



## *EPRA FEEDBACK*

### *on the Commission Delegated Regulation on a climate change mitigation and adaptation taxonomy*

EPRA, representing the listed real estate sector in Europe, thanks the Commission for the opportunity to provide feedback on the EU taxonomy criteria. We stress that our members, including the major listed property companies and REITs,<sup>1</sup> stand strongly behind the EU Taxonomy. There has been tremendous work done by the High-Level Expert Group, the Technical Expert Group and the Commission. It goes without saying that we need a tool – at European level – to help us speak the same language and to help the business and investment communities to re-orient the capital to where it matters.

In the draft Delegated Regulation, there are many positive measures which we highlight:

- The Commission's draft focuses on real estate with seven distinct 'economic activities';
- The preserved ambition to go beyond the current standards for new buildings;
- Certain measures to improve the EU's renovation rate from the current 0.4%-1.2%:
  - with well-designed screening criteria for 'renovation' (i.e. major renovation/-30% PED)
  - emphasis on the 'individual measures and professional services' economic activities);
- Recognition of the operational property investment economic activity ('acquisition and ownership').

There are also measures requiring further attention to become successful on the market. For example:

- **The Technical screening criteria supports prominently construction and acquisition of new buildings, while fully disregarding the most meaningful real estate activity to substantially support climate change mitigation, i.e. acquisition of existing buildings with the aim of renovating them.**
- We stress that it is the actual performance of the buildings which is sought after by the investors (rather than the designed one). There is significant evidence showing a gap between the designed and actual performance of the buildings and that EPCs are not reliable in capturing the real performance of a building.
- There is a lack of measures to facilitate immediate functionality of the taxonomy within<sup>2</sup> and outside the EU (e.g. enabling use of alternative schemes as proxies for EPCs – as per TEG's report);
- Criteria for acquisition of new buildings built before 2020 are for certain member states disproportionately stricter than those for the newly built buildings after 2020. To facilitate a fair and balanced roll-out of the Taxonomy, we recommend to revert to the TEG's recommendation of the top 15 % of the national building stock.
- We noticed a particularly narrow approach on the acquisition and ownership. Property investment companies have the scale to make a true difference. They own the buildings, renovate the buildings they own (redevelopment projects), acquire existing ones to renovate and build new buildings for their own portfolio (not for sale). Therefore, we point out that there is a substantial part of their business which supports climate change mitigation but has not been recognised in the Taxonomy.
- Considering the reporting obligations on the listed companies and on the financial market participants in respect of the financial products, we find the cumulative effect of the DNSH

<sup>1</sup> The vast majority of constituent companies included in the FTSE EPRA Nareit Europe Real Estate Index

<sup>2</sup> We refer to EU Member States such as Belgium or Germany which don't rely on EPCs ratings. For reference see <https://tinyurl.com/y7lgcm9>

requirements excessive to the level which might render the Taxonomy unusable. We recommend to simplify the DNSH requirements.

**We urge the Commission to postpone the Taxonomy Delegated Regulation's adoption, revisit all the technical details and take more time to justify where it deviates from the HLEG's and TEG's recommendations.**

Please note that we elaborate on each of the mentioned points in the ANNEX to the EPRA feedback on the Taxonomy Delegated Regulation submitted on 17 December 2020.

We remain available to discuss this further at your convenience. Please contact Jana Bour, EPRA EU Policy Manager at [j.bour@epra.com](mailto:j.bour@epra.com).

## ANNEX: EPRA FULL COMMENTS ON THE EU TAXONOMY

### GENERAL COMMENTS

#### ON MEASURES ADOPTED FOR CONSTRUCTION AND REAL ESTATE ACTIVITIES IN THE DRAFT DELEGATED REGULATION'S ANNEX I - CLIMATE CHANGE MITIGATION

We reiterate that the listed real estate sector values the efforts done on the Taxonomy so far by the European Commission, the High-Level Expert Group and the Technical Expert Group on Sustainable Finance. We are very supportive of the initiative and would like to see it succeed in the objectives you have set for it. We therefore hope you can take our below recommendations into consideration and align the taxonomy policies on the real estate industry with the mission of the European Green Deal and the Renovation Wave. We highlight the following:

