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Berlin, 22 December 2023

CC: Mrs Helena Viñes Fiestas, Chair, Platform on Sustainable Finance, c/o DG FISMA

5th Submission of requests regarding disclosures to be made according to the Taxonomy-Regulation

Dear Mr Berrigan, dear Mr Špolc,

on behalf of the Accounting Standards Committee of Germany (ASCG) we are writing to submit further application issues arising from the requirements laid down in the Delegated Acts on the Taxonomy-Regulation (Regulation (EU) 2020/852) for clarification by the European Commission and the Platform on Sustainable Finance.

We refer to our letter sent on 21 September 2021. In this letter we had brought the first set of application issues to your attention, as presented in the appendix to the letter. In this respect we had sent three more letters on 25 October 2021, on 24 November 2021 and on 7 December 2021. In addition, we had announced to continue collecting such application issues to address these for your consideration. In addition, the letter contained further explanations and observations that are not reproduced here.

The document in the appendix is intended to help the European Commission and the Platform on Sustainable Finance to issue further guidance; in absence of such guidance this document may provide a reference point for companies applying the taxonomy requirements.

We would like to point out that the ASCG fora do not involve a formal approval process and that the tentative solutions on the issues presented in the appendix to this letter are not the result of such a process. Therefore, these tentative solutions shall not be considered as the view of the German constituency as a whole. In addition, the tentative solutions do neither reflect the position of the ASCG's technical committees nor the thoughts of the ASCG secretariat. Potential future positions of the ASCG, if any, may differ from the tentative solutions expressed in the ASCG fora.

Please find the issues in the appendix to this letter; those not included in the appendix to our letter of 7 December 2021 are flagged as **"NEW"**.

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If you want to discuss these issues further, please do not hesitate to contact us.

Kind regards

Georg Lanfermann
President

Prof Dr Sven Morich
Vice President

Taxonomy for Environmentally Sustainable Activities

Reporting Requirements according to Article 8 of the Taxonomy Regulation

Application Issues: Questions & Answers

This document focuses on several important unresolved issues concerning the application of Article 8 of the Taxonomy Regulation. The issues included in this document result from discussions at the occasion of a number of fora organised by the Accounting Standards Committee of Germany (ASCG) on this subject matter. This is a living document which was not revisited by the ASCG's Technical Committees, and it may be complemented by further materials at a later stage.

The tentative solutions to the issues shall not be considered as the view of German constituency as a whole. In addition, the tentative solutions do neither reflect the position of the ASCG's technical committees nor the thoughts of the ASCG secretariat. Potential future positions of the ASCG, if any, may differ from the tentative solutions expressed in the ASCG fora.

This document is intended to help the European Commission and the Platform on Sustainable Finance to issue further guidance; in absence of such guidance this document may provide a reference point for companies applying the taxonomy requirements.

Status as of December 2023

Content

1	Presentation of an economic activity as eligible under Article 8.....	5
1.1	What processes are covered by the notion ‘manufacturing’?	5
1.2	Definition of a manufacturer	6
1.3	Is the activity “manufacture of passenger cars with combustion engine” eligible?	8
1.4	Eligibility of activities performed by suppliers for vehicle manufacturers.....	10
1.5	May eligible activities be assigned to other those activities?	11
1.6	Intention to generate income directly from an activity as a condition for the activity being considered “ <i>economic</i> ”?	13
1.7	Turnover generated through subcontractors	15
1.8	NEW: Are the references to NACE codes generally indicative for the identification of a taxonomy-eligible economic activity or are there exceptions where the references to NACE codes are exhaustive?	17
1.9	NEW: How is the activity “Sale of spare parts” defined?.....	19
2	Presentation of an economic activity as aligned under Article 8.....	20
2.1	Compliance with national requirements of non-EU jurisdictions	20
2.2	Are the minimum safeguards met through group-wide and global commitments and systems?	21
2.3	How shall the best performing alternative be identified?	22
2.4	What OpEx will be considered sustainable?	23
2.5	NEW: Is it necessary to carry out a substitution test in 2023 for substances on the candidate list of the REACH regulation in order to fulfil the technical screening criteria in the amended point (f) of Annex C of Annex I and II to Delegated Regulation (EU) 2021/2139 regarding the DNSH criteria for pollution prevention and control?.....	25
2.6	NEW: How does a substitution test for the substances on the candidate list of the REACH Regulation have to be carried out and documented according to the amended point (f) of Annex C of Annex I and II to Delegated Regulation (EU) 2021/2139 regarding the DNSH criteria for pollution prevention and control?.....	27
3	Other issues concerning the reporting under Article 8.....	29
3.1	How will taxonomy-aligned group internal revenues be disclosed?	29
3.2	Excluding additions from being considered CapEx if the reporting outcome is misleading (reference: discontinued operations/disposal groups)?	32
3.3	Equal treatment of revenues and expenses from Discontinued Operations and Disposal Groups for Taxonomy Reporting purposes even if IFRS Standards do not support this?.....	35
3.4	CapEx incurred by a subsidiary which the parent ceases to control.....	37
3.5	Disclosure on economic activities carried out by a service provider	40



3.6	Separation of economic activities for the allocation of CapEx and OpEx provided by a service provider	42
3.7	CapEx incurred from the construction of a new headquarters/ administration building	45
3.8	Is there a materiality threshold for the reporting according to Art. 8?	47
3.9	NEW: How to interpret the descriptions of the activities according to Table 1 in Annex XII of Delegated Regulation (EU) 2021/2178?	49
3.10	NEW: How to interpret the additional template in footnote (c) to the three amended templates of Annex II to Delegated Regulation (EU) 2021/2178?	51

Background to this document

In 2020, the European legislators adopted Regulation (EU) 2020/852 (Taxonomy Regulation) which is a central piece of the European Union's legislation on sustainable finance. This classification system is key for future financing of economic activities of undertakings in the European Union. The Taxonomy Regulation also foresees in Article 8 a specific reporting requirement by these undertakings as part of their non-financial statements. This concerns so called taxonomy quotas for taxonomy aligned activities regarding turnover, capital expenditures and operating expenses. Article 8 also includes the possibility for the European Commission to issue a delegated act to further clarify the reporting requirements.

