



**ERT**

**Expert Paper**

# **Practical implementation of the EU Taxonomy**

May 2023

The companies led by the Members of ERT recognise the need for a robust Taxonomy framework to drive capital towards a more sustainable economy and provide companies and investors with greater certainty on which economic activities are classified as sustainable. We welcome the Commission's efforts to facilitate the implementation of the taxonomy through the December 2022 Commission Draft Notice and existing FAQ documents. However, ERT would strongly support the development of further measures to facilitate implementation and interpretation of obligations under the Taxonomy. Our input seeks to address six key issues as follows:

- Proposed timing of implementation;
- Persistent complexity and unclarity;
- Legislative contradictions;
- A lack of support with interpretation;
- The absence of provisions for international alignment;
- And poor usability of information provided in company disclosures.

Each of these issues is outlined below, with further detail provided in the attached Annex.

Firstly, the quality of Taxonomy reports will be at risk if the Commission moves forward with its planned implementation **timeline** for the proposed Environmental Delegated Act and amended Climate Delegated Act. Since the Environmental Delegated Act will only enter into force very late in 2023 at best, companies will not have sufficient time or resources to implement the act in 2023 and submit their first eligibility reports in 2024. This issue is compounded further by the simultaneous implementation of the enormous reporting requirements imposed by the European Sustainability Reporting Standards (ESRS). Implementing the CSRD, ESRS, the Environmental Delegated Act and the amendments to the Climate Delegated Act at the same time will be an impossible task for both companies and their auditors. Going ahead would also contradict the President von der Leyen's objective to reduce reporting requirements by 25%. In this regard, it is incomprehensible that the Commission proposed to delete the phase-in provision for new disclosure requirements for the remaining four environmental objectives as laid out in Article 8 (5) in the Disclosures Delegated Act. Companies led by the Members of ERT (hereafter referred to as 'ERT companies') therefore strongly recommend that

reporting on eligibility be postponed to 2024 and alignment to 2025 to ensure that company reports are comprehensive and meaningful.

Persistent concerns remain around the **complexity and unclarity** of language in the delegated acts, posing a significant risk to the Taxonomy's aim of ensuring comparable sustainability information. ERT companies welcome the additional guidance provided through the FAQs. However, there is still a large number of poorly defined terms and complex, unclear provisions that if unaddressed, will result in companies applying different interpretations. For example, the wording of subparagraphs (f) and (g) in Appendix C of the Climate Delegated Act currently leaves significant room for interpretation around critical substances. We also recommend that the EC consider the strategic timing of issuing future FAQ, bearing in mind time required by companies to compile and produce annual reports. Future FAQ should be issued latest in Q3, to account for the research and editorial process of companies' annual reports.

The complexity of disclosure templates also risks undermining the Taxonomy's goal of providing clear, decision-useful information by reducing the proportion of useful information displayed in taxonomy reports. ERT companies therefore urge the Commission to simplify reporting templates and guidance and confirm that the concept of "materiality" is aligned with materiality as defined in financial reporting (IFRS).

Despite the EU's position as a leader in sustainability regulation, the Taxonomy disregards and **contradicts existing, robust EU legislation.**

This is particularly the case with REACH, which is not integrated into Appendix C on pollution prevention and control. Even within the Taxonomy itself, there are contradictory approaches to classifications of sustainability, such as through misaligned descriptions of economic activities and Technical Screening Criteria (TSC) for vehicles and the parts with which they are manufactured. We strongly recommend that these contradictions are addressed, as per the recommendations in the attached Annex, to maximise the coherence and strength of the EU's sustainability agenda.

To ensure consistency and comparability and thus improve trust in the Taxonomy Regulation, ERT companies call on the Commission to provide **support with interpretation.** The current absence of any authoritative institution to which preparers and auditors can direct their queries has resulted in companies being required to develop their own methodologies internally where guidance is not clear. This phenomenon leads

already to the Taxonomy being implemented in an inconsistent and inaccurate manner, thus compromising the core goal of providing stakeholders with comparable information. ERT companies recommend that the Commission establish a dedicated interpretation committee to ensure successful Taxonomy implementation. To prevent inaccuracies and inconsistencies from becoming embedded in the Taxonomy Regulation, interpretation issues must be addressed as a matter of urgency and before any new requirements under the Environmental Delegated Act and Climate Delegated Act enter into force.

As an ambitious regulation with global reach, it is also vital that provisions are added to ensure **international alignment** and equivalence. As noted, ERT companies welcome references to existing EU legislation and business practices. However, where companies operate or market in other jurisdictions, EU definitions are often not relevant or applicable, such as the reference to EU thresholds in Do No Significant Harm criteria for tyres relevant for all companies with automotive mobility services, for example. To ensure the international applicability of the Taxonomy, the Commission must align definitions with relevant global standards and indicate where 3rd country national standards can be used.

Finally, as a consequence of the issues raised above, the **usability of Taxonomy disclosures has been compromised**, reducing the overall value of the regulation to stakeholders. Rushing implementation, unclear definitions, and divergent interpretations has resulted in reports that are not sufficiently relevant, comparable, or reliable enough to be useful for investors. The large number of impactful activities relating to agriculture, food, telecommunications, and energy efficiency, for example, not being adequately and clearly covered by criteria, has also prevented Taxonomy reports from including important sustainability information that would be expected by stakeholders. Due to these issues, which will only be compounded by the short amount of time that companies have been given to provide feedback on the draft acts, ERT companies strongly recommend that the current legislation is evaluated and improved before expanding it to other environmental objectives.