- In the Recital 23 of the Delegated Regulation, it has become evident that considerations on embedded carbon are intended to be included in the Taxonomy. The Recital 23 states that '*the technical screening criteria should be based on the potential impact of those activities, on the energy performance of buildings and on related greenhouse gas emissions and embedded carbon.*' However, the technical screening criteria in Annex I on Climate change mitigation disregard considerations on embedded carbon.
- Demonstrably, the Technical screening criteria are prominently supportive of construction and/or acquisition of new buildings, while fully disregarding the most meaningful real estate economic activity to substantially support climate change mitigation, i.e. acquisition of existing buildings with the aim of renovating them. This is one of the key provisions which demonstrates **inconsistency of the EU Taxonomy with the objectives of the EU Green Deal and the Renovation Wave strategy**. There are many others, which we will specify in details below, however, we think that this is the most urgent issue to be addressed by the European Commission.
- There is a high number of criteria that rely on EU Directives (around 20 Directives are cited). It would be very helpful to have access to a correspondence table that explains how those Directives have been incorporated in national legislation in order to be able to apply them in a harmonised and more robust way.
- Scale and cross-border investments are particularly important to keep climate change mitigation measures affordable. We ask that the European Commission pay an extra attention to the usability of the Taxonomy and remove measures which would render the EU Taxonomy unusable.
- There are many areas in the Draft Delegated Regulation which are either inconsistent or still unclear to us, in terms of their application. The current draft, if adopted in its form, will introduce a substantial amount of legal uncertainty. For example, it is not clear who exactly is eligible to count what economic activities, or their respective shares in that matter. Unlike the draft Delegated Regulation, the final TEG report contained more detailed information. Yes, there is another Delegated Regulation in a pipeline, which will address part of the topic, i.e. of the EU Taxonomy related disclosure. However, it needs to be clear in terms of who can consider to be eligible for what activity so that it can be then applied and reported on. This is a fundamental issue which requires further elaborations. For example, it is not clear if it is the property owner (i.e. REIT) who invests into renovation that is eligible to count its cost, or it is purely the contractor who is eligible to refer to its turnover for that purpose. These questions are very important in understanding how to apply the Taxonomy in the best way to attract capital for the right set of underlying economic activities. We understand the Taxonomy is trying to achieve that and therefore lack of clarity on this part should be addressed. In addition, we ask the Commission to review the Taxonomy's internal consistency to facilitate legal certainty in its application. For example, Annex 2 defines in point 3.6 what a cement needs to look like to fit the DNSH definition. There is no similar application when it comes to new construction. It is a small example, however, cumulatively these types of inconsistencies can create quite a substantial amount of legal uncertainty. **We therefore call on the Commission to consider postponing the adoption of the**

### **Delegated Regulation and take more time to consider recommendations of the key stakeholders concerned.**

- There is also not sufficient understanding of why the current draft Delegated Regulation varies significantly and in many places from the Final Report of the Technical Expert Group. We want to point out that the members of the TEG group have been carefully selected by the European Commission and hence we would anticipate a greater reliance on their input and advice. We think that a core responsibility to re-direct the investment in economic activities which have a true positive impact on the planet is in fact a responsibility we share: you as the policy makers have the responsibility to draw overall policies that will allow us to reach a common goal and us as business and investment communities in implementing the necessary actions that will transform these policies into real results. We therefore call on the Commission to work on the legislation in a cooperative spirit.
- We want to point out that the list of criteria included in the taxonomy, particularly those in DNSH, will correspondingly increase the reporting burden to a disproportionate extent and make this taxonomy very hard to use for financial and non-financial companies. Particularly considering the reporting obligations on the listed property companies and also on the financial market participants in respect of the financial products, we find the cumulative effect of the DNSH requirements excessive to the level which might render the Taxonomy unusable. We consider the conditions mostly relevant, however, their assessment would increase the reporting burden to an unbearable extent. For example, in the real estate sector, we find that on around 23 criteria used for 7.1 ; 7.2 and 7.7, only 35% of them are already reported by REITs (based on example of the French EPRA member). It means that they were not already asked by stakeholders, such as non- financial rating agencies, in a sector that has a dedicated ESG agency (GRESB) and ESG sectoral reporting guidelines (EPRA Sustainability Best Practices Recommendations Guidelines), which poses the question of the relevance and legitimacy of the criteria chosen in the taxonomy. As they serve as a safeguard to the core objective of the economic activities, we find them particularly unproportionate. We recommend to simplify the DNSH requirements. We also recommend this to be reflected on in the coming Delegated rules on taxonomy-related disclosure.
- Regarding the all above, **we strongly recommend to postpone the application of the Taxonomy reporting requirements to FY 2022 so that the market participants and other stakeholders have sufficient time to gain clarity on how to use the EU Taxonomy appropriately and meaningfully.**

