POSITION PAPER

2 JUNE 2021

Cefic views on the Commission draft Delegated Act on the obligation for certain companies to publish non-financial information

Cefic welcomes the opportunity to provide commends on the draft Article 8 delegated act ('delegated act') of the Taxonomy Regulation and continues to support efforts to further develop the EU Sustainable Finance Agenda. Reliable, comparable and relevant information will bring clarity and transparency on environmental sustainability to investors, companies and issuers; the development of a common language (EU Taxonomy) will promote informed decision-making to foster investment in environmentally sustainable activities and technologies.

The energy intensive industry (EII) ecosystem can enable the greening of both upstream and downstream value chains, thus contributing to the EU's "twin transition" ambition. EIIs require significant investments into research and innovation, demonstration and roll-out of new technologies, including hydrogen-based steelmaking, carbon capture, utilization and storage, and system integration for circularity.[1] Given the EU Taxonomy is a direction of travel and not a status of today, it is important EIIs can precisely communicate their respective transition journeys.

Building on our response to the respective inception impact assessment[2], Cefic wishes to comment on the following:

Reporting Year 2021

1. *Phased reporting for financial year 2021*

Cefic supports the decision for a phased implementation of delegated act; however, the current text is unclear as to what metrics need to be reported. **Cefic recommends clarifying the scope of the reporting obligation for financial year 2021 by indicating whether, and how, companies should disclose the ratio of Taxonomy eligible to Taxonomy non-eligible activities for turnover, CapEx and/or OpEx (using the denominator definition for each KPI)**.

As there are outstanding key provisions in the Taxonomy Regulation, **Cefic also recommends the delegated act (as well as associated secondary legislation) is final for at least one year, including ratification by the European Parliament and Member States, before the first full financial year needs to be reported**. This would allow covered undertakings sufficient time to adapt reporting practices and systems.

2. *Definitions*

Cefic supports the improved definition of key terms, including "Taxonomy-Eligible Economic Activity", "Taxonomy Non-Eligible Economic Activity" and "Taxonomy-Aligned Economic Activity". These terms

[1] Annual Single Market Report 2021

[2] Cefic views on the Commission Delegated Regulation on Taxonomy-related disclosures by undertakings reporting non-financial information – Inception Impact Assessment

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constitute the key sub-headings for the disclosure tables; however, "Taxonomy-Eligible but Non-Aligned" is not defined. For completeness, **Cefic recommends defining this term in the following manner: 'Taxonomy-Eligible but Non-Aligned means a Taxonomy-eligible economic activity that does not comply with the requirements laid down in Article 3 of Regulation (EU) 2020/852'**.

The use of international accounting standards to define turnover, CapEx and OpEx (the denominators of the KPIs) facilitates accurate disclosure by companies by aligning with their existing reporting systems. Cefic supports the Commission's proposal to create equivalence between IFRS and national GAAP standards for the purpose of defining the denominator for the KPIs. For the revenue denominator (Section 1.1.1), **we encourage the Commission to make this point explicit by reinstating ESMA's original language that "Non-financial undertakings applying national GAAP should be required to count the amounts that are accounted for under the corresponding provision in national GAAP"**.

There is an opportunity to create more simplicity in the numerators for the CapEx and OpEx KPI; as the EU Taxonomy reporting process will involve many internal accounting and technical assessments from subject matter experts, simpler principles-based guidelines will encourage more quality and consistency in reporting. As such, **Cefic recommends removing**:

1. The sentence in Section 1.1.2.2 that begins, "Related to the purchase of output from Taxonomy-aligned economic activities [...]"; the sentence in Section 1.1.3.2 that begins, "Related to individual measures enabling the target activities to become low carbon"; and, the sentence in Section 1.1.3.2 that begins "Related to individual measures enabling the target activities to become low carbon". The intent of these sentences can be met more efficiently by allowing a more flexible definition of CapEx plan.
2. The paragraph in Sections 1.1.2.2 and 1.1.2.3 that begins, "The numerator shall also contain the part of the [CapEx/OpEx] for adaptation of economic activities to climate change" since this is already envisaged under the Taxonomy Regulation and its mention here is redundant. If the intent is to ensure preparers understand that for the Climate Change Adaptation objective, turnover is out of scope but CapEx and OpEx are in scope, then existing language in Section 1.1.1 is sufficient.