Delegated Regulation (EU) 2021/2178 gives further explanation of the reporting requirements but had been developed in a very short time frame. The Accounting Standards Committee of Germany (ASCG) published a briefing paper summarising the main contents of the reporting requirements.¹ Also, the ASCG commented during the short consultation period of one month pointing particularly to the fact that the delegated act still had not dealt with all important reporting issues.² The delegated act itself foresees inter alia a particular and very detailed reporting format which undertakings are required to follow. However, the question of eligibility and alignment of an economic activity also requires consideration of the Technical Screening Criteria set out in other delegated acts.³ Their interpretation has a direct effect on the presentation of the taxonomy quota according to Article 8.

The following issues concerning the interpretation of the taxonomy reporting requirements have been derived from discussions between ASCG members at the occasion of a series of internal fora over the past months. These issues are presented in a questions and answers format giving also an indication for a potential solution for them. Further fora will complement this first set of Q&As and may result into updates of this document.

¹ ASCG briefing paper, see https://www.drsc.de/app/uploads/2023/11/231122_Briefing_Paper_UmwelttaxVo.pdf (November 2023).

² ASCG comment letter of 2 June 2021, see https://www.drsc.de/app/uploads/2021/06/210602_DRSC_SN_Art8-TaxVO_final.pdf.

³ Delegated Regulation (EU) 2021/2139 and Delegated Regulation (EU) 2023/2486.



1 Presentation of an economic activity as eligible under Article 8

1.1 What processes are covered by the notion 'manufacturing'?

Issue	The annexes of the delegated regulation supplementing Regulation (EU) 2020/852 regarding technical screening criteria for climate change mitigation and adaptation contain and describe a number of different economic activities for manufacturing in chapter 3 ' <i>Manufacturing</i> '. However, in most cases the 'Description of the activity' does not address the extent of the process of transformation, also known as vertical integration, for example ' <i>Manufacture of organic basic chemicals</i> ' (Annex 1 No. 3.14 of the delegated regulation supplementing Regulation (EU) 2020/852 regarding technical screening criteria for climate change mitigation and adaptation). In other words, it is unclear as to whether or not the notion 'manufacturing' is meant to be aligned to a certain vertical integration and, if yes, what minimum extent is expected.
Question	What exactly is meant by ' <i>manufacture</i> '? To what extent must a pre-product be processed for this process to be considered 'manufacturing'?
View 1	Only those activities that involve a significant transformation process of pre-products can be considered ' <i>manufacture</i> '. The significance of the transformation process is based on the level of changes made to the pre-product. As – for example – filling/bottling of a pre-product does not change its characteristics, this activity shall not be considered as ' <i>manufacturing</i> '.
View 2	Even minor activities may be considered ' <i>manufacturing</i> '. This includes, for example, mixing, assembly, dilution, filling/bottling as these activities involve a significant change in a pre-product's characteristics. For example, the change in the pre-product by filling/bottling is characterised by portioning the pre-product as required by users/customers.
Tentative solution as expressed in ASCG fora	<p>View 1</p> <p>The notion 'Manufacturing' is to be interpreted narrowly, i.e. for a process to be considered manufacturing the characteristics of a pre-product have to undergo a transformation or change. Filling or bottling mean changing the nature of a product's storage without changing the product's characteristics or features.</p>

1.2 Definition of a manufacturer

Issue	<p>According to Article 8 paragraph 2 of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the proportion of their turnover derived from products or services associated with economic activities and the proportion of their capital expenditure (CapEx) and the proportion of their operating expenditure (OpEx) related to assets or processes associated with economic activities that qualify as environmentally sustainable.</p> <p>The Commission Delegated Regulation on Article 8⁴ contains the requirement that “non-financial undertakings shall identify each economic activity, including a subset of transitional and enabling economic activities” and “disclose the KPIs for each economic activity”.</p> <p>Taxonomy-eligible economic activities are defined in Article 1 paragraph 5 of the Commission Delegated Regulation on Article 8 and are listed in annex I and II of the Commission Delegated Regulation as of 4 June 2021.⁵ There are references to several NACE-codes in the descriptions of the economic activities.</p> <p><u>Fact Pattern</u></p> <p>The entity A is, according to its own understanding, a company in the commercial sector and trades in goods. In addition, entity A distributes goods that are manufactured by third parties on behalf of entity A under requirements defined by entity A, labelled with entity A's logo and sold to entity A. These goods are eventually sold by entity A to customers. The product responsibility towards the customers lies with entity A and not with the original manufacturer.</p> <p>The economic activities in section 3 of annex I and II to the Commission Delegated Regulation as of 4 June 2021 are based on the production of certain goods by a "manufacturer". The term "manufacturer" and the vertical range of manufacture are not defined.</p>
Question	<p>May entity A's economic activity be classified as “manufacturing” according to section 3 of annex I and II to the Commission Delegated Regulation as of 4 June 2021 if this activity comprises the purchase and sale of products manufactured by a third party supplier and whose surface design (i.e. brand label) has been created in accordance with the requirements of the entity A?</p>

⁴ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

⁵ COMMISSION DELEGATED REGULATION (EU) of 4.6.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.