## **7.1. CONSTRUCTION OF NEW BUILDINGS**

- Development (construction of new buildings) is by the Taxonomy restricted to sale which leaves part of the market engaged in the same underlying activity out of the Taxonomy's scope. This is probably unintended.
- Overall, we welcome the criteria on NZEB-20%, however, would like to mention the following considerations:
  - The NZEB requirements vary across the EU member states. It would be helpful if the Commission provides for a full set of information of the NZEB requirements, as defined in each individual Member State, and then provides the level of EPC and other internationally recognised schemes corresponding to the NZEB -20% for each member state.
  - In addition, the NZEB requirements fail to relate to the embedded carbon, meaning that the current Taxonomy requirements do not seek to show or reveal the embedded carbon. We stress that a CO2 life cycle assessment plays a central role in the context of climate change mitigation.
  - The NZEB defined by the EU as *“building that has a very high energy performance, as determined in accordance with Annex I. The nearly zero or very low amount of energy*

*required should be covered to a very significant extent by energy from renewable sources, including energy from renewable sources produced on-site or nearby;*” (DIRECTIVE 2010/31/EU, Energy performance of buildings”). We understand the principles of energy efficiency first is a core principle of the EU Renovation Wave and are supportive of the measure. However, we warn against undue inconsistencies between the various EU policies and also against the legitimacy of the decision making process which could undermine the democratic policy making process within the European Union. We call the Commission to align to its own NZEB definition as adopted by the EPBD. We also call on the Commission to review the EPBD, NZEB and EPC as part of the Renovation Wave agenda to better reflect the needs of the European climate policy objectives. This, however, should be at the level of the ordinary legislative procedure (Level 1 – legislative power) and not at the level of creating delegated acts (Level 2 – executive power).

- We continue to stress that it is the actual performance of the buildings which is sought after by the investors (rather than the modelled one). There is significant evidence showing a gap between the modelled and actual performance of the buildings. We draw your attention to successful EU funded projects addressing the issue, e.g. The ALDREN project.
- The technical screening criteria are exclusively requiring EPCs without enabling use of alternative schemes as proxies. We warn against the exclusive reference to EPCs for the following reasons:
  - Established schemes which have been widely accepted by the market participants, tested and internationally recognised should be enabled not suppressed.
  - There is a lack of reliability and even comparability of EPCs across the EU member states. Allowing the alternative use of national regulatory calculations, where they exist in a more robust way, will improve the EPCs’ reliability.
  - We also warn against the use of a standard as an absolute target (whether EPC and/or other schemes). For example, countries with the more stringent EPC A emission/consumption target, will have a strong incentive to reduce the target level in order to still be in position to attract capital, therefore moving in the wrong direction. Instead, we recommend to use an improvement target (e.g. improve the rating by x%).
  - In France, for example, EPCs are established upon completion for residential buildings, and only one year after it was put in operation for non-residential buildings, whereas turnover starts to be registered and accounted for at the date of the building permit (i.e. 2 or 3 years before completion of the building). Therefore, there is a significant usability concern of the mentioned requirement as it will be impossible to qualify turnover as eligible during the first 2 to 3 years.
  - The level of EPC corresponding to NZEB-20% is not specified. The number of uses taken into account in the transposition of the Directive 2010/31/EU (NZEB) is not always similar to the one taken into account in the EPC.
  - EPC [A, B, C, ... E] rating is not something which is required by EU regulations resulting in several Member States not having them at all. Therefore, the exclusive use of EPCs will pose significant problems in the application of the EU Taxonomy. We do not want to say that the Commission should decrease in its ambition. To the contrary! We want to stress that what is behind the EPCs – the performance of the buildings – is what should matter here. EPCs represent one of the tools which are intended to reveal performance of the building. In fact, it is one of the tools which is less reliable, less comparable and less acceptable by the market participants. We want to remind the Commission that the objective of the EU Taxonomy is to help re-direct the financial flows into sustainable activities and thus help us address the climate change. The objective of the EU Taxonomy is not to make use of EPCs mandatory in a delegated act, while it has not been made mandatory in the ordinary legislative decision making process of the adoption of the EPBD. We want to encourage the Commission to focus on the common goal we share: to help us make a positive impact on the planet. It is this objective where we need

to stay united. And there is no harm in diversity of the tools which are to reveal whether the underlying objectives are met or not, as long as we have the same understanding of what it means to have a sustainable performance of the buildings.

