

EU Taxonomy Regulation – FAQs

Regulation (EU) 2020/852 (the “Taxonomy Regulation”)
Commission Delegated Regulation (EU) 2021/2178 (the “Disclosures Delegated Act”)
<p>FAQs</p> <p>20 December 2021 – 22 FAQs</p> <p>2 February 2022 – 33 Draft FAQs</p> <p>6 October 2022 – Final version 33 FAQs</p>

Article 8 of the [Taxonomy Regulation](#) (“**Article 8**”) provides that entities which are already in scope of the Non-Financial Reporting Directive (the “**NFRD**”) must disclose information on how and to what extent their activities are associated with Taxonomy-aligned economic activities. The details of this disclosure obligation are set out in the [Disclosures Delegated Act](#), which has been supplemented by guidance from the Platform for Sustainable Finance and by the EU Commission.

[Regulation 2021/2139](#) (the “**Climate Delegated Act**”) sets out the criteria to be met by specific economic criteria in order to qualify as environmentally sustainable under the first two environmental objectives of climate change mitigation and climate change adaptation.

In particular, the Commission published a set of 22 FAQs on 20 December 2021 which we summarised [here](#). The Commission published a further 33 FAQs in draft form on 2 February 2022, the final versions of which were published on 6 October 2022.

General Questions	
Entities in scope of Article 8	<p>The Taxonomy Regulation provides that entities which are subject to Article 19a⁽¹⁾ or 29a⁽²⁾ of the Accounting Directive (as inserted by the NFRD) are required to make disclosures under Article 8.</p> <p>The FAQs helpfully clarify that undertakings <u>directly in scope</u> of the NFRD, rather than any implementing national legislation, are subject to the Article 8 disclosure obligation.</p>
Economic activities and NACE codes	<p>The FAQs clarify that the references to the use of the NACE code in the Climate Delegated Act is indicative only, and that an economic activity could meet one of the activity descriptions in the Climate Delegated Act even if the NACE code is not listed in the relevant section.</p>

(1) A large undertaking which is a public-interest entity with more than 500 employees on average during the financial year.

(2) A public-interest entity which is a parent undertaking of a large group with more than 500 employees on average on a consolidated basis during the financial year.

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General Questions	
Taxonomy eligibility and NACE codes	<p>Similarly, the FAQs confirm that for the purposes of identifying Taxonomy-eligible economic activities, NACE codes can help to identify eligible activities, but only the <u>specific activity description</u>⁽³⁾ in the Climate Delegated Act sets out the exact scope of the activities included in the Act. This has several impacts on collecting in data on counterparties:</p> <ul style="list-style-type: none"> • where a NACE is broader than the description (which is generally the case), the description prevails; and • an activity with no NACE but which meets an activity description can be Taxonomy eligible.
Enabling and transitional economic activities	<p>Enabling and transitional economic activities are defined in the Taxonomy Regulation:</p> <p>Transitional activities are those for which low-carbon alternatives are not yet available and that have greenhouse gas emission levels that correspond to the best performance in the sector or industry, which fulfil the two following conditions:</p> <ol style="list-style-type: none"> they should not hamper the development and deployment of low-carbon alternatives, and they should not lead to a lock-in of carbon-intensive assets, considering the economic lifetime of those assets. <p>Enabling activities are those that directly enable others to make a substantial contribution to an environmental objective.</p> <p>The FAQs confirm that for <u>eligibility reporting</u>, economic activities defined as enabling or transitional activities should not be treated differently from other activities. If they are within the scope of the relevant activity description, they should be identified as <u>eligible</u>.</p>

⁽³⁾ For example, for District heating/cooling distribution, the NACE code identified is D35.30 (Steam and air conditioning supply) but the description is “Construction, refurbishment and operation of pipelines and associated infrastructure for distribution of heating and cooling, ending at the sub-station or heat exchanger”

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General Questions	
<p>Enabling and transitional economic activities</p>	<p>However, the FAQs note that an economic activity is only transitional or enabling under the Taxonomy Regulation provided it meets the <u>technical screening criteria</u> in the relevant section of the Annexes to the Climate Delegated Act.</p> <p>Therefore, for the first years of eligibility reporting in accordance with the Disclosures Delegated Act, those activities can only be considered as <u>eligible-to-be-transitional</u> or <u>eligible-to-be-enabling</u> and reported as such, on a voluntary basis. The FAQs point out that this is the same treatment as for other activities, where eligibility does not give an indication of the actual alignment of the activity.</p>
Financial Institution Specific Questions	
<p>How should cash and cash equivalents be treated?</p>	<p>The FAQs clarify that, while these exposures should be included in the <u>denominator</u> of the KPIs, on the basis that their eligibility cannot feasibly be determined until they are allocated to a specific economic activity, they should be excluded from the <u>numerator</u> up to that point.</p>
<p>How should banks with investment firm licences report their Taxonomy-eligible economic activities?</p>	<p>The FAQs confirm that a parent undertaking classified as a credit institution and which undertakes investment activities, should follow the requirements for credit institutions under the Disclosures Delegated Act.</p> <p>The FAQs reiterate that the use of the Annexes is not mandatory for eligibility reporting, but that it is recommended.</p>
Debt Market Questions	
<p>How to assess and report the Taxonomy-eligibility of a debt asset such as a bond or loan.</p>	<p>The FAQs recommend that, in order to calculate Taxonomy-eligibility of <u>general-purpose debt instruments</u>, one should apply the eligibility value of the underlying entity (its turnover and CapEx).</p> <p>The FAQs also state that if all (or a portion) of the use of proceeds of a debt instrument is Taxonomy-eligible, reporting of this value would take precedence over the issuer-level value within the Taxonomy-alignment KPIs. The proceeds can be directly allocated to Taxonomy-eligible activities or be part of a CapEx or OpEx plan to render an activity or asset Taxonomy-aligned.</p>

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Debt Market Questions

Can green debt instruments or green sovereign debt from non-EU entities be reported as Taxonomy-eligible?

Green Debt Instruments

The FAQs state that the provisions of the Disclosures Delegated Act which deal with eligibility reporting clarify that financial undertakings should disclose information while taking into consideration the provisions which state that undertakings which do not fall under the NFRD (which includes non-EU undertakings) are excluded from the numerator but included in the denominator of the KPIs for Taxonomy-alignment reporting of financial undertakings.

However, these provisions also state that:

“...environmentally sustainable bonds or debt securities with the purpose of financing specific identified activities that are issued by an investee undertaking shall be included in the numerator of KPIs up to the full value of Taxonomy-aligned economic activities that the proceeds of those bonds and debt securities finance, on the basis of information provided by the investee undertaking.”

This means that financial undertakings can include the proceeds of environmentally sustainable bonds and debt securities whose purpose is to finance specific identified activities in the numerator of the eligibility disclosure.

This includes non-EU issuers’ use of proceeds bonds, but not use of proceed loans.

The FAQs reminds readers that exposures which are not in scope for mandatory reporting may be included voluntarily, bearing in mind the Platform’s guidance on voluntary disclosures.

Green sovereign debt

The FAQs state that, as the Disclosures Delegated Act excludes exposures to central governments, central banks and supranational issuers from the calculation of the numerator and denominator of KPIs of financial undertakings, sovereign exposures should not be included in Taxonomy-eligible disclosures.

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