

European Public Real Estate Association (EPRA) feedback on the EU Taxonomy Delegated Acts

3 May 2023

EPRA, representing the listed real estate sector in Europe, thanks the European Commission for the opportunity to provide feedback on the EU Taxonomy Delegated Acts. We stress that our members, including the major listed property companies and REITs, appreciate a full dedication from both the Platform on Sustainable Finance and the European Commission in producing the EU Taxonomy Delegated Acts. Most importantly, they are also committed to work towards advancing the objectives of the European Green Deal. However, in order to do that, certain important changes need to be considered for the purpose of the appropriate and encouraging application of the EU Taxonomy.

Irrespective of the Commission's guidelines published in the form of Q&As in December 2022 (the Guidelines), the draft Environmental Taxonomy Delegated Act seems to recognise construction of new buildings and renovation of existing buildings as eligible economic activities only when planned with a view to sell the building upon delivery or at a later date, or when built on own account for sale. If a listed property company in Europe develops new buildings with a view to e.g. provide an additional supply of an affordable housing or an office space for the European SMEs; and continues to own buildings as a long-term investment property to earn a stable rental income, then this is not seen as eligible for the purpose of the Environmental Taxonomy's application.

Key recommendation on the draft Environmental Taxonomy Delegated Act:

- Extend the application of the construction of new buildings and renovation of existing buildings to the listed property companies investing in renovations or development of buildings which they own as an investment property. This can be done, for example, by explicitly stating that these activities apply also when planned with a view to rent the building upon delivery.

In regards with the existing Climate Taxonomy Delegated Act, we want to stress that for the real estate sector, the objective of climate change mitigation continues to be the most impactful contribution to Europe's sustainable built environment. Although certain areas have been clarified in the Commission's Guidelines, they are important to require an additional support by amending the current Climate Taxonomy Delegated Act, e.g. the use of alternatives to EPCs.

Lastly, important changes are ahead for the EU Taxonomy application with the upcoming adoption of the Energy Performance of Buildings Directive (EPBD). We are concerned of the ununiform transposition of the EPBD in national legislation, both in terms of substance but also in terms of timeline.

Please note below the full EPRA feedback on the EU Taxonomy Delegated Acts in the Commission's template. We remain available to discuss this further at your convenience. Please contact Jana Bour, EPRA EU Policy Manager at j.bour@epra.com.

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TYPE OF RESPONDENT: Business Association	TRANSPARENCY REGISTER NUMBER: 09307393718-06
COUNTRY: Belgium	SECTOR OF ACTIVITY: Construction and real estate
ORGANISATION: European Public Real Estate Association - EPRA	ORGANISATION SIZE: Small (< 50 employees)
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The Delegated Acts presented in this call for feedback include several activities spanning over various economic sectors substantially contributing to all six environmental objectives of the Taxonomy Regulation, however only some of these activities may be of relevance to you. To facilitate your feedback process, find an overview of included activities per sector and environmental objective on the [EU Taxonomy website](#).

Stakeholders are asked to limit their feedback only to the content of the drafts Delegated Acts subject to this call for feedback. Any other comments, including suggestions to add new activities will not be considered. A specific mechanism to channel these requests will be made available on the Commission website in the future.

When replying to this call for feedback, please clearly signal which activities in the draft Delegated Regulation(s) your comments relate to. For example, if referring to activity 3.19 regarding the manufacture of rail constituents in the draft amending Delegated Regulation regarding the objective of climate change mitigation (CCM), please mention the activity reference number (3.19) and the objective (CCM) clearly in your submission. The objectives should be abbreviated as follows:

- Climate Change Mitigation: CCM
- Climate Change Adaptation: CCA
- Water: WTR
- Circular Economy: CE
- Pollution Prevention and Control: PPC
- Biodiversity and ecosystems: BIO

If referring to the amendments to Delegated Regulation (EU) 2021/2178 regarding disclosures under the Taxonomy (Art. 8), please also clearly highlight the relevant Section or Annex your reply refers to.

In line with the taxonomy's guiding principle of establishing robust, science-based criteria, the call for feedback puts emphasis on providing a **clear scientific and technical explanation and rationale** as well as **supporting evidence** (including links to published journals and articles) for any comments made with respect to the proposed technical screening criteria.

