EPRA
EUROPEAN PUBLIC REAL ESTATE ASSOCIATION

FEEDBACK

JUNE 2021

EPRA FEEDBACK
on the Commission Delegated Regulation on Article 8 of the EU Taxonomy

EPRA*, representing the listed real estate sector in Europe, thanks the Commission for the opportunity to provide feedback on the draft Delegated Act on Article 8 of the EU Taxonomy Regulation (TR). EPRA's feedback is focused on the listed real estate sector due to the Association's sector specific knowledge and experience.

Key highlights:

- We welcome the Commission's proposal to specify the content, methodology, and presentation of the information to be disclosed by both non-financial and financial undertakings. We consider the proposed draft **a solid and much needed foundation towards enabling companies in scope of the Taxonomy Regulation to disclose relevant information in a comparable way**. We stress that the clearer the rules on disclosure, the greater the comparability achieved for all companies, investors, financial intermediaries etc. Therefore, **we encourage the Commission to provide more details and clarification on how to apply the proposed rules in a uniform way while recognising sectorial specificities (e.g. listed real estate).**
- The listed real estate (LRE) sector **appreciates the postponement of the application on the financial KPIs to 1st January 2023** as it will allow the sector to get acquainted with the new TR rules on disclosure and gain a greater clarity on many aspects which remain unspecified. **We suggest to specify in the draft Article 9(3) that the first reporting period for financial KPIs is the fiscal year 2022 to be disclosed in 2023.**
- In addition, we propose to equally postpone the second part of the qualitative information referred to in Section 1.2.1 of Annex I. which relates to any substantial deviations to the Capex Plan and related information, as it would not be relevant for the initial reporting years.
- We recommend to further clarify:
    - The definitions of CAPEX and OPEX for investment property to ensure comparability.
    - That for those activities for which technical criteria can be verified only upon completion of the project (e.g. thermal integrity for development of new buildings), non-financial undertakings are to count their turnover, CAPEX and OPEX based, on engagement, to respect the technical criteria at the end of the project.
    - That all costs related to renovations (e.g. acquisition costs) should be added in the CAPEX for investment property if the renovations meet technical screening criteria.
    - That the KPIs of transitional activities are to be counted in the final share (in %) of the Taxonomy aligned KPIs in addition to being reported separately in the proposed templates.
- We propose to specify that Methodology in point b) refers **to the non-financial undertakings disclosing the KPIs for each eligible economic activity** and the total KPIs for all economic activities at the level of the relevant undertaking and group.

- We stress that the proposed template does not currently accommodate a full disclosure of the CAPEX plan. We suggest to extend the template to up-to 5 year time horizon to enable long-term investors to have a greater overview of the efforts pursued by non-financial undertakings.
- Lastly, we refer to EPRA feedback on the ESAs consultation concerning Taxonomy-related sustainability disclosure (here). We highlight a significant lack of alignment between the methodology to calculate Taxonomy-aligned investments in non-financial undertakings. We recommend a weighted average ratio composed of all three KPIs, or alternatively a weighted average ratio composed of turnover and CAPEX, as long as the relevant share of OPEX can be added to the CAPEX plan and disclosed as part of CAPEX in the respective years.

Please note that we provide additional comments in the ANNEX to the EPRA feedback on the Commission Delegated Regulation on Article 8 of the EU Taxonomy submitted on 2 June 2021.

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

ANNEX: EPRA COMMENTS ON THE COMMISSION'S DRAFT DELEGATED REGULATION ON ARTICLE 8 OF THE EU TAXONOMY

ADDITIONAL COMMENTS

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 (in coloured boxes) into consideration as they are reflecting the experience of the listed real estate sector.

Disclosure by non-financial undertakings (specified in Annex I by using a form in Annex II)

Definition of KPIs [DRAFT DELEGATED REGULATION]

1) Turnover

The proportion of turnover referred to in Article 8(2), point (a), of Regulation (EU) 2020/852 shall be calculated **as the part of the net turnover derived from products or services, including intangibles, associated with Taxonomy-aligned economic activities (numerator) divided by the net turnover (denominator) as defined in Article 2, point (5), of Directive 2013/34/EU[1].** The turnover shall cover the revenue recognised pursuant to International Accounting Standard (IAS) 12, paragraph 82(a) as adopted by Commission Regulation (EC) 1126/2008.