- The criteria on the thermal integrity at the moment apply to the existing buildings only and would constitute a complexity in the reporting process, considering that such assessment is done after a completion of the project. This could also lead to a partial unusability of the category 7.1. Construction of new buildings. We welcome the criterium on testing for air-tightness, but recommend to suppress the one on thermal integrity, today only applied to existing buildings. Those two criteria will present the same timing problem as the previous ones mentioned regarding EPCs: they are done after completion whereas the turnover starts at the date of the building permit.

## 7.2. RENOVATIONS

We very much welcome the category and technical screening criteria for renovations. It goes without saying that the current low annual energy renovation rate (around 1% in Europe)<sup>3</sup> requires renovations to be addressed urgently. In fact, we would argue that it is needed to over incentivise them over the construction of new buildings. One way of doing so is to set an appropriately high level of ambition so that it remains feasible to reach, otherwise there is a risk of achieving the contrary: leading capital towards the construction of new buildings.

Regarding renovations, whether major or deep renovations, we would like to stress that greater considerations should be placed on the embedded carbon and the full life cycle CO<sub>2</sub> assessment of the building. This is to help the industry to focus on the right types of renovations for the right types of buildings. The core idea is to improve energy performance of the existing buildings without generating more carbon leading to creating bigger damage than the salvage. We urge the Commission to place more emphasis on the life cycle assessment of buildings and invest more time and dedication to exploring how best to address this in a uniform manner.

In terms of the Taxonomy technical screening criteria, we would like to mention the following:

- We welcome the proposed alignment with the EPBD definition of major renovations and/or alternatively the 30% improvement of PED. It would be helpful to enable national regulatory methods for calculating the primary energy demand or calculation of actual energy use (ex post data) while ensuring their transparency and comparability. This should lead to an adaptation or an improvement of the EPCs in the future so that it would become a more reliable and comparable tool.
- As mentioned before, we repeat that it is not clear who is counted in for the renovation part, and especially if the property investment companies are also enabled/encouraged to renovate. If there is such intention, then the below should be explicitly added (see below a few suggestions on how this could be done).
  - **It should be made clear, that investments in renovation are investments made by the asset owners and hence it should be made clear that the cost of renovation should be eligible to count by the asset owners (not only the construction companies).**
  - **It should be made clear that all the redevelopment projects, which would include renovation (i.e. the construction work) of the buildings owned for own portfolio, are performed by listed property companies and considered as real estate activity under L.68 NACE code for acquisition and ownership of buildings. It is not at all clear at this stage of the Taxonomy development.**

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<sup>3</sup> [https://ec.europa.eu/energy/sites/ener/files/eu\\_renovation\\_wave\\_strategy.pdf](https://ec.europa.eu/energy/sites/ener/files/eu_renovation_wave_strategy.pdf).

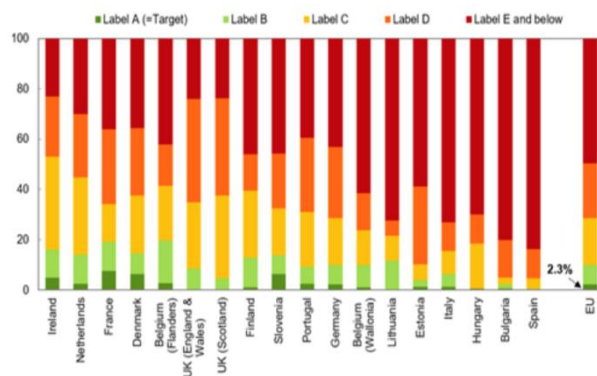
## 7.7. ACQUISITION AND OWNERSHIP

- Under the acquisition & ownership part, the entire focus of the Commission is on the acquisitions of new buildings. From the climate change mitigation's point of view, this is very unfortunate. The listed real estate sector is supportive of a high standard set for new constructions, e.g. 20% lower than NZEB. We believe that such a high standard should be equal to those buildings built before December 2020 regarding their acquisition so that the conditions for developing new buildings and acquiring new buildings are the same, or at least close to the same. The listed real estate sector is concerned of such a sudden change from the Final TEG Report's recommendations for the eligible buildings to be classified among the top 15% within the existing local stock, in terms of energy performance, whether calculated with ex ante national regulatory methods for calculating the primary energy demand or calculation of actual energy use (ex post data). We consider this requirement to be more reasonable and fair in comparison with the requirements for the buildings built after 31 December 2020 and in comparison with the proposed EPC A.

