body and no alternative exists. Currently, those type of medical equipment are subject to an exemption. In the Tax04, these exemptions are not considered, meaning that companies are unable to classify these activities as aligned, which will result in incomplete information.

Another example, substance restrictions in Tax04 go much further than current EU restrictions not considering availability of alternatives (e.g., Medical Devices are exempted under the Biocidal Products Regulation (BPR, Regulation (EU) 528/2012)). To change medical products due to the highly regulated nature of such products, it will take many years before products without these substances will be available on the market. Not aligning the EU Taxonomy requirements with the other existing EU legislation will cause legislation conflicts and will make it impossible for the companies to report any aligned revenues in the foreseeable future. Therefore we recommend to review the EU Taxonomy provisions and align them with the other legislation requirements.

4. International alignment

The EU Taxonomy is developed by the European Commission and therefore the definitions used follow EU legislation and EU business practices. EU-based definitions are not always directly applicable for products and services delivered by companies that also produce for or sell to other (non-EU) jurisdictions.

We refer to the following example that is derived from experience with the current EU Taxonomy screening. European producers of electric vehicles have indicated that the “Do No Significant Harm” requirements for tires includes references to EU legislation (e.g. Regulation (EU) 2018/858, Regulation (EC) No 595/2009 and Regulation (EC) No. 715/2007) and specific norms and thresholds that are not required nor present in non-EU countries (EU Taxonomy Regulation Annex II page 66, (5) Pollution prevention and control).

We would advise the Commission to align all definitions with the most appropriate global standard or guidelines wherever possible and provide further instructions for companies on how to deal with possible necessary translations to methodologies used in other markets of the world outside of the EU market.

5. Implementation guidance needed

The legislation regarding the EU Taxonomy is very complex and extensive. Definitions and principles such as the “Do No Significant Harm” principles and the “Principles of Adverse Impacts” require additional clarifications that are not yet sufficiently available. In practice this leads to a significant number of interpretation issues for which no right or wrong can be determined as there is no implementation guidance from an authoritative institution. Currently, a significant number of companies struggle with the application of the EU Taxonomy-related disclosure requirements as a company specific methodology has to be developed internally for all elements where the interpretation is not clear.

In order to apply with the EU Taxonomy in an accurate and consistent manner and to deliver on the ultimate goal – having comparable data for stakeholders – it is crucial that companies can reach out to an implementation support organization to seek clarification from an independent and authoritative body, preferably connected to the standard setter. Perhaps the Platform on Sustainable Finance can

play a role? Furthermore, the quality of disclosure requirements could be enhanced by a so-called Interpretations Committee that will help in enabling high-quality assurance by auditors. With the requirements on EU Taxonomy-related information this also comes with the limited assurance under the CSRD as of January 1st 2024 for large Public Interest Entities and as of January 1st 2025 for all other large companies. Given the evolving nature of the sustainability area and hence EU Taxonomy requirements, this authoritative body could be playing a role in the continuous maintenance of the EU Taxonomy to ensure it is timely updated for new changes in e.g. technology. The implementation costs should be taken into account when considering implementation and amendments of the requirements.

Implementation support and interpretation guidance by a dedicated authoritative body are essential for successful adoption of the EU Taxonomy. This will help to derive uniform and comparable information based on reported EU Taxonomy disclosures and will also help develop the EU Taxonomy into a set of mature reporting requirements. Therefore we would advise the Commission to provide clear and sufficient application before implementing a new EU Taxonomy.

6. Timing: Date of entry into force

The DASB is concerned that the ambitious timeframe of implementing requirements of CSRD, ESRS and EU Taxonomy poses a risk to the quality of such sustainability reporting in the short term. Especially the concurrence of the implementation of the CSRD and the extension of the scope of the EU Taxonomy with the new set of objectives will become too burdensome for reporting companies and independent auditors. The implementation of the CSRD and ESRS requires considerable effort and resources from companies and auditors. However, we consider that the confluence of implementing the CSRD, ESRS and Tax04 for reporting over the financial year 2024 will make reporting not feasible for both reporting companies and their auditors. In addition we believe that the fundamental concerns as mentioned above should be addressed before broadening the scope of reporting for the remaining four environmental objectives.

To ensure successful implementation and reliable, comparable and useable reporting on Tax04, sufficient time for preparation is required to prepare for this comprehensive and complex legislation. Quality of reporting is under pressure when the reporting requirements for the year 2023 only become clear during 2023. The DASB therefore suggests postponing the Tax04 by means of a phased approach, similar to the CSRD in order to avoid confluence, which was originally a provision of Art. 8 (5) DA. This section has however been deleted in the new version of Tax04-DA draft Art. 5 (1). The DASB believes reporting on eligibility should not start earlier than for reporting year 2024 and reporting on alignment not earlier than reporting year 2025 for the current NFRD-reporters which allows to resolve the concerns and meanwhile lets companies adopt CSRD-ESRS requirements. For large companies, reporting on eligibility should be considered not earlier than reporting year 2025 and reporting on alignment not earlier than reporting year 2026.

Finally, as mentioned in the introduction of our letter, the DASB understands the urgency and supports the development of sustainability reporting standards that ensure high quality, consistent and comparable reporting. Our feedback is meant to promote relevant, comparable and reliable sustainability information for all stakeholders. We believe it is necessary to address the concerns in respect of reliability, comparability and useability and revisit the Taxonomy's role in the entire new EU sustainability reporting framework first and as a result postpone Tax04 which would benefit the quality of sustainability reporting for all stakeholders.

We will be pleased to provide any further information that you may require.

Yours sincerely,

Gerard van Santen
Chairman Dutch Accounting Standards Board

Simon Braaksma & Olga Smirnova
Co-chairs DASB WG Sustainability Reporting