Cefic notes the OpEx definition can be further improved with a more robust explanation of what is included (i.e. cost for servicing the unit is not equal to cost of operating the unit, which would also include salaries and/or travel & expenses).

Additionally, there seems to be typographical error in Annex I (Section 1.1.1) with reference "International Accounting Standard (IAS) 12, paragraph 82(a)" – **the appropriate reference is "IAS 1, paragraph 82(a)"**.

Reporting Beyond Year 2021

1. *Reporting requirements*

The delegated act proposes undertakings provide comparative Taxonomy data for the five previous reporting periods, which is longer than the 1-2 years typically required for financial statements (creating misalignment with other aspects of a company's reporting in their annual report) and ESMA's recommendation to provide one year of comparables[3]. Further, it is not clear from when undertakings start calculating the five years (i.e. calculating for 2017 in reporting year 2022 and the challenges of retroactive

[3] ESMA Final Report – Advice on Article 8 of the Taxonomy Regulation

application). If users require comparative data for longer periods, this need can more conveniently be met via other means.

Additionally, the proposed requirement states undertaking shall provide "the key performance indicators for the previous reporting period" – for clarity, it would be helpful to specify that this requirement refers to the comparatives columns in the standard disclosure tables (Column 19).

To ensure Taxonomy reporting aligns with other elements of the financial report, **Cefic recommends companies be required to provide comparative data for one prior reporting period only and that companies be allowed to meet this requirement via the creation of an appropriate number of comparables columns in the standard disclosure tables (starting from Column 19)**.

2. *Accompanying narrative*

Cefic recognizes the need for textual narrative to accompany the disclosure tables; however, such a narrative should allow companies the flexibility to determine content and presentation in order to ensure alignment with other reporting requirements – a parallel annual report should be avoided. The proposed requirement to provide a quantitative breakdown of the numerator for each KPI, in addition to the quantitative information already presented in the disclosure tables, runs the risk of duplication and inconsistency, undermining the ambition of a uniform disclosure regime. **Cefic believes the Commission's objectives would be better served by concentrating quantitative reporting in the disclosure tables, while allowing flexibility to determine the content and presentation of the narrative**.

Additionally, a company's annual financial report typically contains discussion of trends in revenue, CapEx and OpEx. In this respect, Cefic notes that *compliance by reference* was strongly supported by a range of stakeholders in the ESMA consultation and would recommend its inclusion in the delegated act; **Cefic supports the advice given by ESMA that companies preparing accompanying disclosures for the KPIs be permitted to 'comply by reference', meaning they can present accompanying information elsewhere in the non-financial statement other than in the immediate vicinity of the KPIs**.

Generally speaking, **Cefic encourages a more principles-based approach specifying the intent of the disclosures while taking a less prescriptive approach to content and presentation**. As such, where the delegated act states "Non-financial undertakings shall provide a quantitative breakdown [of the numerator]" Cefic recommends removing the term "quantitative" and adopting more accessible language such as 'provide a high-level explanation of the key elements of change during the reporting period'. **Cefic also recommends that this obligation refer to the totals at the individual undertaking or group level (for consolidated reporting)**.

Finally, in various annexes of the delegated act, non-financial undertakings are asked to disclose their future objectives and targets for the KPIs and plans to achieve them. Not only is there lack of clarity in which period this refers to, but **reporting under the Taxonomy Regulation should reflect basic reporting principles and focus on material information. Disclosing commercially sensitive data and information (performance, investments, etc.) poses confidentiality issues.** Additionally, as non-EU based competitors are not subject to the EU Taxonomy and its reporting obligations, they would be privy to such data from EU-based competitors which undermines the principles of sustainable finance and adversely impacts EU business.

3. *CapEx plans*

Regarding the CapEx plans set out in Section 1.2, Cefic believes disclosure objectives can be better met by allowing a simpler, more flexible definition that better accommodates the diversity of industry-specific business cycles and planning. The chemical industry is an indispensable provider of safe, sustainable and innovative solutions at the service of society, but it is also capital-intensive and cyclical, requires long lead-time and depends on a level-playing field with the right economic incentives. For major capital projects, a significant proportion of CapEx may be incurred before the final investment decision is taken. These factors are even more pronounced for assets involving new technology deployments, due to the added investment and innovation needed to achieve cost reduction, scale up and de-risking.