The focus should be on adding swiftly further economic activities on a continuous basis (e.g. digital technologies in telecommunications, aerospace & defence, etc.). In that regard, we call for the Commission to urgently establish promised 'mechanisms' to channel requests around currently excluded economic activities so that the Taxonomy can become complete.

As stated, a more detailed overview of key issues and challenges are highlighted in the attached annex, including recommendations where appropriate.

# Annex

## Challenges regarding the EU Taxonomy

This annex contains a compilation of several challenges regarding the implementation of the EU Taxonomy and the associated reporting requirements.

It is a list of various concerns reported by companies for which alternatives and/or solutions are proposed.

ERT and the companies led by its Members stand ready to engage further and provide more insights.

## General comments

The following section gives an overview of overarching barriers to effective EU Taxonomy implementation for which further guidance and clarification is needed. The general comments are separated into subsections covering six core issues: the timing of implementation, persistent complexity and unclarity, legislative contradictions, a lack of support with interpretation, the absence of provisions for international alignment, and poor usability of information provided in company disclosures.

## Timing

### Entry into force of Environmental Delegated Act and amendments to Climate Delegated Act

#### Question/issue

ERT would like to highlight that if, as proposed, companies are required to report eligibility under the Environmental Delegated Act and the amended Climate Delegated Act in 2024 and report alignment in 2025, there will be a significant conflict with CSRD/ESRS implementation.

We would also like to emphasise that the deletion of the phase-in for the reporting on the remaining four environmental objectives as laid out in Art. 5 (1) of Delegated Regulation 2021/2178 unnecessarily reduces the time that companies have to implement the new reporting requirements.

#### Justification/explanation

Companies will be required to comply with the ESRS and the new Taxonomy requirements for the first time simultaneously. The significant resources that this would require renders this task impossible for most companies, especially smaller companies with limited ESG reporting experience.

#### Recommendation

The drafts acts should be amended so that companies are required to consider eligibility from 2024 (reporting in 2025) and consider alignment in 2025 (reporting in 2026).

The easing of reporting requirements should also cover all existing economic activities of Delegated Regulation 2021/2139 whose activity descriptions or Technical Screening Criteria are amended with this revision. Finally, the Commission should clarify whether reporting requirements will be phased in beyond 2025 or not, as this is currently unclear in the amendments to Article 10 paragraph 6.

### Commission Notices on the EU Taxonomy (19/12/2022)

#### Question/issue

ERT Member companies welcome the publication of Commission Notices but regret that the late timing of their publication did not allow them to be appropriately considered for the 2022 reporting exercise.

Additionally, auditors are treating the Commission Notices with the same legal weight as the Delegated Acts.

#### Justification/explanation

The timing of publication of the Commission Notices did not leave enough time for companies to integrate the guidance into 2022 reporting, especially when information needed to be obtained through the supply chain.

There is significant uncertainty as to the extent to which companies are expected to follow the guidance, and in particular their level of legal relevance in comparison with the Climate Delegated Act.

#### Recommendation

The Commission should clarify that guidance set out in FAQs do not carry the same level of legality as the Climate Delegated Act, unless they go through public consultation.

Future Commission Notices on the EU Taxonomy should be developed through consultation with affected stakeholders/sectors.

## Unclarity of language

### Missing definitions

#### Question/issue

Several key terms used throughout the Regulation have not been defined. As well as the more specific examples highlighted below, this includes core terms such as 'low-carbon emissions', 'circularity', 'essential' and 'materiality'.

**Justification/explanation**

The lack of defined terms will lead to even experienced reporters interpreting the EU Taxonomy differently. This will significantly risk the regulation's ability to deliver on its comparability objectives.

**Recommendation**

The Commission should clarify currently undefined terms, especially those that are central to Taxonomy's objectives and implementation, such as 'low-carbon emissions', 'circularity', 'essential' and 'materiality'.

**Commission Notice on Taxonomy Climate Delegated Act FAQ 176; FAQ 181: supply chain definition****Question/issue**

FAQs 176 and 181 require companies to obtain information through their supply chain, however a definition for the scope of what is referred to as the company's 'supply chain' is not given.

**Justification/explanation**

Both FAQs 176 and 181 require reporting companies to obtain supply chain information to fulfil DNSH criteria to pollution prevention and control regarding the use and presence of chemicals. Without further clarification, the Commission Notice leaves significant room for interpretation as to where the supply chain begins and ends.

**Recommendation**

While ERT Member companies welcome the statement in FAQ 181 that supply chain information should be requested from a 'direct supplier', additional guidance on the definition of 'supply chain' for the purpose of Taxonomy reporting from the Commission would still be very beneficial.

**Article 18: Minimum Social Safeguards assessment****Question/issue**

The Commission Notices did not provide for further clarification on applying Minimum Social Safeguards (under Article 18 of the Taxonomy Regulation)

**Justification/explanation**

The lack of clarification will lead to poor harmonisation between companies' approaches to carrying out Minimum Social Safeguards assessments and therefore divergent approaches to assessing taxonomy alignment.

**EXAMPLE:**

*As regards to compliance with human rights, the Platform on Sustainable Finance in October 2022 highlighted 'In practice, it might be necessary to differentiate between court proceedings involving serious violations and minor cases. Further work on these open issues is necessary in the future. For this, implementing a disclosure requirement on respective court cases under CSRD might be considered.'*

**Recommendation**

To avoid different interpretation between companies, auditors, or stakeholders on how to carry out Minimum Social Safeguards assessments, the Commission should consult with industry and publish an additional Notice clarifying FAQs on the Platform on Sustainable Finance's report on Minimum Social Safeguards.