For more information on the EU Taxonomy and activities already covered in the Taxonomy Climate Delegated Act, please visit: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en.

Please copy/paste the below comment table for each activity that you would like to provide comments to. In addition, please name the file using your organisation's or first and last name: e.g. Company X or John_Smith.

COMMENT

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): 3. Construction and real estate activities

GENERAL COMMENT (incl. comments on corrections of technical mistakes in Climate Delegated Act and Article 8 Delegated Act):

We welcome the recognition of 'Construction and real estate activities' as eligible for the purpose of transitioning to a circular economy (CE) under the Taxonomy Environmental Delegated Act.

We highlight the need to consider differences within the construction sector (i.e. service providers) and the real estate sector (i.e. investment decision makers) to ensure that the motivation to advance on transitioning to a circular economy is well placed to where decisions are being made. For that reasons, we highlight that listed property companies, whose shares are traded on the stock exchanges for attracting capital from the investment communities, are engaged in the following activities:

1. They develop new buildings for the purpose of keeping them within their investment portfolio for a long-term so that they can rent them out to tenants, hence serve the society by providing them with the built environment available for rent. The income generated from this activity is not by selling the buildings (which is the case of property development companies), but by receiving stable and recurrent income from rent. This economic activity is done under 7.7 'Acquisition & ownership' as eligible for climate change mitigation (CCM) and climate change adaptation (CCA).
 2. They renovate buildings which they own.
 3. They acquire existing buildings to renovate first and then to rent out.
 4. They own those buildings as part of their investment portfolio to generate income, i.e. rent.
 5. They keep the buildings maintained and engage in community building by way of many projects with a social impact.
 6. Occasionally, they develop buildings which they then sell after its completion, but this is often not eligible to be the main part of the business either under [the Ground Rules for the construction and management of the FTSE EPRA Nareit Global REal Estate Index Series](#) or a national Real Estate Investment Trust (REIT) regime.
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We call on the Commission to either

- i. add 'Acquisition & ownership' to the list of eligible activities with the same technical screening criteria (TSC) for development and renovation, or
- ii. to extend the existing eligible activities by adding the L68.1 and L68.2 NACE codes to enable listed property companies (whom EPRA represents), but also other asset owners (e.g. Commercial Real Estate funds), to consider and report their income (TURNOVER) and cost (CAPEX) from developed and renovated buildings meeting TSC for transitioning to a circular economy as equally sustainable.

Outcome of such addition is not double counting as the buildings built by property owners are not those which they acquire by purchasing from property development companies. The same applies to renovated assets, as these are within their ownership. Investing in renovations of owned buildings, while significantly contributing to transitioning to a circular economy, should lead to the right recognition of such investments as sustainable.

EPRA's major concern is a prevailing and significant confusion of how the listed real estate market operates, functions and conducts business. The fact that while construction companies and property development companies can report income generated from developing a new building and renovating an existing building, property investment companies who are true long-term property investors are denied the same, likely demonstrates the lack of understanding of the sector. In this regard, EPRA offers the Commission – when and where it is relevant - a tailored workshop to help understand the complex world of the listed real estate sector.

We will reach out to the Commission on the proposal separately in due time.

COMMENT ON THE ACTIVITY DESCRIPTION: N/A

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA: N/A

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA: N/A

COMMENT

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): 3.1. Construction of new buildings

GENERAL COMMENT (incl. comments on corrections of technical mistakes in Climate Delegated Act and Article 8 Delegated Act):

We welcome the recognition of 'Construction of new buildings' as an eligible activity for the purpose of transitioning to climate economy under the Taxonomy Environmental Delegated Act.

Please see above comments for this category as well. We particularly highlight the need to either

- i. add 'Acquisition & ownership' to the list of eligible activities with the same TSC for development and renovation, or
 - ii. to extend the existing eligible activities by adding the L68.1 and L68.2 NACE codes to enable listed property companies (whom EPRA represents), but also other asset owners (e.g. commercial real estate funds), to consider and report their income (TURNOVER) and cost (CAPEX) from developed and renovated buildings meeting TSC for transitioning to a circular economy as equally sustainable.
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COMMENT ON THE ACTIVITY DESCRIPTION:

We highlight the fact that the current description of the activity is limited to the business of property development companies and to the construction sector which serves as a service provider to the property owners, whether it is a large listed property company, commercial real estate fund or an individual property owner.