The KPI referred to in the first subparagraph shall exclude from its numerator the part of the net turnover derived from products and services associated with economic activities that have been adapted to climate change in line with Article 11(1)(a) of the Taxonomy Regulation and in accordance with Annex II to Delegated Regulation (EU) year/number unless those activities:

a. qualify as **enabling activities** in accordance with Article 11(1), point (b) of Regulation 2020/852, or

b. **are themselves Taxonomy-aligned.**

EPRA COMMENTS:

1) **We point out that the net turnover as defined in Article 2, point (5) of Directive 2013/34/EU might not be in full alignment with for example IFRS 15 and IFRS 16 definitions. We recommend that the Commission provides further details on how to reconcile such possible differences.**
2) **We recommend that the Commission clarifies that the turnover of transitional activities which are to be reported separately in the proposed template is also to be counted in the share (%) of turnover.**
3) **We suggest the Commission to clarify that for those economic activities for which technical screening criteria can be verified only upon completion of the project (e.g. thermal integrity for development of new buildings), non-financial undertakings are to count their TURNOVER, CAPEX, AND OPEX based on engagement to respect the technical criteria at then end of the project.**

[1] Article 2, point (5), of Directive 2013/34/EU defines the net turnover as 'the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover'.

2) Capital expenditure (CapEx)

The proportion of CapEx shall be calculated as the numerator divided by the denominator as specified below.

Denominator

The denominator shall cover **additions to tangible and intangible assets during the financial year considered before depreciation, amortisation and any re-measurements, including those resulting from revaluations and impairments, for the relevant financial year and excluding fair value changes.**

The denominator shall also cover additions to tangible and intangible assets resulting from business combinations.

For non-financial undertakings applying international financial reporting standards (IFRS) as adopted by Regulation (EC) 1126/2008, **CapEx shall cover costs that are accounted based on:**

– IAS 16 Property, Plant and Equipment, paragraphs 73, (e), point (i) and point (iii);

– IAS 38 Intangible Assets, paragraph 118, (e), point (i);

– IAS 40 Investment Property, paragraphs 76, points (a) and (b) (for the fair value model);

– IAS 40 Investment Property, paragraph 79(d), points (i) and (ii) (for the cost model);

– IAS 41 Agriculture, paragraph 50, points (b) and (e);

– IFRS 16 Leases, paragraph 53, point (h).

EPRA COMMENTS:

4) **The denominator as defined above looks inconsistent as far as the investment property is concerned. Revaluation and fair value change are the same and cannot be both excluded and included. It therefore needs to be clarified or adjusted specifically for investment property.**
5) **As for the application of the international financial reporting standards, we recommend to clarify that the requirement is to look at Net capex (IAS mention only additions, and therefore there could be a misinterpretation). When it comes to Capex that are related to transactions (i.e. acquisition or disposal), the reported number should be Net (i.e acquired – disposed) to reflect well the reality behind the transactions. For example:**

   Sell eligible property : 100

   Buy eligible property : 100

   Net change in capex : 0

   Gross change in capex : 100

Numerator

The numerator shall include the part of the capital expenditure included in the denominator that is:

– related to assets or processes that are associated with Taxonomy-aligned economic activities, or

– **part of a plan to expand Taxonomy-aligned economic activities** or **to allow Taxonomy-eligible economic activities to become Taxonomy-aligned** **('CapEx plan')** within a predefined timeframe as further defined in the next paragraph, or

– **related to the purchase of output from Taxonomy-aligned economic activities, notably activities listed in sections 7.3 to 7.6** of Annex I of the [Climate Delegated Act], as well as other economic activities listed in the delegated acts referred to in Articles 10(3), 11(3), 12(2), 13(2), 14(2), 15(2) of Regulation (EU) 2020/852 **and provided that such measures are implemented and operational within 18 months.**

EPRA COMMENTS:

6) **EPRA recommends to clarify that the costs related to the purchase of output from Taxonomy-aligned economic activities, notably activities listed in sections 7.3 to 7.6 of Annex I of the [Climate Delegated Act], as well as other economic activities listed in the delegated acts referred to in Articles 10(3), 11(3), 12(2), 13(2), 14(2), 15(2) of Regulation (EU) 2020/85 should be counted in and reported in the template only once.**
7) **In addition, we recommend that the Commission specifies a retrospective adjustment for when the plan is not executed after 18 months.**

The CapEx plan referred to in the paragraph above shall be disclosed and be approved by the Management Board of non-financial undertakings and meet one of the following conditions:

(a) the plan aims **to expand the undertaking's Taxonomy-aligned economic activities and such an expansion is planned for completion within a period of five years**;

(b) the plan aims to **upgrade Taxonomy-eligible economic activities to render them Taxonomy-aligned within a period of five years.**

The CapEx plan mentioned under point (b) can exceed five years only where a longer period is objectively justified by specific features of the economic activity and the upgrade concerned, **with a maximum of seven years.** This justification shall feature in the CapEx plan itself and in the contextual information.