View 1	<p>Entity A is the manufacturer of the goods because it claims to be the manufacturer by affixing its brand label to the goods. This view is in line with the regulations on CE marking,⁶ in particular:</p> <ul style="list-style-type: none"> • Article 2 Number 19 of Regulation (EU) No 305/2011: <i>“‘manufacturer’ means any natural or legal person who manufactures a construction product or who has such a product designed or manufactured, and markets that product under his name or trademark”</i> (emphasis added). • Article 2 point I of Directive 2006/42/EC: <i>“‘manufacturer’ means any natural or legal person who designs and/or manufactures machinery or partly completed machinery covered by this Directive and is responsible for the conformity of the machinery or the partly completed machinery with this Directive with a view to its being placed on the market, under his own name or trademark or for his own use. In the absence of a manufacturer as defined above, any natural or legal person who places on the market or puts into service machinery or partly completed machinery covered by this Directive shall be considered a manufacturer;”</i> (emphasis added). <p>Thus, Company A carries out economic activities from section 3 of annex I and II to the Commission Delegated Regulation as of 4 June 2021 and must publish KPIs for such economic activities.</p>
View 2	<p>The manufacturing process is performed by the third party supplier as the production process, relevant for the Technical Screening Criteria, is performed by that supplier. Furthermore, the third party supplier controls the production process. Thus, the third party supplier performs the economic activities according to section 3 of annex I and II to the Commission Delegated Regulation as of 4 June 2021.</p> <p>In contrast, entity A is not considered the manufacturer and does not perform economic activities according to section 3 of annex I and II to the Commission Delegated Regulation as of 4 June 2021.</p>
Tentative solution as expressed in ASCG fora	View 1

⁶ https://ec.europa.eu/growth/single-market/ce-marking/manufacturers_en.



1.3 Is the activity “manufacture of passenger cars with combustion engine” eligible?

Issue	<p>Art. 1 para. 5 of the delegated regulation supplementing Regulation (EU) 2020/852 specifying the content and presentation of information to be disclosed contains a definition of taxonomy-eligible economic activities. According to this definition a taxonomy-eligible economic activity is “<i>an economic activity that is described in the delegated acts adopted pursuant to Article 10(3), Article 11(3), Article 12(2), Article 13(2), Article 14(2), and Article 15(2), of Regulation (EU) 2020/852, irrespective of whether that economic activity meets any or all of the technical screening criteria laid down in those delegated acts</i>”.</p> <p>The production of passenger cars is an activity addressed by section 3.3 (No. 3.3 of the two annexes of the delegated regulation supplementing Regulation (EU) 2020/852 regarding technical screening criteria for climate change mitigation and adaptation). In Annex I the activity is described as “<i>manufacture, repair, maintenance, retrofitting, repurposing and upgrade of low carbon transport vehicles, rolling stock and vessels.</i>” The regulation states further that the economic activities in this category “<i>could be associated with several NACE codes, in particular C29.1, C30.1, C30.2, C30.9, C33.15, C33.17 in accordance with the statistical classification of economic activities established by Regulation (EC) No 1893/2006.</i>” However, the text in Annex I (on “climate change mitigation”) is silent on what the notion ‘low-carbon’ means.</p> <p>Section 3.3 of Annex II (on “climate change adaption”) describes the activity more detailed. In particular, the description contains a subparagraph that precludes passenger cars with specific emissions of CO₂ higher than 50g per kilometre from being considered low carbon. (From 2026 only zero-emission cars will be considered low carbon.)</p>
Question	<p>Is the production of passenger cars with internal combustion engine a taxonomy-eligible economic activity considering the environmental objective ‘climate change mitigation’ in case of CO₂ emissions higher than 50g per kilometre?</p>
View 1	<p>No. Passenger cars with internal combustion engine and CO₂ emissions above the 50g per kilometre threshold cannot be ‘low carbon’ per se.</p>
View 2	<p>Yes. The description of activity in section 3.3 of Annex I contains an explicit reference to the NACE code C29.1. The NACE code C29.1 refers to ‘Manufacture of motor vehicles’. As section 3.3. does not contain additional explanation on what low carbon means, the activity is not precluded from being considered low carbon.</p> <p>The fact that passenger cars with internal combustion engine and CO₂ emissions higher than 50g per kilometre are not taxonomy-aligned (as per the Technical Screening Criteria) does not play any role on the eligibility.</p>
Tentative solution as expressed in ASCG fora	<p>View 2.</p> <p>As the legal text (in Annex I) describes the activity by referring to the ‘manufacture of motor vehicles’ without adding a certain condition, the emissions are not relevant for determining the taxonomy eligibility for the environmental objective ‘climate change mitigation’. This view is in line with the European Commission’s approach of</p>



first identifying the sectors that generate the greatest carbon emissions. Then, in a second step, these sectors are considered in terms of their sustainability.

1.4 Eligibility of activities performed by suppliers for vehicle manufacturers

Issue	<p>The undertaking manufactures solutions for vehicles, machinery, traffic, and transportation. Most of the solutions are supplied to vehicle manufacturers, some to end-customers. These solutions do neither comprise the engine of a vehicle nor components of it.</p> <p>The customers of the undertaking produce and sell both zero tailpipe emissions vehicles (ZTEV) as well as vehicles with internal combustion engines with a certain level of carbon emissions.</p> <p>The undertaking is able to identify the solutions that go into a ZTEV according to the definition in the taxonomy regulation under chapter 3.6 of Annex 1.</p>
Question	<p>Are the activities of suppliers for vehicle manufacturers in general eligible under the chapter “3.3 Manufacture of low carbon technologies for transport” or “3.6 Manufacture of other low carbon technologies”?</p>
View 1	<p>Chapter 3.3 comprises the activities of a supplier for vehicle manufacturers.</p>
View 2	<p>Chapter 3.3 does not comprise the activities of a supplier for vehicle manufacturers but instead chapter 3.6 comprises these activities.</p>
Tentative solution as expressed in ASCG fora	<p>View 2.</p> <p>Although the draft Annex I issued by the Commission on 20 November 2020 [Ref. Ares(2020)6979284 - 20/11/2020] included the production of key components according to the wording section 3.3 of this draft, the manufacture of key components is not mentioned in the final version anymore.</p> <p>Therefore, manufacturing activities that clearly aim “at substantial GHG emission reductions in other sectors of the economy” (as stipulated in section 3.6 of Annex I), are eligible under 3.6 instead and they are aligned if they meet the defined technical screening criteria (especially the proof of “substantial life-cycle GHG emission savings compared to the best performing alternative technology/product/solution available on the market”.)</p>

1.5 May eligible activities be assigned to other those activities?

Issue

According to Article 8 paragraph 2 of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the proportion of turnover, capital expenditure (CapEx) and operating expenditure (OpEx) associated with ecologically sustainable economic activities. Chapter 2 of Annex I to the Commission Delegated Regulation on Article 8⁷ requires non-financial undertakings or entities to identify each economic activity, including a subset of transitional and enabling economic activities. Furthermore, entities shall disclose the KPIs for each economic activity and the total KPIs for all economic activities.