We highlight the fact that when listed property companies develop new buildings meeting the same as proposed TSC for transitioning to a circular economy (CE), they make investment decisions to conduct such activity, and the construction sector executes to its client as per the client's direction. However, the income of the construction company (turnover) based on the activity is recognised as sustainable, while the income of the investment decision maker – the property owner, in this case the listed property company/REIT, is not. We question to what extent such a structure enables or motivates investment flows to in fact developing such buildings with the intention to offer them to tenants. The outcome of such constraint in making investment decisions will be particularly felt within the provision and supply of affordable housing.

Furthermore, we highlight that with the described activity it is not possible to apply for the CAPEX considerations either as it is explicitly limited to property development with the purpose of sale.

As a result, listed property companies and REITs in Europe – whose current portfolio of assets represents over EUR 790 billion of real estate assets and 94% of the market capitalisation of the FTSE EPRA Nareit Europe Index, are completely disabled to apply under this category.

We call on the Commission to either:

- 1) add 'Acquisition & ownership' to the list of eligible activities with the same TSC for development and renovation, which is to enable listed property companies (whom EPRA represents), but also other asset owners (e.g. commercial real estate funds), to consider their income from developed and renovated buildings meeting TSC for transitioning to a circular economy as equally sustainable.
- 2) Or to extend the eligible activity's description to property developments for own portfolio as well by adding the L68.1 and L68.2 NACE codes.

Important note: The upcoming revised version of the NACE classification recognises the relevant distinction between the construction and real estate sector and places development of new buildings under real estate activities. With the NACE Rev. 3 application as from 2025, as anticipated, the Commission should reflect the above consideration already at this stage to avoid future confusion in the Taxonomy's application.

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA: No specific comments.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA: No specific comments.

COMMENT

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): 3.2. Renovation of existing buildings

GENERAL COMMENT (incl. comments on corrections of technical mistakes in Climate Delegated Act and Article 8 Delegated Act):

We welcome the recognition of ‘Renovation of existing buildings’ as an eligible activity for the purpose of transitioning to climate economy under the Taxonomy Environmental Delegated Act.

Please see also above comments for this category.

COMMENT ON THE ACTIVITY DESCRIPTION:

We highlight the fact that it is not clear at all that the current description of the activity is available to listed property companies when renovating their existing portfolio. Considering that European listed real estate companies’ current portfolio of assets represents over EUR 790 billion of real estate assets and 94% of the market capitalisation of the FTSE EPRA Nareit Europe Index, it would be a significant missed opportunity to incentivise property owners to renovate their existing assets. In addition, it would undermine their existing efforts in energy renovations by failing to recognise the same economic activity conducted by listed property companies and REITs, while meeting the same TSC and DNSH, as not sustainable simply because they are long-term real estate investors & owners in comparison with the construction companies and property development companies.

Consequently, we call on the Commission to either

- i. add ‘Acquisition & ownership’ to the list of eligible activities with the same TSC for renovation, or
 - ii. to explicitly refer to L68 in the existing description of the eligible activity to enable listed property companies (whom EPRA represents), but also other asset owners (e.g. CRE funds), to consider and report their income (TURNOVER) and cost (CAPEX) from renovated buildings meeting TSC for transitioning to a circular economy as equally sustainable.
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COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA: No specific comments.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA: No specific comments.

COMMENT

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex I to Climate Delegated Act (CCM)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): CCM 7. Construction and real estate activities

GENERAL COMMENT (incl. comments on corrections of technical mistakes in Climate Delegated Act and Article 8 Delegated Act):

We welcome the Commission's guidelines published in the form of Q&As in December 2022, as they provide great support in clarifying certain important aspects of the EU Taxonomy and thus support its application. Given that the Guidelines are not a legally binding document, we advise the Commission to make amendments according to the clarifications provided for within the December Guidelines:

- Enabling the use of property certifications which are alternative to EPCs, where EPCs are not possible to apply for the purpose of the EU Taxonomy application
- Confirming the consideration of development of new buildings by listed real estate sector.