EPRA COMMENTS:

8) **EPRA recommends to clarify that transitional activities which are to be reported separately in the proposed template are to be also counted in the share (%) of CAPEX.**

9) **We stress that the proposed template does not currently accommodate a full disclosure of the Capex plan. We suggest to extend the template to up-to 5 year time horizon to enable long-term investors to have a greater overview of the efforts pursued by non-financial undertakings.**
10) **EPRA calls the Commission to clarify that the refurbishment capex should be considered in the CAPEX plan and that it includes the acquisition costs where relevant.**

3) Operating expenditure (OpEx)

The proportion of OpEx shall be calculated as the numerator divided by the denominator (specified as below).

Denominator

The denominator shall cover direct non-capitalised costs that relate to **research and development, building renovation measures, short-term lease, maintenance and repair, and any other direct expenditures relating to the day-to-day servicing of assets of property**, plant and equipment by the undertaking or third party outsourcee **that are necessary to ensure the continued and effective functioning of such assets.**

Non-financial undertakings that apply national GAAP and are not capitalising right-of-use assets shall include lease costs in the OpEx in addition to the costs listed above.

Numerator

The numerator shall include the part of the operating expenditure included in the denominator that is:

– related to assets or processes associated with Taxonomy-aligned economic activities, including training and other human resources adaptation needs, and direct non-capitalised costs that present research and development, or

– **part of the CapEx plan to expand Taxonomy-aligned economic activities or allow Taxonomy-eligible economic activities to become Taxonomy-aligned within a predefined timeframe as further defined in the next paragraph**; or

– **related to individual measures enabling the target activities to become low-carbon or to lead to greenhouse gas reductions** as well as **individual building renovation measures** as identified in the delegated acts referred to in Articles 10(3), 11(3), 12(2), 13(2), 14(2), 15(2) of Regulation (EU) 2020/852 (meeting the technical screening criteria for either or the six environmental objectives) and **provided that such measures are implemented and operational within 18 months.**

EPRA COMMENTS:

11) **Regarding the denominator, EPRA points out that there is no GAAP measure to identify theses OPEX and it is arguable whether the outcomes will be auditable. For example, it is not clear how to account for the difference between a company that buys the**

maintenance of its buildings and one that does the maintenance of the buildings itself (which will then have costs shown as SG&A rather than OPEX).

12) **EPRA recommendation is that the definitions of OPEX and CAPEX for investment property needs to be clarified and more precisely defined. If the definitions are left to the appreciation of the reporting entity, then it will lead to the lack of comparability. EPRA's own observation of the listed real estate sector with CAPEX and OPEX definitions suggest that until they are clearly defined, the lack of comparability between companies will continue.**
13) **In relation to the numerator's third point on individual measures enabling the target activities to become low-carbon or to lead to greenhouse gas reductions** as well as **individual building renovation measures** as identified in the delegated acts referred to in Articles 10(3), 11(3), 12(2), 13(2), 14(2), 15(2) of Regulation (EU) 2020/852 (meeting the technical screening criteria for either or the six environmental objectives), **we recommend to clarify that the related costs are counted and reported in the template only once.**
14) **In addition, we recommend that the Commission specifies a retrospective adjustment for when the plan is not executed after 18 months.**

Specification of disclosures accompanying the KPIs of non-financial undertakings [DRAFT DELEGATED REGULATION]

Non-financial undertakings shall disclose the following information **accompanying the relevant KPIs.**

1. Accounting policy

Non-financial undertakings shall explain:

(a) how turnover, capital expenditure and operating expenditure were determined and allocated to the numerator;

(b) the basis on which the turnover, capital expenditure and operating expenditure were calculated, including any assessment in the allocation of revenues or expenditures to different economic activities.

For **turnover and capital expenditure**, non-financial undertakings shall include references to all of the following:

(a) to the related line items in the financial statements;

(b) where relevant, to whether the denominators of those KPIs differ from any Alternative performance measures (APMs) defined in ESMA's Guidelines on APMs that depict items of turnover or capital expenditures.

Where the application of relevant definitions has changed since the previous reporting period, non-financial undertakings shall explain why those changes result in more reliable and relevant information and provide for restated comparative figures.

Non-financial undertakings shall provide disclosures about any substantial deviations that have occurred during the reporting period in relation to the implementation of the CapEx plans as disclosed in accordance with Sections 1.1.2.2 and 1.1.3.2 in the previous reporting periods. Non-financial undertakings shall disclose all of the following:

(a) the substantial changes that have occurred in the plan and the reasons underlying those changes;

(b) the impact of such changes on the potential for the relevant economic activities of the undertaking to become Taxonomy-aligned and on the period of time in which this is expected to take place ;

(c) the restatement of the CapEx and OpEx KPI for each past reporting year covered by the plan whenever changes to the plan had an impact on those KPIs.