The annexes of the delegated regulation of 4 June 2021 supplementing Regulation (EU) 2020/852⁸ regarding technical screening criteria for climate change mitigation and adaptation contain and describe a number of different economic activities in this respect. Further activities will be covered in the near future.

Fact pattern

An entity is a manufacturer of passenger cars. The entity's business covers a wide range and include a number of activities all being covered by the Taxonomy. The entity has divided its activities into main or primary activities and other activities that the entity does not consider as primary. However, some or all of those other activities might be necessary for the primary activities to be performed. (Those activities are further referred to as „specific enabling activities“.) An example may be the „renovation of existing buildings“ as described in No. 7.2. of Annex I to the Commission Delegated Regulation of 4 June 2021. From the entity's perspective this activity is performed with the view to enable the activity „Manufacture of low carbon technologies for transport“ (No. 3.3. of Annex I to the Commission Delegated Regulation of 4 June 2021) with the latter being one of the entity's main activities and the renovation being the specific enabling activity.

The activities performed by the entity in this example comprise the following main activities:

1. Manufacture of low carbon technologies for transport (No. 3.3. of Annex I to the Delegated Regulation of 4 June 2021)
2. Transport by motorbikes, passenger cars and light commercial vehicles (No. 6.5. of Annex I to the Delegated Regulation of 4 June 2021)

In addition to these main activities the entity performs the following other activities:

1. Manufacture of batteries (No. 3.4. of Annex I to the Delegated Regulation of 4 June 2021)

⁷ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

⁸ COMMISSION DELEGATED REGULATION (EU) of 4.6.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.



	<p>2. Generation of energy (chapter 4. of Annex I to the Delegated Regulation of 4 June 2021)</p> <p>3. Renovation of existing buildings (No. 7.2. of Annex I to the Delegated Regulation of 4 June 2021)</p>
Question	Is the entity required to disclose KPIs on each single activity regardless of the activity being primary?
View 1	<p>Yes.</p> <p>The KPIs have to be disclosed for every single eligible economic activity the entity performs given the activity is described in the Delegated Regulation of 4 June 2021. The reasoning is based on the wording of the requirement in chapter 2 point (a) and (b) of Annex I to the Commission Delegated Regulation on Article 8 which includes the requirement that “non-financial undertakings shall identify each economic activity” and “disclose the KPIs for each economic activity”.</p>
View 2	<p>No.</p> <p>The entity may assign certain eligible activities to main activities also for the reporting under the Taxonomy Regulation provided that these activities are interrelated, and the activities assigned to one or more main activities are subordinated in substance. There are some indicators that may help the entity in determining on whether or not certain eligible activities can be assigned to main activities. The fact that an activity forms an activity upstream of the main activity could be a strong indicator in case the entity would not be able to perform the main activity without performing the “specific enabling activity”. Another indicator is based on the principle of materiality. I.e. an activity 1 may be assigned to another activity 2 if the revenues from performing activity 1 are zero or not material in relation to the total revenues and/or activity 1 is of subordinate importance to the entity’s business.</p>
Tentative solution as expressed in ASCG fora	<p>View 2</p> <p>The reporting requirements set out in Art. 8 of the Taxonomy Regulation and the corresponding Commission Delegated Act should be adhered to under consideration of the reporting principle for the management report, which comprises the nonfinancial statements, including the Taxonomy reporting in particular from 2022.</p> <p>The reporting principle of materiality aims predominantly at avoiding presentation of information that is not useful for users. According to this principle, information that is considered immaterial may, for instance, be aggregated in the financial statements. Therefore, economic activities of a company shall be aggregated for Taxonomy reporting purposes by analogy.</p>



1.6 Intention to generate income directly from an activity as a condition for the activity being considered “economic”?

Issue	<p>According to Article 8 paragraph 2 of the Taxonomy Regulation (Regulation (EU) 2020/852) undertakings are required to disclose the proportion of turnover, capital expenditure (CapEx) and operating expenditure (OpEx) associated with ecologically sustainable economic activities. Chapter 2 of Annex I to the Commission Delegated Regulation on Article 8⁹ requires non-financial undertakings or entities to identify each economic activity, including a subset of transitional and enabling economic activities. Furthermore, entities shall disclose the KPIs for each economic activity and the total KPIs for all economic activities.</p> <p>However, neither the Taxonomy Regulation nor the corresponding delegated acts contain a definition on “economic activity” which leaves the question unanswered whether or not an activity involves the intention to generate income.</p>
Question	Does an activity need to be performed with the intention to generate income in order to be considered for the purpose of the reporting under Article 8 of the Taxonomy Regulation?
View 1	<p>Yes</p> <p>For an activity of an entity to be considered as an economic activity this activity must be performed with the intention to generate income through offering the products or services resulting directly from that activity to (potential) customers. This conclusion is based on the court decision Case C-222/04 Cassa di Risparmio di Firenze SpA and Others EU:C:2006:8, paragraph 108: “Any activity consisting in offering goods or services on a given market is an economic activity”.</p> <p>By analogy, for an activity to be considered as an “economic activity”, it must involve the intention to generate income from the sale of goods or services resulting directly from that activity to customers. In contrast, an activity not meeting this condition is not an “economic activity”, and, therefore, not subject to the reporting under Article 8 of the Taxonomy Regulation.</p>
View 2	<p>No</p> <p>An entity’s activities whose output is used internally and does not generate revenue are also considered economic activities in the meaning of the Taxonomy Regulation.</p>
Tentative solution as expressed in ASCG fora	<p>View 2</p> <p>Although Article 8 of the Taxonomy Regulation refers to economic activities, an activity does not need to involve the sale of products/services resulting directly from that activity in order to it being considered as an economic activity. If an activity does not result in revenues from the sale of products/services resulting directly from that activity, the entity cannot report a turnover KPI. However, the entity may</p>

⁹ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.



report CapEx and OpEx as long as these expenditures are related to assets or processes associated with economic activities that qualify as environmentally sustainable.