### Old and inefficient

The average energy efficiency of buildings varies significantly across countries, with a large share of highly inefficient buildings in Southern and Eastern European countries.

(distribution of building stock by EPC class, percent of dwellings, 2017)



Sources: Building Performance Institute Europe; Central Statistics Office Ireland; European Environment Agency; Eurostat, EU Building Stock Observatory; and IMF staff calculations.  
 Note: EPC=Energy Performance Certificate. Green shades = more energy efficient; red shades = more energy inefficient. Countries with no central database or with limited information are not included.

In some European countries, Class A corresponds to close to the 15% proposed by the TEG (for example, the Netherlands about 16%), but in other countries, such as Sweden, Class A can represent as little as 1-2% of existing buildings, or in Germany around 2%. It depends on how different countries have chosen to define Class A. An European average would, however, still represent only around 2.3% of the European building stock<sup>4</sup> (as per 2017 data).

requirements set out in NZEB. This disqualifies basically all existing buildings, despite the fact that many of them have very high energy efficiency in absolute terms compared to most other EU countries.

- Besides, it is not entirely clear whether 'build before/after 2020' relates to the date of buildings' completion or the building's permit.
- Most importantly, we stress that these conditions are possible to meet only for the newly constructed buildings. On the other hand, much more can be done to meaningfully encourage property investors to invest in renovations. We refer to the draft Technical Taxonomy issued in June 2019 which reflected well the need to accelerate our efforts to renovate, not just build new buildings, this way:
  - Acquisition of any other building, provided that it is subsequently improved (within 3 years of purchase, either through one single improvement achieving the thresholds or through a series of improvements), achieving one of the following:

<sup>4</sup> From the presentation of Gertrude Tumpel-Gugerell on the 'Economic Outlook and Challenges to Society' at EPRA Finance Summit on 18 November 2020

a) savings in energy performance of at least 30% against the baseline; performance and predicted improvement shall be based on a specialised building survey and be validated by an accredited energy auditor;

b) EPC rating B (or above); c) Energy performance standards set for major renovation in applicable building regulations transposing the EPBD.

#### DO NO SIGNIFICANT HARM ('DNSH')

- It was mentioned already in the general comments, however, we reiterate that the list of criteria included in the taxonomy, particularly those in DNSH, will correspondingly increase the reporting burden to a disproportionate extent and make this taxonomy very hard to use for financial and non-financial companies. We recommend to simplify the DNSH requirements.

#### OTHER IMPORTANT OBSERVATIONS

- The Taxonomy is looking at the amount of Capex (or the cost or amount of financing) that goes into a building to determine the % of “good investment” while there is no correlation between this number and the actual efficiency of the investment from an energy perspective. 10.000 sqm EPC A in Paris will cost substantially more than 10.000 sqm EPC A in the region. A portfolio owning 1 efficient building in Paris and 5 inefficient buildings in the regions will look better than a portfolio owning 5 efficient buildings in the region and one inefficient in Paris.
- Finally, the EU Taxonomy brings quite an amount of legal uncertainty to the table. We understand that the level of ambition has been set very high and in an incredibly short timeframe which may have caused the European Commission’s capability to consult in depth was weakened. This is a high cost to pay in one of the most significant EU regulation of the century. **We urge the Commission to postpone its adoption and revisit all the technical details and take more time to justify where it deviates from the recommendations of the High-Level Expert Group and Technical Expert Group.**

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#### About EPRA

EPRA’s mission is to promote, develop and represent the European public real estate sector. We achieve this through the provision of better information to investors and stakeholders, active involvement in the public and political debate, improvement of the general operating environment, promotion of best practices and the cohesion and strengthening of the industry. Find out more about our activities on [www.epra.com](http://www.epra.com).