EPRA COMMENTS:

15) EPRA suggests to postpone the application of the last part of the above section [highlighted in green] on any substantial deviations to the Capex plan and related information, as it would not be relevant for the initial reporting year. We recommend the application as from 2024 for the fiscal year 2023 considering that the financial KPIs will be disclosed for the first time in 2023 for fiscal year 2022.

METHODOLOGY FOR REPORTING OF KPIs TO BE DISCLOSED BY NON-FINANCIAL UNDERTAKINGS [DRAFT DELEGATED REGULATION]

The following requirements shall apply for the purposes of disclosures under Article 8(2) of Regulation (EU) 2020/852:

(a) non-financial undertakings **shall identify each economic activity**, including a subset of **transitional** and **enabling** economic activities ;

(b) non-financial undertakings shall disclose the **KPIs for each economic activity** and **the total KPIs for all economic activities at the level of the relevant undertaking or group;**

(c) non-financial undertakings shall disclose the KPIs for each environmental objective and the total KPIs for all environmental objectives at the level of the undertaking or group across all environmental objectives by avoiding double counting;

(d) Non-financial undertakings shall identify the Taxonomy-aligned economic activities and the Taxonomy-eligible economic activities that do not meet technical screening criteria. Within a Taxonomy-eligible economic activity, non-financial undertakings shall identify the proportion of that activity that is Taxonomy-aligned.

(e) Non-financial undertakings shall identify Taxonomy-non-eligible economic activities and disclose the share in the denominator of the turnover KPI of those economic activities at the level of the undertaking or group;

(f) the KPIs 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.

EPRA COMMENTS:

16) **In relation to points b) of the above methodology, EPRA proposes to specify that point b) relates to non-financial undertakings disclosing the KPIs for each eligible[2] [inserted] economic activity and the total KPIs for all economic activities at the level of the relevant undertaking or group.** While we understand the need to identify all economic activities, whether they are Taxonomy eligible or not, for the purpose of determining the correct share in the denominator of the turnover KPI, we would argue that any requirement for disclosing a specific financial KPI for economic activities which fall outside the EU Taxonomy scope would go beyond the obligation constituted by the EU Taxonomy Regulation which requires companies to disclose the extent to which they are Taxonomy aligned.

Disclosure by asset managers (specified in Annex III by using a form in Annex IV)

The KPIs shall be calculated as the numerator divided by the denominator as specified below.

Numerator

The numerator shall consist of **a weighted average of the value of investments in Taxonomy-aligned economic activities of investee companies** based on the share of Taxonomy-aligned economic activities of investee companies measured by the following:

(a) for investees that are non-financial undertakings, **turnover and CapEx KPIs** as resulting from the calculation of the KPIs of the investee in accordance with Annexes I and II;

(b) for investees that are asset managers, turnover-based and CapEx-based KPIs, as resulting from the calculation of the KPIs of the investee in accordance with Annexes III and IV;

(c) for investees that are credit institutions, the turnover-based and CapEx based green asset ratio as resulting from the calculation of the green asset ratio of the investee in accordance with Annexes V and VI;

(d) for investees that are investments firms, investments and revenues, as resulting from the calculation of the turnover-based and CapEx based KPIs of the investee in

2 **'Taxonomy-eligible economic activity'** means an economic activity which is described in the delegated acts irrespective of whether that economic activity meets all of the technical screening criteria laid down in those delegated acts.
'Taxonomy-aligned economic activity' means an economic activity that complies with the technical requirements laid down in the delegated acts.

accordance with Annexes VII and VIII in accordance with the share of services and activities of dealing on own account and not dealing on own account in the income of the investment firm;

(e) for investees that are insurance or reinsurance undertakings, investments, gross premiums written or, as applicable, total insurance revenue, as resulting from the calculation either of the turnover-based and CapEx based investment KPI or of the underwriting KPI of the non-life investee insurance and reinsurance undertakings in accordance with this Annexes IX and X.

Denominator

The denominator shall consist of the value of all Asset under Management (AuM) without exposures to central governments and central banks resulting from both collective and individual portfolio management activities of asset managers.

Asset managers shall disclose a KPI based on turnover KPIs of the investee companies and a KPI based on the CapEx KPI of investee companies.

EPRA COMMENTS:

17) **In relation to disclosure by asset managers, we agree with the Commission's proposal and propose to adopt a similar methodology for the Taxonomy related disclosure on financial products. To complement EPRA views, we refer to our feedback submitted to ESAs on the Taxonomy related disclosure on financial products which is accessible at the following weblink:** https://www.epra.com/application/files/3116/2133/3004/EPRA_Response_to_ESAs_consultation_on_TR_disclosure_re_financial_products__final.pdf.