**DNSH Appendix B protection of water and marine resources: criteria related to good water status and good ecological potential****Question/issue**

The Commission Notice does not provide information on DNSH Appendix B on Generic Criteria for DNSH to Sustainable Use and Protection of Water and Marine Resources.

**Justification/explanation**

The absence of clarification on criteria related to the notion of good water status and good ecological potential in Europe and outside Europe leaves significant room for interpretation, and therefore divergent alignment reporting between companies.

**Recommendation**

The Commission should provide further information on criteria related to the notion of good water status and good ecological potential in Europe to allow companies to accurately fulfil reporting requirements and to ensure that reports are comparable.

**Conflicting requirements with other EU legislation**

**Alignment and overlap with CSRD**

**Question/issue**

The significant amount of reporting on sustainability matters that will be introduced by CSRD has resulted in overlap between the aims of Taxonomy reporting and CSRD reporting. The added value of Taxonomy reporting is therefore not clear, especially for industries whose activities are not currently included in the Taxonomy.

**Justification/explanation**

CSRD already poses a significant reporting challenge and will result in much more comprehensive sustainability disclosures than the EU Taxonomy. Introducing two overlapping pieces of legislation (especially when implemented simultaneously) also counters the Commission’s goal of reducing the reporting burden on companies by 25%.

**Recommendation**

As recommended above, eligibility and alignment reporting under the Environmental Delegated Act and amended Climate Delegated Act should be delayed by one year so that companies consider eligibility from 2024 (reporting in 2025) and alignment in 2025 (reporting in 2026) for large EU Public Interest Entities.

Taking measures to ensure compatibility of EU Taxonomy definitions and provisions with existing reporting regimes, and therefore limiting unnecessary regulatory burdens, would also be more closely in line with keeping with the objectives as set out by the EC’s own Better Regulation initiative.

**Reference to REACH**

**Question/issue**

The Commission Notice fails to clarify the interaction between Appendix C and the EU’s REACH regulation.

**Justification/explanation**

The lack of clarification means that it is not clear if EU Taxonomy requirements refer to existing restrictions under REACH or if DNSH criteria go beyond legal requirements under reach.

**Recommendation**

ERT strongly recommends that DNSH criteria do not exceed the perimeters and restrictions imposed by existing regulation in order to maximise interoperability and consistency with the EU’s current legal framework. This should be reflected within the wording of Appendix C, for example by qualifying criteria with the phrase, ‘as laid down in the regulation’. The Taxonomy framework should also be updated so that exemptions for the healthcare industry and other industries to use specific chemicals (e.g. where no alternatives are available) are reflected. Otherwise, certain heavily regulated products would unjustifiably not be included in aligned/eligible revenues.

**Support with interpretation**

**Lack of interpretation guidance**

**Question/issue**

ERT Member companies have highlighted that there is no designated person or committee that companies can contact with their queries on interpreting the Taxonomy Regulation.

**Justification/explanation**

The absence of a central, authoritative source of interpretation guidance risks significant divergence between companies' approaches to reporting. It also requires them to spend a significant amount of time interpreting the regulation.

**Recommendation**

The Commission should set up a dynamic helpdesk to assist with Taxonomy implementation and interpretation and/or an interpretation committee. ERT Member companies advise that this committee be modelled on similar, existing interpretative bodies, such as the IASB's IFRIC Committee. To ease the implementation of the new disclosure recommendations and improve comparability, the Commission should also provide substantial and comprehensive interpretation guidance as soon as possible, including further FAQ documents.

**International alignment****Equivalent international standards****Question/issue**

Both in the Climate Delegated Act and the draft Environmental Delegated Act, some of the criteria for the activities require action in accordance with EU legislation specifically, but don't reference any equivalent 3rd country national or international standards that companies could comply with when carrying out activity outside of the EU.

**Justification/explanation**

Without reference to international or 3rd country national standards, companies operating overseas will face significant barriers to following the Taxonomy criteria.

**EXAMPLE 1:**

*Environmental Delegated Act, Annex 2 transition to a circular economy Activity 2.4 – Construction, upgrade, and operation of dedicated facilities for the treatment of*

*hazardous waste as a means for material recovery operations.*

*Relevant passage: 'This economic activity covers both in-situ and ex-situ material recovery operations of waste classified as hazardous waste in accordance with the European List of Waste established by Commission Decision 2000/532/EC51 and in accordance with Annex III to Directive 2008/98/EC'*

**EXAMPLE 2:**

*Environmental Delegated Act, Annex 3 pollution prevention and control Activity 2.2 – Construction, repurposing, upgrade, and operation of dedicated facilities for the treatment of hazardous waste, including the incineration of non-recyclable hazardous waste, biological treatment of hazardous waste and physico-chemical treatment.*

*Relevant passage: 'For the treatment of waste containing Persistent Organic Pollutants (POP), all waste containing POP substances listed in Annex IV to Regulation (EU) 2019/1021 are controlled and traced as hazardous waste in accordance with Article 17 of Directive 2008/98/EC. Specific requirements of Articles 7(4), 17, 18 and 19 of Directive 2008/98/EC apply'*

**EXAMPLE 3:**

*For the manufacture of biogas to be deemed environmentally sustainable under the Climate Delegated Act, any agricultural biomass used for those purposes are required to satisfy certain criteria set out in the RED II Directive. In that instance, no equivalent is provided for activities which take place outside of the EU.*

**Recommendation**

The Climate Delegated Act and draft Environmental Delegated Act should be updated so that any criteria which refer to EU legislation be qualified by the following phrase: 'or any applicable equivalent international or 3rd country legislation'.