For the purposes of EU Taxonomy reporting, it is recognized that the eligibility and alignment of CapEx will need to be properly determined; however, the approach proposed in the delegated act, whereby companies must adopt a CapEx plan endorsed by the Management Board, embrace a time limit of seven years, and disclose the plan in the accompanying narrative is overly rigid and operationally challenging on several counts. The disclosure objectives can be met more efficiently by encouraging companies to integrate the EU Taxonomy into existing business planning processes and allowing a degree of flexibility on issues such as management approval level, time limits, and the nature of any associated disclosures, if any.

In Section 1.1.2.2, **Cefic recommends that references to a CapEx Plan permit 'compliance by reference'** so that undertakings can refer to the relevant sections of the financial report where overall CapEx plans are discussed. This promotes integration and reduces the need for parallel disclosures. Additionally, in Section 1.1.2.2, **Cefic recommends removing the seven year maximum time limit for activities to become Taxonomy aligned**. Notably, the EU Platform on Sustainable Finance recommends a maximum ten year investment plan limit.[4]

Finally, Section 1.2 repeatedly refers to the need for various types of accompanying disclosures in relation the CapEx plan. Cefic encourages a more flexible, principles-based approach that enables undertakings to integrate the Taxonomy into their existing business planning and reporting process rather than creating parallel structures. **Cefic recommends that references to accompanying disclosures in relation to the CapEx plan (Sections 1.2.1, 1.2.3.2 and 1.2.3.3) permit compliance by reference**. We encourage the Commission to consider whether the requirements of these sections can be re-phrased so that they are more intent-based and provide greater flexibility for companies to integrate relevant disclosures into their existing annual report. Further, "substantial deviations" in Section 1.2.1 requires further definition to ensure reporting consistency.

4. *Disclosure tables*

Cefic supports the decision not to include an itemized breakdown of Non-Eligible Activities in the disclosure tables in Annex II. This would increase reporting complexity and create conflicts with existing segmental reporting. We support the concept that companies should calculate the sum total of Non-Eligible activity for the purposes of determining the denominator for the KPIs. **Cefic recommends that Annex 1, Section 2(e) be clarified to read "Non-financial undertakings shall identify the total proportion of Taxonomy-non-eligible economic activities and disclose the share in the denominator of the turnover, CapEx and OpEx KPIs of those economic activities at the level of the undertaking or group"**.

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[4] EU Platform on Sustainable Finance – Transition Finance Report

Cefic members expect the process of preparing the input data for disclosure tables will be complex as existing systems are not designed for reporting against economic activities and the allocation of turnover, CapEx and OpEx is expected to involve thousands of individual accounting and technical judgements. There is unlikely to be an IT solution in the short term (with retroactive capabilities), as the process of integrating new capabilities in Enterprise Reporting Systems is a complex, multi-year process. Consequently, for many companies, EU Taxonomy reporting will for many years be manual and labor-intensive process, creating risk for data quality issues that impact the overall credibility of the EU Taxonomy.

We believe it is possible for the Commission to meet its substantive goals for EU Taxonomy reporting while adjusting the standard disclosure tables that result in a more efficient process for preparers and generates higher quality data. Our suggestions concerning the simplification of the standard disclosure tables should be interpreted in this context. **Please refer to the attached Figure I, which links our comments to specific locations in the standard disclosure table**. Our comments apply to all three of the tables.

1. We recommend the Commission closely examine the disclosure requirements for Subsection A.2 on Taxonomy-Eligible but Non-Aligned activities. The current version of the table requires Eligible but Non-Aligned activities to be itemized together with an indication of the reason why the activity is non-aligned. There are several challenges with this approach:
    a. The current table contains columns allowing a company to demonstrate non-alignment due to not meeting the DNSH or Social Safeguard tests; however, there is no column that allows non-alignment to be attributed to not meeting the Substantial Contribution test.
    b. In practice, a company may have multiple assets for an eligible activity that are deemed non-aligned for different reasons. The current version of the table would require each of these activity/reason-for-non-alignment combinations to itemized individually. This is potentially confusing for users and will result in a table that is possibly more complex than the Commission intends.
    c. The need to capture detailed data on “reasons for non-alignment” adds considerably to internal reporting complexity while generating information of limited value for investors. Cefic notes that this data is not used in the KPIs for financial market participants. In some cases, this data may also be competitively sensitive. Ultimately, the purpose of the delegated act is to report on EU Taxonomy alignment rather than non-alignment.