1.7 Turnover generated through subcontractors

Issue	<p>According to Article 8 paragraph 2 point a of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable. In Annex I chapter 1.1.1. of the Commission Delegated Regulation on Article 8¹⁰ the term turnover is defined by reference to Article 2 point (5) of the Accounting Directive (EU/2013/34) and by reference to paragraph 82 point (a) of IAS 1 “Presentation of Financial Statements”. (This paragraph requires revenue to be presented as a separate line item in the statement of profit or loss.) Furthermore, the Commission Delegated Regulation on Article 8 requires companies to present the KPIs by using the reporting templates as shown in Annex II of that Commission Delegated Regulation on Article 8.</p> <p>The Commission Delegated Regulation on Article 8 contains the requirement that “non-financial undertakings shall identify each economic activity, including a subset of transitional and enabling economic activities” and “disclose the KPIs for each economic activity”. Taxonomy-aligned economic activities are listed and defined in annex I and II of the Commission Delegated Regulation as of 4 June 2021.¹¹ There are references to several NACE-codes in the descriptions of the economic activities.</p> <p><u>Fact pattern</u></p> <p>The entity A performs several economic activities listed in chapter 6 (“Transport”) of the annexes I and II of the Commission Delegated Regulation as of 4 June 2021 including the activity described in chapter 6.6. (“Freight transport services by road”). For this activity the entity A has engaged subcontractors that take the physical delivery to the customers on behalf the entity A. The subcontractors use their own assets (i.e, the fleet) for the transport. However, the service agreement with the customer is held by the entity A. Therefore, revenues from contracts with customers are incurred by the entity A whereas the subcontractor incurs revenues from entity A from performing the physical transport on behalf of entity A.</p>
Question	Has the entity A to report taxonomy-eligible revenues from the activity 6.6 (“Freight transport services by road”) even if the entity A incurs these revenues from an activity that is ultimately performed by a subcontractor by using the assets of the latter?
View 1	<p>No.</p> <p>The activity 6.6. is described in the annexes I and II (Technical Screening Criteria) as “<u>Purchase, financing, leasing, rental and operation of vehicles</u> designated as</p>

¹⁰ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

¹¹ COMMISSION DELEGATED REGULATION (EU) of 4.6.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.



category N1, N2 or N3 falling under the scope of EURO VI, step E or its successor, for freight transport services by road.”

Since the subcontractors perform the services (on behalf of the entity A) by employing their own fleet, that activity is, from the perspective of entity A, not consistent to the description of the activity in the Technical Screening Criteria. This is because that description suggests the activity has to be performed through the use of own assets. Therefore, the revenues incurred from that activity must be recorded as taxonomy-non-eligible turnover.

View 2**Yes.**

The activity 6.6. is described in the annexes I and II (Technical Screening Criteria) as “Purchase, financing, leasing, rental and operation of vehicles designated as category N1, N2 or N3 falling under the scope of EURO VI, step E or its successor, for freight transport services by road.”

When assessing a contract for financial reporting purposes, an entity shall consider the economic substance of that contract. From a purely legal perspective it must be noted that entity A does not operate the vehicles (fleet). However, since the entity A engages subcontractors involving the assignment to the subcontractors to use their own assets for satisfying the performance obligation of entity A towards this entity’s customers, the entity A assigns the subcontractors to operate the fleet. Such an “assignment to operate” should be considered as an operation in substance.

Moreover Chapter 1.1.1. of Annex I to the Commission Delegated Regulation on Article 8 states: “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), [...]”. Since the entity A (not the subcontractors) incurs the revenues directly from the customers, the entity A must report these revenues as taxonomy-eligible turnover. In case the Technical Screening Criteria are met for the activity 6.6., these revenues have to be reported as taxonomy-aligned turnover.

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View 2



1.8 **NEW:** Are the references to NACE codes generally indicative for the identification of a taxonomy-eligible economic activity or are there exceptions where the references to NACE codes are exhaustive?