## Usability of information provided in Taxonomy disclosures

### Incomparable data

#### Question/issue

ERT Member companies highlighted that there is a general lack of clarity in the Climate Delegated Act and the draft Environmental Delegated Act. This is particularly the case with Annex C of the draft Environmental Delegated Act, which is not clearly written.

#### Justification/explanation

The lack of clarity has resulted in incomparable data, which has been seen from companies' first set of Taxonomy reports.

The uncertainty around interpretation is also resulting in auditors taking a conservative stance, therefore reducing companies' alignment figures and making high-quality, comparable reporting very difficult.

### Recommendation

Before implementing the Environmental Delegated Act, the Commission should pause to review, correct and clarify the Taxonomy Regulation and existing Climate Delegated Act. Otherwise, the same issues will be replicated when implementing the Environmental Delegated Act.

### Value-add for investors of Taxonomy disclosures

#### Question/issue

Multiple ERT Member companies highlighted that the first year of reporting resulted in divergent approaches being taken by companies and also alignment being under-reported by auditors.

Asset Managers also have more sophisticated approaches to assessing the sustainability of companies beyond the taxonomy, whilst

companies are investing a significant amount of time explaining taxonomy reports to investors. Several companies highlighted that they receive very few questions from their stakeholders on the EU Taxonomy.

#### Justification/explanation

Poor comparability, under-reporting, and limited use of Taxonomy disclosures for decision-making puts the current value of the taxonomy into question.

If the Taxonomy is neither usable nor operable, and if resulting company disclosures are not comparable, then the taxonomy will not be used by investors and will therefore not serve its purpose.

### Recommendation

The Commission should launch an investigation into the extent to which investors are using taxonomy disclosures for investment decisions and the reasons for low uptake, if this is found to be the case. It is vital that a good evaluation is conducted before moving forward with the Environmental Delegated Act to ensure that the Taxonomy is a feasible tool. Ensuring that stakeholders are consulted on and given the opportunity to provide evidence during the development of new regulation would exemplify best practice per the objectives of the Better Regulation initiatives.

### Enabling activities

#### Question/issue

Many enabling activities are still missing from the Climate Delegated Act and Environmental Delegated Act, including energy efficient industrial solutions and digital solutions.

#### Justification/explanation

Whilst ERT Member companies support the Commission's recognition of the role of enabling activities in the EU taxonomy, and therefore including economic activities such as the manufacturing of electrical equipment, failing to include energy efficient and digital solutions will starve vital decarbonisation activities of investment.

## Recommendation

The new Platform on Sustainable Finance should look into incorporating energy efficiency and digital solutions into the Climate Delegated Act and Environmental Delegated Act as a priority area of its future work. The Commission should put its focus on swiftly adding more economic activities to the EU Taxonomy to broaden its scope and to ensure that large parts of the EU economy are covered (e.g. digital technology used by telecom companies, etc.).

### Exclusion of economic activities (e.g. paints and coatings production)

#### Question/issue

Paints and coatings are currently not included in the EU Taxonomy.

Furthermore, aerospace & defence activities are not covered.

#### Justification/explanation

Without paints and coatings being included, producers are forced to report immaterial amounts of eligible CapEx for non-core activities even where the company is a frontrunner on sustainable activities in their sector.

The exclusion of such activities also poses significant challenges when preparing Annual Reports, as companies must consolidate their Taxonomy non-eligibility with other extensive reporting on sustainability.

## Recommendation

The new Platform on Sustainable Finance should address how several economic activities (e.g. paints and coatings, aerospace & defence, etc.) can be included in the EU Taxonomy. More generally, it would also be important to address provisions for sustainability leaders whose activities are not included in the EU Taxonomy. As a matter of urgency, the Commission should ensure that a communication channel is in place to allow sectors whose activities are not covered to request the inclusion of new activities or revisions to Technical Screening Criteria. ERT Member companies also strongly underline the importance of the European Commission include additional economic activities swiftly on a continuous basis.

# Comments on the Environmental Delegated Act

## Annex 2 transition to a circular economy, activity 2.6 (dismantling and depolluting complex end-of-life products)

### Question/issue

ERT would like to highlight that it is unclear whether the decommissioning of a production platform would be included as an activity in this section. Ships are frequently referred to, but there is no clarity as to whether platforms and facilities that are not 'moveable' would be included here.

### Justification/explanation

Further clarifying what is included under activity 2.6 would help to maximise harmonisation between different companies' approach to reporting and therefore ensure comparability.

## Recommendation

The Commission should clarify that additional decommissioning activities, such as decommissioning a production platform, would be considered under activity 2.6.

## Annex 2 transition to a circular economy, activity 5.6 (marketplace for the trade of second-hand goods for reuse)

### Question/issue

Clarification is needed as to why food products and beverages are included under activity 5.6 and whether this refers to packaging.

### Justification/explanation

If the activity does not refer to packaging, it is not clear which kind of food and beverage products would be suitable for reuse.

## Recommendation

The Commission should clarify whether activities under section 5.6 refer to food products and beverages themselves or their packaging.