In addition, we recommend the Commission to make certain specific amendments to ease the EU Taxonomy application vis-à-vis updated/upcoming regulatory changes. Most specifically, we call on the following:

- The Commission should translate the upcoming revised version of the NACE classification into the text of the EU Taxonomy. We consider this action particularly important for the listed real estate sector, as in the NACE Rev. 3 the relevant distinction between the construction and real estate sector is well recognized and should apply as from 2025, as per the information received from Eurostat.
- The Commission should set a single application date for the new EPBD's key concept for the purpose of the EU Taxonomy application. This is to avoid a not harmonized and parallel application by cross-border investment property companies, if certain Member States transpose the new EPBD on different timelines.

Besides the above, we would stress that for the climate change mitigation objective it is necessary to strengthen the considerations of the whole life carbon approach. On that aspect, we will elaborate further within the EPRA comments on renovations category.

Regarding the Taxonomy Disclosure (Article 8 Delegated Act), we stress that without further and more specific, ideally sector relevant, guidance, the Taxonomy reports will not be comparable. The disclosure requirements and definitions are at the moment not sufficiently granular to achieve the desired comparability of Taxonomy reports.

We would strongly suggest to work with the industry and EFRAG, which has been working on the sector specific ESRS already – although further work has been postponed, to develop soft guidelines which would give stronger direction to each sector to align with. EPRA has started to work on relevant recommendations for listed real estate on which we will reach out in due time to discuss with the Commission further. The challenge will be to ensure that the sector defines and applies e.g. relevant CAPEX and Turnover, in a comparable manner.

COMMENT ON THE ACTIVITY DESCRIPTION: N/A

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA: N/A

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA: N/A

COMMENT

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex I to Climate Delegated Act (CCM)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): CCM 7.1. Construction of new buildings

GENERAL COMMENT (incl. comments on corrections of technical mistakes in Climate Delegated Act and Article 8 Delegated Act): [Please see above comments for this category as well.](#)

COMMENT ON THE ACTIVITY DESCRIPTION:

As mentioned above, we very much appreciate the Commission's Guidelines in the form of Q&As published in December 2022, as they clarify the possibility to apply development of new buildings for own portfolio under the acquisition & ownership category.

Since the guidelines are not legally binding, there is an urgent need to amend the EU Taxonomy formally when the first opportunity arises to enable the listed property sector to assess and report on the EU Taxonomy alignment of their property development projects. This can be done either by adding an explicit reference to this activity under 7.7. or by extending the scope of 7.1. to provide for equal and legally binding recognition of this activity as eligible under the EU Taxonomy.

Such confirmation will be crucial in auditor's verifications of the EU Taxonomy reports and engagement with investors.

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

We point out that a number of requirements, such as NZEB, will change following the revised EPBD's adoption and then transposition to Member States. For that, we recommend the Commission to set a single application date of the EPBD's application for the EU Taxonomy purpose.

This is to avoid an increased complexity for a short/midterm period while transposing the EPBD Directive.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA:

Considering the further strengthening of the sustainability reporting obligations (ESRS), we find the cumulative effect of the DNSH requirements excessive to its purpose. We recommend to simplify the DNSH requirements. We consider the conditions mostly relevant, however, their assessment would increase the reporting burden to an unbearable extent. As they serve as a safeguard to the core objective of the economic activities, we find them particularly unproportionate.

COMMENT

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex I to Climate Delegated Act (CCM)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): CCM 7.2. Renovation of existing buildings

GENERAL COMMENT (incl. comments on corrections of technical mistakes in Climate Delegated Act and Article 8 Delegated Act):

COMMENT ON THE ACTIVITY DESCRIPTION:

In line with our above recommendations, we would welcome an explicit recognition of real estate sector's possibility to apply this category. This can be done by adding L68.2 reference to the description of the activity or by adding the same or new TSC for energy renovations under the 7.7. category.