   Based on the above, we suggest the Commission consider removing Columns 11-17 in their entirety. This would simplify the disclosure table for users and reduce reporting burden and competitive disadvantage for companies.
2. For all tables, Cefic recommends the wording of the sub-headings uses the language of the defined terms set out in Article 2, specifically:
    a. A - Taxonomy-Eligible Economic Activities
    b. A.1 - Taxonomy-Aligned Economic Activities
    c. A.2 - Taxonomy Eligible but Non-Aligned Economic Activities [Please refer to recommended definition above]
    d. B - Taxonomy Non-Eligible Economic Activities
3. The turnover table includes a Section B where companies populate the Non-Taxonomy Eligible residual; however, this section is missing from the CapEx and OpEx tables. For consistency, it is recommended to adopt one approach across all tables.
4. For all three tables, Columns 20-21 appear to be a duplication. If this is not the intent, further explanation of the content is needed.

5. For all three tables, it is recommended to shift Column 19 (Taxonomy-aligned proportion Year N-1) to the right-most side of the table. This conforms with standard practice for presentation of financial data, in which data for the current reporting period appears on the left and previous reporting periods on the right.
6. An eligible activity may consist of multiple NACE codes and a requirement to itemize each activity by NACE as implied by Column 2 is likely to result a table that is unnecessary complex for users. Cefic recommends removing Column 2 to create simplification for preparers and users.

Given the complexities of implementing new disclosure requirements, **Cefic recommends the Commission establish a dedicated functional inbox or helpdesk for companies to ask practical questions**. For instance, it is not clear how to communicate economic activities not yet covered by the EU Taxonomy without creating reporting distortion or how to approach economic activities enabling the currently defined enabling activities. From the perspective of the chemicals industry, it is unclear how to approach activities not explicitly mentioned but part of the NACE code, or reporting of chemical intermediates.

5. *Consideration of non-financial undertakings with a global footprint*

Similar to the Corporate Sustainability Reporting Directive (CSRD) proposal, **Cefic recommends introducing an equivalence or exemption regime for EU-subsidiaries of non-EU companies**. This will ensure consistency in the timing of reporting for all EU-subsidiaries of non-EU companies as some EU-subsidiaries may already fall under the scope of the Non-Financial Reporting Directive (NFRD) and others later under the CSRD.

Many subsidiaries from international companies sell products locally, therefore turnover will be in local annual statements which may be produced, serviced and/or imported in/from either another EU Member State or which may be bought from other companies (i.e. swaps). The delegated act must clarify how to report these revenue figures and related activities that are in the local books of the final selling entity, and where they should be represented in the disclosure tables.

In addition, EU subsidiaries may also produce, service and/or import in/from non-EU countries. As the EU Taxonomy does not apply to non-EU countries, the delegated act must clarify how to report these revenue figures and related activities that are in the local books of the final selling entity (i.e. whether they will need to be analyzed for Taxonomy eligibility and alignment, or entirely excluded).

Finally, the expanded scope of the CSRD will include EU-subsidiaries not involved in manufacturing or product sales (based on total number of employees and total balance sheet size), rather providing certain services. **Cefic recommends excluding these companies from the CSRD coverage and reporting under the delegated act.**

6. *Metrics beyond the EU Taxonomy*

In line with EU Platform recommendations, Cefic agrees that in order for companies to demonstrate their transition plans, metrics other than Taxonomy-aligned percentage should be considered. **Other metrics may be better suited to reporting transition in terms of emissions reductions or the financial implications of company transition.** Sectoral decarbonization pathways are another opportunity for companies to clarify how their own transition is consistent with the transition required at sectoral level while demonstrating robustness. Such tools include emission reduction targets and performance;

recommendations of the Taskforce on Climate-Related Financial Disclosure (TCFD); sectoral decarbonization approaches (SDAs) and recommendations of the Science-based targets initiative.

Adherence to Better Regulation Principles

Cefic supports the European Green Deal and the EU ambition to become climate neutral by 2050. Indispensable for Europe's transition, the chemicals industry is a solutions provider to multiple and interconnected value chains. Cefic welcomes EU efforts in furthering the EU Sustainable Finance Agenda and notes the immediacy of this initiative; however, the feedback period for this consultation is challenging given the need for companies to evaluate (integrated) reporting implications and requirements. Given the recent publication of the CSRD and the ongoing obligations under the NFRD, the interplay between the different initiatives is difficult to assess.