### Technical Screening Criteria under Annex 4 protection of biodiversity and ecosystems, activity 1.1 (conservation, including restoration, of habitats, ecosystems and species), condition 3.1

#### Question/issue

The requirement under condition 3.1 for activities to be covered by a management plan that is updated 'at least every ten years' is overly burdensome and not effective.

#### Justification/explanation

The requirement to update the management plan every ten years will be ineffective as the activities of the organisation undertaking the restoration may only occur for a few years before being passed on to another 3rd party. There is also no guarantee that the third party will adhere to the management plan.

## Recommendation

The draft act should be updated so that 'at least every ten years' is replaced by language that requires the plan to be regularly updated.

### Technical Screening Criteria under Annex 4 protection of biodiversity and ecosystems, activity 1.1 (conservation, including restoration, of habitats, ecosystems and species), condition 4

#### Question/issue

The requirement under condition 4 for the plan and activities to be audited by an independent third-party certifier may detract from resources that could be used directly for conservation purposes.

#### Justification/explanation

The requirements for the plan and activities

to be audited by an independent third party certifier would introduce significant additional costs and resource implications for restoration projects being undertaken by conservation organisation or businesses alike, when these resources should be used directly for conservation purposes. Similar national competent authorities do not have the resources, procedures or policies to provide that third party verification

## Recommendation

The draft act should be amended so that organizations are required to disclose details regarding the restoration activities and management plan, such as in annual reports or as part of their disclosures under the CSRD or TNFD frameworks (once the latter is finalised). This would both allow for public scrutiny and review. This change would also make reporting easier and therefore perhaps help incentive businesses to invest in nature conservation.

### Technical Screening Criteria under Annex 4 protection of biodiversity and ecosystems, activity 1.1 (conservation, including restoration, of habitats, ecosystems and species), condition 6.2

#### Question/issue

It is not realistic for companies to prevent the introduction of invasive species as per condition 6.2.

#### Justification/explanation

Invasive species may be introduced by third party activities in the area, which the company does not control.

## Recommendation

The text for condition 6.2 should be replaced with the following: 'Mechanisms should be put in place to avoid or minimize the risk of introducing invasive alien species, and if necessary, rehabilitate areas impacted by invasive alien species'.

## Appendix C, points (f) and (g)

### Question/issue

ERT welcomes attempts to clarify the correct interpretation of Appendix C on pollution prevention and control. However, several key issues remain that risk reducing harmonised approaches to using this DNSH criteria.

For example, FAQ 178 in the Commission Notice still requires companies to consider both harmonised lists of products and self-classification assessed and concluded by the industry itself. This means that an enormously large number of substances remain within scope of Appendix C, especially given the lack of guidance on whether a substance is critical or not and the unclear language on “controlled conditions” (which is not defined) in subparagraphs (f) and (g).

### Justification/explanation

The voluntary nature of self-classification risks poor comparability between industries since self-classification is voluntary. The large number of substances in scope also risks compromising comparability since companies are likely to prioritise substances differently. The lack of clarification on “controlled conditions” further risks poor harmonisation of interpretations.

To ensure comparability and operability of taxonomy reporting, reference to official and legal assessments are of importance.

### Recommendation

The Commission should limit the scope of chemical substances to only the harmonised list and refer to official legal assessments to ensure comparability and operability. To align with the Commission’s aims of reducing the reporting burden on companies by 25%, Appendix C should be phased in and paragraph (g) should be removed. Where not removed, (f) and (g) should be adopted in a way that aligns with REACH 1907/2006 and its provisions, including the definition of “controlled conditions”.

## Comments on the Climate Delegated Act

### Emissions reduction initiative for non-eligible economic activities

#### Question/issue

There is no clear way of classifying investments that help taxonomy-non-eligible activities become more low-carbon.

#### Justification/explanation

Without a clear definition on how to classify these kinds of investments, the Taxonomy framework risks depriving companies of transition finance. For example, it is concerning that there is currently no way to classify a fuel switch project that would help alumina refining become more ‘low carbon’.

### Recommendation

The Commission should set out how it plans to address economic activities that reduce the emissions associated with taxonomy-non-eligible activities.

### References to ETS in Technical Screening Criteria

#### Question/issue

ERT notes that the Taxonomy uses ETS benchmarks as part of its criteria for many activities. However, not all plants associated with these respective economic activities are covered by the ETS.

#### Justification/explanation

Such activities cannot and must not be assessed and are generally reported as not taxonomy-aligned even though they are considered eligible under the Taxonomy.

**EXAMPLE:**

*Manufacture of soda ash – caprolactam production network is not covered by ETS*

**Recommendation**

The Commission should clarify that activities with Technical Screening Criteria including a reference to the ETS, but which are not covered by the ETS, are not Taxonomy eligible

**Crossover between economic activity 3.3 and 6.5 (Climate Delegated Act) for car manufacturers**
**Question/issue**

ERT notes that in the automotive industry, some companies include their leasing and sales financing business in the manufacturing activity 3.3, whereas other OEMs report leasing and sales financing business according to 6.5 Transportation activity.

This leads to non-comparability of disclosures as there is an underlying different set of Technical Screening criteria for these activities.

**Justification/explanation**

DNSH criteria of 6.5 Transportation activity focuses on specific product requirements, whereas 3.3 focuses on the production process itself.

If a vehicle is leased/financed (instead of sold) after the 6.5 criteria OEMs, among other things, have to assess criteria referring to compliance with various product-related European regulations and directives on, for example, emission limits and rolling resistance coefficients — as well as rolling noise requirements for tyres. Currently those requirements lead to major DNSH reductions for all OEMs applying activity 6.5 for their leasing and sales financing business.