Issue	<p>A “taxonomy-eligible economic activity” is defined as an activity that is described in the delegated acts, irrespective of whether that economic activity meets any or all of the technical screening criteria laid down in those delegated acts (Article 1 point 5 Delegated Regulation (EU) 2021/2178). The descriptions of the activities in the delegated acts (Delegated Regulation (EU) 2021/2139 and Delegated Regulation (EU) 2023/2486) contain references to NACE codes.</p> <p>In most descriptions of the activities the references to NACE codes are worded as follows (or similar): “The economic activities in this category could be associated with NACE code [...]”. Furthermore, recital 6 to Delegated Regulation (EU) 2021/2139 and questions 2 and 6 of a commission notice (C/2022/6937) clarify that the references to NACE codes should be understood as indicative. NACE codes can help identify taxonomy-eligible activities, but only the specific descriptions of the activities in the delegated acts set out the exact scope of the activities.</p> <p>However, there is a limited number of activities for which the wording in the descriptions of the activities differs. For some activities the references to NACE codes are worded as follows: “The activity is classified under NACE code [...]” (sections 4.26, 4.27, 4.28 and 4.31 of Annexes I and II to Delegated Regulation (EU) 2021/2139). Certain other activities have similar wordings (sections 5.1 to 5.6 of Annex II to Delegated Regulation (EU) 2023/2486).</p>
Question	<p>Are the references to NACE codes generally indicative for the identification of a taxonomy-eligible economic activity or are there exceptions where the references to NACE codes are exhaustive?</p>
View 1	<p>The references to NACE codes are generally indicative.</p> <p>Recital 6 to Delegated Regulation (EU) 2021/2139 and questions 2 and 6 of the commission notice clarify that the NACE codes are generally indicative.</p>
View 2	<p>There are exceptions where the references to NACE codes are exhaustive.</p> <p>The wording in the descriptions of certain activities (sections 4.26, 4.27, 4.28 and 4.31 of Annexes I and II to Delegated Regulation (EU) 2021/2139 and sections 5.1 to 5.6 of Annex II to Delegated Regulation (EU) 2023/2486) is clear. Therefore, the references to NACE codes in the descriptions of these activities are exhaustive and only activities associated with these NACE codes are taxonomy-eligible economic activities.</p>
View 3	<p>The references to NACE codes are mostly indicative. This especially applies to nuclear energy related activities and fossil gas related activities. Nevertheless, the references to NACE codes in the descriptions of activities in sections 5.1 to 5.6 of Annex II to Delegated Regulation (EU) 2023/2486 are exhaustive.</p> <p>The references to NACE codes in the descriptions of some nuclear energy related activities and fossil gas related activities are worded as exhaustive. However, these activities are part of the amended Delegated Regulation (EU) 2021/2139. Recital 6 to the initial Delegated Regulation (EU) 2021/2139 clarifies that the NACE codes are</p>



generally indicative. Moreover questions 2 and 6 of the commission notice explicitly refer to the Delegated Regulation (EU) 2021/2139. This means that the reference to NACE codes in the descriptions of nuclear energy related activities and fossil gas related activities are indicative.

However, this does not apply to activities in sections 5.1 to 5.6 of Annex II to Delegated Regulation (EU) 2023/2486, because the descriptions of this activities are part of another delegated act. Recital 6 to Delegated Regulation (EU) 2021/2139 and questions 2 and 6 of the commission notice only contain clarifications for descriptions of activities that are part of Delegated Regulation (EU) 2021/2139.

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1.9 **NEW:** How is the activity “Sale of spare parts” defined?

Issue	<p>The activity “Sale of spare parts” is described in section 5.2 of Annex II to Delegated Regulation (EU) 2023/2486. The description of the activity consists of four paragraphs. The first two paragraphs contain a general description of the activity, whereas the last two paragraphs refer to various NACE codes. The third paragraph contains an exhaustive reference to NACE Codes C26, C27, C28.22, C28.23, C28.24 and C31. The last paragraph contains an indicative reference to NACE Codes G46 and G47.</p> <p>By referencing certain NACE codes in the third paragraph, only spare parts that are used in products manufactured by certain activities are included in the description of the activity. If this reference in the third paragraph is exhaustive and mandatory for the scope of the activity, this would considerably limit the scope of the activity.</p>
Question	How is the activity “Sale of spare parts” defined?
View 1	<p>Only the first two paragraphs in the description of the activity are relevant for the definition of the activity “Sale of spare parts”.</p> <p>A “taxonomy-eligible economic activity” is defined as an activity that is described in the delegated acts, irrespective of whether that economic activity meets any or all of the technical screening criteria laid down in those delegated acts (Article 1 point 5 Delegated Regulation (EU) 2021/2178).</p> <p>The reference to NACE codes in the last two paragraphs can help to identify the activity, but only the general description in the first two paragraphs sets out the exact scope of the activity. Therefore, the reference to certain NACE codes in the last two paragraphs should be understood as indicative (questions 2 and 6 of commission notice (C/2022/6937)).</p>
View 2	<p>In addition to the first two paragraphs, the third paragraph is also relevant for the definition of the activity “Sale of spare parts”.</p> <p>In addition to the general description of the activity in the first two paragraphs, the reference to the NACE codes in the third paragraph is also relevant for the definition of the activity.</p> <p>The wording in the description of the activity is clear and the reference to NACE codes in the third paragraph is exhaustive. Therefore, only spare parts that are used in products manufactured by certain activities are included in the description of the activity.</p>
Tentative solution as expressed in ASCG fora	View 1



2 Presentation of an economic activity as aligned under Article 8

2.1 Compliance with national requirements of non-EU jurisdictions

Issue	<p>The Technical Screening Criteria very often refer to other requirements or guidelines. For example, the Technical Screening Criteria for the activity ‘Afforestation’ in section 1.1 of Annex I of delegated regulation supplementing Regulation (EU) 2020/852 specifying the content and presentation of information to be disclosed refer to the Commission Delegated Regulation (EU) No 807/2014 as well as to the Pan-European Guidelines for Afforestation and Reforestation with a special focus on the provisions of the UNFCCC.</p> <p>Many requirements and guidelines referred to by the Technical Screening Criteria do not apply in Non-EU jurisdictions. However, many companies covered by the EU-Taxonomy Regulation are operating globally, i.e. via subsidiaries in Non-EU countries. Most of these countries have their own specific requirements and guidelines addressing the same or comparable matters, which may be equivalent to those referred to in the Technical Screening Criteria. Application of the Technical Screening Criteria in addition to the local requirements in these cases would be inefficient and create the risk of establishing double standards.</p>
Question	<p>How can a group's activities that are carried out in jurisdictions other than the EU be assessed efficiently for compliance with the Technical Screening Criteria by reference to the local requirements or guidelines?</p>
View 1	<p>The European Commission will develop principles regarding the equivalence, i.e. whether or not certain local requirements and guidelines are in line with requirements and guidelines referred to in the Technical Screening Criteria.</p>
View 2	<p>Since national requirements serve to protect people and the environment, operating in line with these requirements can be considered as “no significant harm” and meeting of the DNSH Criteria where the requirements refer to the respective objective of the EU Taxonomy. In all other cases, the undertaking needs to judge whether a national requirement applicable in a jurisdiction other than the EU is equivalent to an EU requirement referred to in the Technical Screening Criteria.</p>
Tentative solution as expressed in ASCG fora	View 2.