In addition and specifically for the purpose of reaching the climate change mitigation objective, we stress that energy renovation of existing buildings should be recognised as a standalone activity. As long as the objective is the mitigation of climate change, meaning the process of holding the increase in global average temperature to well below 2 °C and pursuing efforts to limit it to 1,5 °C above pre-industrial levels, as laid down in the Paris Agreement, we should be looking at energy renovations of existing buildings as activities which are very important in decreasing the GHG emissions of existing buildings into the environment. In comparison, when developing new buildings, even though highly energy efficient, we still release a new set of GHG emissions into the environment. Both activities do mitigate climate change in different ways. Renovations by decreasing the existing GHG emissions and development of top energy efficient buildings by optimising the future operational GHG emissions release. We find it very unfortunate, that the reasons why income generated from renovated buildings meeting TSC for this category is not considered sustainable as is the comparison between the energy performance of renovated buildings vs. newly built buildings. The EU Taxonomy was, however, not designed to compare individual products but to assess to what extent certain economic activities, in this case energy renovations, have the potential to, in this case, mitigate climate change. Therefore, it is imperative that income from activities where there was major capital invested to significantly mitigate climate change is recognised as sustainable. If this part is missing, then the legislation motivates

stakeholders to actually demolish existing buildings and build new ones with the consequent cumulative outcome being an further (although optimised) increase in GHG emissions into the environment.

For the above reasons, and while considering the whole lifecycle of carbon approach, we call on the Commission to consider renovations of existing buildings as sustainable and not transitional activities.

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

In line with the RePowerEU initiative, we call on the Commission to recognise the role renewable energy needs to play within the renovations of existing buildings.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA: N/A

COMMENT

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex I to Climate Delegated Act (CCM)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): CCM 7.7. Acquisition & ownership

GENERAL COMMENT (incl. comments on corrections of technical mistakes in Climate Delegated Act and Article 8 Delegated Act):

No specific feedback.

COMMENT ON THE ACTIVITY DESCRIPTION:

As mentioned above, we welcome the Commission's guidelines published in the form of Q&As in December 2022, as they provide great support in clarifying certain important aspects of the EU Taxonomy and thus support its application. Given that the Guidelines are not a legally binding document, we advise the Commission to make amendments according to the clarifications provided for within the December Guidelines:

- Confirming the consideration of development of new buildings by listed real estate sector and;
 - Enabling the use of property certifications which are alternative to EPCs, where EPCs are not possible to apply for the purpose of the EU Taxonomy application.
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COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

As already mentioned, we find it important to stress that a number of requirements, such as EPCs or NZEB, will change following the revised EPBD's adoption and then transposition to Member States. For that, we recommend the Commission to set a single application date of the EPBD's application for the EU Taxonomy purpose. This is to avoid an increased complexity for a short/midterm period while transposing the EPBD Directive.

In addition and specifically for the purpose of reaching the climate change mitigation objective, we stress that energy renovation of existing buildings should be recognised as a standalone activity. As long as the objective is the mitigation of climate change, meaning the process of holding the increase in global average temperature to well below 2 °C and pursuing efforts to limit it to 1,5 °C above pre-industrial levels, as laid down in the Paris Agreement; then we should be looking at energy renovations of existing buildings as activities which are very important in decreasing the GHG emissions of existing buildings into the environment. In comparison, when developing new buildings, even though highly energy efficient, we still release a new set of GHG emissions into the environment. Both activities do mitigate climate change in different ways. Renovations by decreasing the existing GHG emissions and development of top energy efficient buildings by optimising the future operational GHG emissions release. We find it very unfortunate, that the reasons why income generated from renovated buildings meeting TSC for this category is not considered sustainable as is the comparison between the energy performance of renovated buildings vs. newly built buildings. The EU Taxonomy was, however, not designed to compare individual products but to assess to what extent certain economic activities, in this case energy renovations, have the potential to, in this case, mitigate climate change. Therefore, it is imperative that income from activities where there was major capital invested to significantly mitigate climate change is recognised as sustainable. If this part is missing, then the legislation motivates stakeholders to actually demolish existing buildings and build new ones with the consequent cumulative outcome being an further (although optimised) increase in GHG emissions into the environment.

For the above reasons, and while considering the whole lifecycle of carbon approach, we call on the Commission to add technical screening criteria for renovations of existing buildings under the 'Acquisition & ownership' category as a sustainable activity which while meeting all TSC and DNSH would enable property investment companies to recognise consequent rental income of thus renovated buildings as green for the purpose of EU Taxonomy Disclosure.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA: No further comments