However those criteria are not relevant if the leased/financed vehicle is assessed under 3.3, which has a different set of Technical Screening criteria. As a consequence the same vehicle could be aligned under 3.3 and non-aligned under 6.5 (due to DNSH criteria of 6.5).

This leads to non-comparability in practise.

**Recommendation**

The Commission should clarify the differentiation of economic activities 3.3 and 6.5 for OEMs to ensure comparable mapping of Leasing/Financing business of OEMs to those economic activities.

**Technical Screening Criteria for Activity 3.6 Other Low Carbon Technologies**
**Question/issue**

Technical Screening Criteria for Climate Change Mitigation to justify the substantial GHG emission savings compared to other alternative products/technologies on the market should be amended when a labelling regulation applies.

**Justification/explanation**

The current Technical Screening Criteria reduce comparability between companies since some consider labelling regulations while others do not.

**Recommendation**

When products or technologies are subject to a labelling regulation that provides confidence in the quantification process of the GHG emission savings calculation, the Technical Screening Criteria of the category 3.6 should be amended to refer to the labelling regulation. When such regulation does not exist then the mention to the verification of a third party should apply as well as the reference to the latest best company technology alternative.

**Definitions under paragraph 3.18**
**Question/issue**

There are contradictions between the Taxonomy's approach to sustainability classifications of automobile parts/components and cars/motorcycles.

While the new activity 3.18 (under the draft amendments to the Climate Delegated Act) includes the production of parts, components and spare parts exclusively for cars and motorcycles with zero CO<sub>2</sub> tailpipe emissions, whereas zero tailpipe emissions is not a

requirement for taxonomy-eligible cars under activities 3.3 and 6.5.

Additionally, the meaning of the term 'essential' in the context of delivering and improving the environmental performance of the vehicle, as well as the term 'environmental performance', are not defined.

Furthermore, the description of the economic activity 3.18 restricts eligible parts and components to those that are "used only in vehicles and buses of category M1, M2, N1, N2 and L meeting the criteria set out in this Section". This contradicts the approach taken by the Commission for other economic activities relevant for the automotive industry (3.3 & 6.5). The description of 3.18 would lead to a situation where the parts/components would not be eligible but the final products, the car or motorcycle would be eligible.

#### Justification/explanation

If the term 'essential for delivering and improving the environmental performance of the vehicle' refers to the Technical Screening criteria of zero emissions, then this would result in a methodical difference between 3.3 and 3.18 as ICE vehicles are explicitly included in the 3.3 activity description and therefore eligibility (FAQ Document 02/2022).

The misaligned approach would also result in a scenario in which the certain vehicles are taxonomy-eligible whilst the parts with which they have been manufactured are not taxonomy-eligible.

These conflicting and poor clarified definitions of 'essential' and 'environmental performance' is a particular issue given that identical parts are frequently used in electrical and non-electrical vehicles. This issue is exacerbated by Recital 9 of the Delegated Act amending Delegated Regulation 2021/2139, which list components which are decisive for environmental performance, but which is incomplete given all parts and components influence and therefore potentially improve the environmental performance of a vehicle.

#### Recommendation

The Commission should ensure that these definitions are aligned, such as by including plug-in hybrid vehicles (until including 2025) in economic

activity 3.18. This would ensure that the scope of activity 3.18 is aligned with the scope of economic activities 3.3 and 6.5 and would help to ensure that the Taxonomy is an inclusive rather than an exclusive investment framework.

If a precise definition of 'essential' is not given, then the term should be deleted. To avoid discrimination, the terms "used only" and "meeting the criteria set out in this section" should be deleted from the activity description to harmonize the descriptions of the economic activities relevant for the automotive industry.

#### Technical Screening Criteria for Activity 3.20 Manufacture, installation, and servicing of high, medium and low voltage electrical equipment for electrical transmission and distribution that result in or enable a substantial contribution to climate change mitigation

#### Question/issue

While the title of the activity and its description explicitly refer to medium voltage equipment (MV), it is not explicitly listed in the technical screening criteria. This unclarity could lead to differences in interpretation of non-financial undertakings.

#### Justification/explanation

Distributed energy resources will increase by a factor of 7 by 2030 and will have to be connected at the distribution grid level. The IEA estimates that to achieve a net zero emissions scenario, investments in transmission network (high voltage) will have to double and in distribution networks (low and medium voltage) it will have to triple between 2021- 2050.

#### Recommendation

For legal certainty, we recommend explicit mention of medium voltage equipment in the technical screening criteria. We also recommend including "products, equipment and software" to avoid limiting medium voltage equipment to switchgear and control gear only.

## Multiple economic activities for charging infrastructure

### Question/issue

There are a multitude of different economic activities under the Climate Delegated Act that comprise charging activities:

Activity 4.9

Activity 7.4

Activity 6.15

Activity 3.20 (Draft Climate DA)

### Justification/explanation

As the different economic activities have overlapping descriptions with regards to charging activities (e.g. construction/ installation or operation of charging stations), there is no consensus in the market as to which activity to apply.

Due to the different Technical Screening Criteria behind those activities, the lack of clarity as to which activity is applicable will lead to a lack of comparability between disclosures.

Also, where there is a multitude of activities comprised in the description, the requirements do not always fit the charging activity (e.g. DNSH requirement of Appendix A: climate risk assessment on the level of charging points is not feasible)

### Recommendation

There is an urgent need to clarify this overlap and ensure uniform application of relevant activities for charging activities.