2.2 Are the minimum safeguards met through group-wide and global commitments and systems?

Issue	<p>Article 18 of the Regulation 2020/852 (Taxonomy-Regulation) defines the minimum safeguards as “procedures implemented by an undertaking that is carrying out an economic activity to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights”. In other word, the aforementioned procedures are designed to ensure compliance of company behaviour with certain standards on Human Rights and labour.</p> <p>Most entities have committed to adhere to these standards and provide information about their compliance in their management reports. This includes – for example – disclosure on entity specific guidelines approved by management, management systems implemented, and certification of these.</p> <p>The Taxonomy-Regulation does not contain guidance on the reliability of assessments made by the entity. Reliability of information is often confirmed by an external audit.</p>
Question	<p>Can minimum safeguards (according to Article 18 of the aforementioned regulation) in a reporting entity’s (international) subsidiaries, branches etc. considered to be met if the entity’s existing commitment and procedures as disclosed in its management reports have been audited externally? Or does the Taxonomy-regulation trigger additional external (on-site) audits in order to meet the minimum safeguards conditions?</p>
View 1	<p>The minimum safeguards shall be considered met if they have been audited when implemented.</p>
View 2	<p>The level of aspiration underlying the Taxonomy-Regulation requires additional regular on-site audits.</p>
Tentative solution as expressed in ASCG fora	<p>View 1.</p> <p>The Taxonomy-Regulation does not contain any requirement to have the compliance with the minimum safeguards audited. Article 8 of the Taxonomy-Regulation requires entities that are subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU to include in its non-financial statement information on how and to what extent the undertaking’s activities are associated with economic activities that qualify as environmentally sustainable under the Taxonomy-Regulation. In addition, the Directive 2013/34/EU does not require non-financial statements to be subject to a statutory audit. Concluding, a requirement to have compliance with the minimum conditions audited cannot be derived from the text of the legislation.</p>

2.3 How shall the best performing alternative be identified?

Issue	<p>Annex I of the Delegated Regulation supplementing Regulation (EU) 2020/852 by establishing the technical screening criteria addresses the criteria for the activity “Manufacture of other low carbon technologies” in section 3.6. A significant criterion for an activity under 3.6 to be classified sustainable is described by the condition “<i>The economic activity manufactures technologies that are aimed at and demonstrate substantial life-cycle GHG emission savings compared to the <u>best performing alternative technology/product/solution</u> available on the market.</i>” (emphasis added)</p> <p>Thus, the economic activity under review can be classified sustainable, i.e. taxonomy-aligned, only if its emission savings are at a level higher than the savings achieved by the best performing alternative technology/product/solution. In addition, the economic activity under review must aim at achieving this relative savings level. Concluding, for a reporting entity to assess its activity 3.6 it has to identify (1) the best performing alternative technology/product/solution, and (2) the life-cycle GHG emissions of this alternative technology/product/solution.</p> <p>However, the regulation does not contain any guidance or requirement on how to identify the best performing alternative technology/product/solution. In addition, even if the best performing alternative technology/product/solution can be identified, in the very most cases the life-cycle GHG emission savings of this alternative technology/product/solution is unknown to the reporting entity.</p>
Question	How shall (1) the best performing alternative technology/product/solution and (2) its life-cycle GHG emission savings be identified?
View 1	The European Commission will develop detailed guidance and criteria on this issue.
View 2	Both the identification of the (1) the best performing alternative technology/product/solution, and (2) the life-cycle GHG emissions of this alternative technology/product/solution is based on judgement by the reporting entity’s management.
Tentative solution as expressed in ASCG fora	<p>View 2.</p> <p>The Delegated Regulation supplementing Regulation (EU) 2020/852 by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU contains a requirement in Annex I according to which non-financial undertakings shall explain “how they assessed compliance with the criteria set out in Article 3 of Regulation (EU) 2020/852 and the associated technical screening criteria.” The wording of this disclosure requirement contains the notion “to assess compliance” which indicates a certain level of judgement. Even if the European Commission plans to develop guidance on this issue, the answer whether or not certain criteria are met must be based on judgement by the entities’ management.</p>

2.4 What OpEx will be considered sustainable?

Issue	<p>According to Article 8 paragraph 2 point b of the of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the proportion of their operating expenditure (OpEx) related to assets or processes associated with economic activities that qualify as environmentally sustainable. The term OpEx is defined in the Commission Delegated Regulation as of 6 July 2021¹² supplementing the Taxonomy Regulation (Commission Delegated Regulation on Art. 8). According to this definition, OpEx covers direct non-capitalised costs that relate to research and development, building renovation measures, short-term lease, maintenance and repair, and any other direct expenditure relating to the day-to-day servicing of assets of property, plant and equipment by the undertaking or third party to whom activities are outsourced that are necessary to ensure the continued and effective functioning of such assets (chapter 1.1.3. Commission Delegated Regulation on Art. 8).</p> <p><u>Fact pattern</u></p> <p>The company is a manufacturer of products that are classified sustainable according to the Technical Screening Criteria¹³ and that meet the minimum safeguards according to Art. 18 of the Taxonomy Regulation.</p> <p>The company employs large production facilities that require regular and intensive maintenance. In addition, the maintenance involves a significant consumption of electricity that is not generated through a taxonomy-aligned economic activity.</p>
Question	Are these OpEx basically capable of being classified sustainable if these expenditures result from high consumption of energy?
View 1	<p>Yes.</p> <p>For OpEx to be considered sustainable only the Technical Screening Criteria applicable to the <u>economic activity</u> are relevant, given the minimum safeguards are met. This is because the Commission Delegated Regulation on Art. 8 refers to “assets or processes associated with economic activities that qualify as environmentally sustainable”. In contrast, the Regulation does not refer to “sustainable OpEx”. In case the Technical Screening Criteria including the DNSH-criteria do not give any indication to the contrary, OpEx might be considered sustainable even if these OpEx are the result of high energy consumption and the energy itself does not come from sustainable production.</p>
View 2	No.