The chemicals industry is highly regulated, both at an EU and Member State level, it is important that enough time is afforded for the assessment of forthcoming policy initiatives. Given the recent Better Regulation publication, Cefic agrees that moving forward there should be a more "streamlined, inclusive and simpler system" in place so that stakeholders can impactfully contribute to feedback opportunities.[5] In this regard, **Cefic supports an extension of the consultation period in order to provide meaningful input.**

Cefic continues to support the European Commission and is committed to contributing to the development, analysis and review of all components in the EU Sustainable Finance Agenda with evidence-based recommendations. This includes active participation of our Permanent Representative in the EU Platform on Sustainable Finance.

While contributing to this consultation we are very aware we are experiencing unprecedented times, with events none of us have lived through before. Cefic endeavors to maintain a high standard in our responses to public consultations. While we are confident that this contribution adequately reflects our views at the current time, we recognize that public and private sector responses to the crisis and its aftermath, both in the EU and globally, have the potential to significantly affect industry's operating conditions. When investing in the future, industry, governments and institutions will also have to continue to ensure investments align with the policy targets of a climate-neutral Europe. We look to the European Commission to undertake the appropriate assessments and to include these wider considerations in the future framework that will be developed, with the objective of ensuring the EU's post-crisis attractiveness as a place for investing in the industrial transformation required to achieve EU Green Deal objectives.

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About Cefic
Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium and small chemical companies across Europe, which provide 1.1 million jobs and account for 15% of world chemicals production.

[5] Better Regulation – Joining forces to make better laws

Figure I

ANNEX II Templates for the KPIs of non-financial undertakings

Template 1: Proportion of turnover from products or services associated with Taxonomy-aligned economic activities - disclosure covering year N

				Substantial contribution criteria						DNSH criteria (Does Not Significantly Harm')										
Economic activities (1)	Code(s) (2)	Absolute turnover (3)	Proportion of turnover (4)	Climate change mitigation (5)	Climate change adaptation (6)	Water and marine resources (7)	Circular economy (8)	Pollution (9)	Biodiversity and ecosystems (10)	Climate change mitigation (11)	Climate change adaptation (12)	Water and marine resources (13)	Circular economy (14)	Pollution (15)	Biodiversity and ecosystems (16)	Minimum safeguards (17)	Taxonomy-aligned proportion of turnover, year N (18)	Taxonomy-aligned proportion of turnover, year N-1 (19)	Category (enabling activity or) (20)	Category (transitional activity) (21)
		Currency	%	%	%	%	%	%	%	Y/N	Y/N	Y/N	Y/N	Y/N	Y/N	Y/N	Percent	Percent	E/T	
A. TAXONOMY-ELIGIBLE ACTIVITIES			%																	
A.1. Environmentally sustainable activities (Taxonomy-aligned)																				
Activity 1 [26]				%*	0%	0%	0%	0%	0%		Y	Y	Y	Y	Y	Y	%		E	
Activity 2			%	0%	0%	100%	0%	0%	0%	Y	Y		Y	Y	Y	Y	%			
Turnover of environmentally sustainable activities (Taxonomy-aligned) (A.1)			**%**	**%**	**0%**	**%**	**0%**	**0%**	**0%**								**%**		**	
A.2 Taxonomy-Eligible but not environmentally sustainable activities (not Taxonomy-aligned activities)																				
Activity 1			%	0%	0%	0%	0%	0%	0%	Y	Y	Y	Y	Y	Y	Y	0%		T	
Activity 3			%	%	0%	0%	0%	0%	0%	Y	Y	N	Y	Y	Y	Y	0%			
Turnover of Taxonomy-eligible not but not environmentally sustainable activities (not Taxonomy-aligned activities) (A.2)			%																	
Total (A.1 + A.2)			**%**	**%**	**0%**	**%**	**0%**	**0%**	**0%**								**%**		**%***	
B. TAXONOMY-NON-ELIGIBLE ACTIVITIES																				
Turnover of Taxonomy-non-eligible activities (B)			%																	
Total (A + B)			%																	

Column 21 should be filled in for transitional activities contributing to the climate change mitigation.

26 Activity 1 is Taxonomy-eligible in its entirety. However, only a proportion of it is Taxonomy-aligned. Therefore, Activity 1 may be reported under both A1 and A2. However, only the proportion reported under A1 may be counted as Taxonomy-aligned in the turnover KPI of the non-financial undertaking.