## Electronic communications networks (8.2)

### Question/issue

FAQ 159 in the Commission Notice on the EU Taxonomy Climate Delegated Act (19/12/2022) creates additional uncertainty.

### Justification/explanation

FAQ 159 contradicts section 8.2 of the Climate Delegated Act and introduces concepts that do not exist in the Climate Delegated Act, creating more confusion for companies in the ICT sector.

For example, the narrative included in the FAQ leads to the assumption that, when electronic communication networks are used to support solutions that reduce GHG emissions, they could be considered eligible under the Taxonomy. This appears to be based on an assumption that networks could be separately deployed or split by access or solution provided to client, which is not the case. Networks cannot be considered as detached parts of technology because they are not capable of autonomous data transmission. It is therefore not possible to distinguish the eligibility of entire networks under the proposed definition.

### Recommendation

The Commission should consult with the ICT sector to identify specific questions to reduce uncertainty and enhance both comparability and alignment among reporting companies. In light of the example above, we recommend that the Commission clarify the delegated act so that the network operator is treated consistently as an ICT-solution enabling GHG emissions reductions, given its nature of primary enabler of any 'data-driven' activity. More generally, the Commission should also outline whether the Climate Delegated Act will be amended and to whom companies should direct questions on possible amendments.

## Comments on Article 8

### CAPEX plans

#### Question/issue

It is unnecessary for companies to be required to provide a CAPEX plan into a (potentially) green activity in all cases where the investment period is longer than one year.

**Justification/explanation**

Amending this requirement would reduce the reporting burden on companies and would help to increase the proportion of decision-useful information presented in taxonomy reports.

**Recommendation**

CAPEX plans should only be required where it is not clear whether an investment will meet all EU Taxonomy criteria rather than for all green activities where the investment period is longer than one year.

**Definitions of CapEx and OpEx****Question/issue**

ERT members want to emphasise that the EU Taxonomy definitions of CapEx and OpEx are complex and not aligned with mainstream financial reporting definitions. Despite the Commission's FAQs, there are still many issues regarding the definition and calculation of the OpEx KPI.

**Justification/explanation**

The misalignment of mainstream CapEx and OpEx definitions with the Taxonomy definitions has resulted in confusion among users of Taxonomy reports.

On OpEx specifically, as well as the collection of data required to disclose the KPI being particularly burdensome, it will not be relevant for many companies/activities. In most cases, investors are more interested in the CapEx KPI. ERT Member companies recognise, however, that the OpEx KPI will be relevant for some activities (i.e. with no sales), therefore the OpEx KPI should be voluntary.

**Recommendation**

The Commission should align the EU Taxonomy definitions of OpEx and CapEx with the way in which they are understood for the purposes of mainstream financial reporting. The OpEx KPI defined in Article 8 of the Taxonomy Regulation should also be made voluntary, not mandatory. Therefore, pending the review of the Taxonomy Regulation, we consider that Annex I of Delegated Regulation (EU) 2021/2178 should be amended: in

paragraph 1.1.3.2 the last indent should be drafted as follows 'Where the operational expenditure is not material or relevant for the business model of non-financial undertakings, those undertakings shall be exempted from the calculation of the OpEX KPI.' Setting OpEx KPI disclosure as voluntary would also be consistent with the overall Commission objective to rationalise and simplify reporting requirements as mentioned in the Communication of March 16, 2023 on long-term competitiveness of the EU.

**KPI adjusted financed by environmentally sustainable bonds or debt securities****Question/issue**

ERT would also like to highlight that the Delegated Act on Article 8, Annex I requires non-financial undertakings to disclose CapEx and Turnover KPI adjusted financed by environmentally sustainable bonds or debt securities.

The FAQ Document (published 12/2022) exceeds these requirements in question 16 by additionally mentioning OpEx KPI adjusted, which is not reflected in Delegated regulation so far.

The requirement of disclosure of a Turnover KPI adjusted lacks clarity in terms of timing (for example, whether the adjustment is required in the future) and allocating turnover to certain investments.

Also, a definition of environmentally sustainable bonds is required.

**Justification/explanation**

If companies issue Green Bonds which currently do not fully align with Taxonomy requirements, it is unclear if the disclosure requirements for KPI adjusted still apply.

There are many open questions regarding the determination of Turnover KPI adjusted, e.g. which reporting periods have to be adjusted (the period of the investment and when CapEx KPI has to be adjusted or (all) future periods with turnover derived from adjusted investments/assets) or how Turnover has to be allocated to specific investments.

If OpEx KPI has to be disclosed, this needs to be included in Art. 8 Delegated Act.



**Recommendation**

The Commission should clarify the required KPIs adjusted financed by environmentally sustainable bonds or debt securities to be disclosed.

OpEx KPI adjusted should be preferred over Turnover KPI adjusted, as the latter would pose challenges in terms of data gathering and implementation (since many allocation mechanisms are needed) and will hence lead to non-comparability in practice. However, the requirement of an OpEx KPI adjusted would still need to be included in the Delegated Regulation.

particular output where activities benefit multiple businesses and for addressing the allocation where activities contribute to multiple objectives (which is likely to become an even more pressing issues following Taxo4 adoption). A more flexible approach to the use of disclosure templates would help companies find solutions to issues such as these, which stem from overly-prescriptive reporting frameworks. For example, companies may wish to allocate spending based on the revenues that they would generate, given that the revenues usually underpin the original business case for the activity.

**Flexibility on capital allocation**

**Question/issue**

There are strong concerns around the lack of flexibility that companies are able to exercise when using the disclosure templates.

Specifically, the templates for the KPIs (DA Art.8, Annex II) and Annex 3 amending Delegated Regulation (EU) 2021/2139 containing standard templates for the disclosure of gas and nuclear activities were highlighted as particularly inflexible and burdensome.

It is still unclear how companies should address 'double counting' where economic activities contribute to both climate change mitigation and climate change adaptation objectives.

**Justification/explanation**

This is a particular issue when companies need to allocate spending where an activity benefits two or more businesses. Currently, reporting would require companies to split capital into multiple sub-elements (e.g. split the retail site into the cost of land allocated on footprint of sub-business, utilities connections allocated on utility usage, etc).

Absence of clarification on double counting is also likely to lead to significantly divergent approaches to allocation between similar companies.

**Modified Reporting Tables according to Art. 8 DA Annex II (Annex V, Taxo-4 Draft DA)**

**Question/issue**

The proposed amendments to the reporting tables would increase the complexity of the table and increase the amount of redundant information that companies need to disclose.

Specifically, the substantial contribution columns contain different column headings with a mix of percentages and different attribute answers (Y, N, EL, N/EL, N/A) to be filled in, which makes the table very difficult to read.

Companies would also be required to provide redundant information for the following reasons:

- Information on eligibility or non-eligibility of activities per environmental objective ("EL; N/EL") under A.2 as the information on eligibility or non-eligibility is also disclosed under the column "Code".
- The columns on DNSH criteria and minimum social safeguards, since these criteria must always be met
- The additions '(A.1)' and '(A.2)' to the cells for total taxonomy-eligible and taxonomy-aligned KPIs, since they are no longer mentioned in the cell for the KPI

Finally, Annex 3 amending Delegated Regulation (EU) 2021/2139 containing standard templates for the disclosure of gas and nuclear activities are extensive and burdensome without providing decision-useful information.

**Recommendation**

Companies need a practical approach, including practical guidance, for mapping spending to a

### Justification/explanation

The templates are problematic for the fact that for each taxonomy-eligible activity that a company is involved in, a percentage of alignment with significant contribution criteria is required, whilst a binary answer is needed for alignment with the DNSH criteria. The structure in effect makes the columns for reporting DNSH redundant.

Under Section A.1, for the environmental objectives not relevant for this activity, it is unclear, where the attribute 'N' or 'N/A' should be ticked. It is also unclear why a code (combination of relevant environmental objective and economic activity) has been added to the first column of the table, since this would result in information being repeated by assigning a 'Y' attribute to the relevant environmental objective. This information is already contained in the code.

The same applies to Section A.2, since the code already communicates for which environmental objective the activity is eligible. The substantial contribution columns therefore contain redundant information.

### Recommendation

Columns that provide no additional decision-useful information, such as the redundant binary answer DNSH and minimum social safeguards columns, should be removed from the templates or the cells filled in black to help reduce the reporting burden on companies and improve the usability of reports for investors. If the columns are not removed, then the binary Y/N option should be expanded to include 'N/A' or 'left blank', since DNSH criteria are not provided for all economic activities (e.g. 6.5 Transportation by passenger cars, motorbikes and LCV).

ERT Member companies also recommend that column (18) and (4) be placed next to each other to facilitate annual comparisons and that the additions '(A.1)' and '(A.2)' to the cells for total taxonomy-eligible and taxonomy-aligned KPIs either be removed or the addition '(B)' could be included in the cell for total taxonomy-non-eligible KPI. If the latter option is taken, then the cell for the total KPI should include the addition '(A.1 + A.2 + B)'.

### Template colour theme proposed under paragraph 6 Annex V Draft delegated regulation (Ares(2023)2481554)

#### Question/issue

The draft delegated regulation proposes that the colour theme of disclosure templates become mandatory.

#### Justification/explanation

Without exact colour codes, it will be impossible for companies to replicate the colour theme that would be mandated by the amendments.

The colour theme would also give high prominence to data in highlighted columns, suggesting that other information is less important. However, vital information such as the proportion of turnover, CapEx, and OpEx is not highlighted in the template.

#### Recommendation

The draft act should be amended so that the colour scheme is not mandatory.

### Additional information on “transitional” and “enabling” activities under paragraph 6 Annex V Draft delegated regulation (Ares(2023)2481554)

#### Question/issue

Regarding the additional lines regarding “transitional” and “enabling” activities, there is no provision for the additional lines in the Delegated Regulation (EU) 2021/2178 (Annex I point 2 (a) does not require these lines).

#### Justification/explanation

The reporting tables already contain too much (in many cases unnecessary and useless) information. It should be avoided to add further information that is not even required by the legal texts.

#### Recommendation

The additional lines regarding “transitional” and “enabling” activities should be deleted.



The European Round Table for Industry (ERT) is a forum that brings together around 60 Chief Executives and Chairmen of major multinational companies of European parentage, covering a wide range of industrial and technological sectors. ERT strives for a strong, open and competitive Europe as a driver for inclusive growth and sustainable prosperity. Companies of ERT Members are situated throughout Europe, with combined revenues exceeding €2 trillion, providing around 5 million direct jobs worldwide - of which half are in Europe - and sustaining millions of indirect jobs. They invest more than €60 billion annually in R&D, largely in Europe.

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