¹² COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

¹³ As set out in the Commission Delegated Regulation as of 4 June 2021 supplementing the Taxonomy Regulation by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.



High OpEx due to high consumption of energy stemming from generation activities that themselves are not considered sustainable according to the Technical Screening Criteria cannot be considered sustainable for the reporting under Art. 8 of the Taxonomy Regulation.

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2.5 **NEW: Is it necessary to carry out a substitution test in 2023 for substances on the candidate list of the REACH regulation in order to fulfil the technical screening criteria in the amended point (f) of Annex C of Annex I and II to Delegated Regulation (EU) 2021/2139 regarding the DNSH criteria for pollution prevention and control?**

Issue	<p>Regulation (EU) 2020/852 (Taxonomy Regulation) establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable (Article 1 paragraph 1 Taxonomy Regulation). An activity shall qualify as environmentally sustainable where that activity, among other criteria, complies with technical screening criteria that have been established by delegated acts (Article 1 point (a) Taxonomy Regulation).</p> <p>Delegated Regulation (EU) 2021/2139 establishes the technical screening criteria for determining the conditions under which an activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives. Appendix C of Annex I and II to Delegated Regulation (EU) 2021/2139 contains generic criteria for “Do No Significant Harm” (DNSH) to pollution prevention and control regarding use and presence of chemicals. If the technical screening criteria in this Appendix are not met, an activity cannot be reported as taxonomy aligned (Article 1 point 2 Delegated Regulation (EU) 2021/2178).</p> <p>Points (26) to (28) of Annex I and points (25) to (27) of Annex II to Delegated Regulation (EU) 2023/2485 amend Appendix C of Annex I and II to Delegated Regulation (EU) 2021/2139. In particular, point (f) of Appendix C was amended.</p> <p>Point (f) contains a reference to Regulation (EC) 1907/2006 (REACH Regulation). In accordance with the provisions certain restricted substances may only be used if they have been subjected to a substitution test. According to the amended point (f) of Appendix C, not only substances that are on the restricted list of the REACH Regulation shall be subjected to a substitution test. The reference in point (f) to Article 59 paragraph 1 REACH Regulation means that substances that are only on the candidate list must also be subjected to a substitution test if they are listed there for 18 months.</p> <p>This raises the question of whether a substitution test must be carried out for both the restricted substances and the substances on the candidate list of the REACH Regulation so that these two categories of substances may continue to be used and thus comply with the technical screening criteria.</p>
Question	<p>Is it necessary to carry out a substitution test in 2023 for substances on the candidate list of the REACH regulation in order to fulfil the technical screening criteria in the amended point (f) of Annex C of Annex I and II to Delegated Regulation (EU) 2021/2139 regarding the DNSH criteria for pollution prevention and control?</p>
View 1	<p>No.</p> <p>A substitution test for the substances on the candidate list of the REACH Regulation is not immediately necessary. It is sufficient for reporting in 2024 for the 2023 financial year to define and establish processes for substitution testing for the substances on the candidate list.</p>



	<p>The provisions in the amended point (f) of Appendix C go beyond the provisions of the REACH Regulation. Extensive processes therefore need to be set up and considerable investments made to carry out the substitution test. This cannot be achieved in the short term and retroactively for 2023.</p> <p>The period of 18 months should therefore be understood to mean that undertakings have at least 18 months to implement the amended provisions. This period begins from the entry into force of the Delegated Regulation (EU) 2023/2485, or at least from the adoption of the Delegated Regulation (EU) 2023/2485. This means that the new provisions for reporting in 2025 would apply to the 2024 financial year.</p>
<p>View 2</p>	<p>Yes.</p> <p>A substitution test must be carried out for both the restricted substances and the substances on the candidate list of the REACH Regulation so that these two categories of substances may continue to be used. If a substitution test is not carried out, the technical screening criteria are not met. This means that activities associated with such substances cannot be reported as taxonomy aligned.</p>
<p>Tentative solution as expressed in ASCG fora</p>	<p>View 1</p>



2.6 **NEW: How does a substitution test for the substances on the candidate list of the REACH Regulation have to be carried out and documented according to the amended point (f) of Annex C of Annex I and II to Delegated Regulation (EU) 2021/2139 regarding the DNSH criteria for pollution prevention and control?**

<p>Issue</p>	<p>Regulation (EU) 2020/852 (Taxonomy Regulation) establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable (Article 1 paragraph 1 Taxonomy Regulation). An activity shall qualify as environmentally sustainable where that activity, among other criteria, complies with technical screening criteria that have been established by delegated acts (Article 1 point (a) Taxonomy Regulation).</p> <p>Delegated Regulation (EU) 2021/2139 establishes the technical screening criteria for determining the conditions under which an activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives. Appendix C of Annex I and II to Delegated Regulation (EU) 2021/2139 contains generic criteria for “Do No Significant Harm” (DNSH) to pollution prevention and control regarding use and presence of chemicals. If the technical screening criteria in this Appendix are not met, an activity cannot be reported as taxonomy aligned (Article 1 point 2 Delegated Regulation (EU) 2021/2178).</p> <p>Points (26) to (28) of Annex I and points (25) to (27) of Annex II to Delegated Regulation (EU) 2023/2485 amend Appendix C of Annex I and II to Delegated Regulation (EU) 2021/2139. In particular, point (f) of Appendix C was amended.</p> <p>Point (f) contains a reference to Regulation (EC) 1907/2006 (REACH Regulation). In accordance with the provisions certain restricted substances may only be used if they have been subjected to a substitution test. According to the amended point (f) of Appendix C, not only substances that are on the restricted list of the REACH Regulation shall be subjected to a substitution test. The reference in point (f) to Article 59 paragraph 1 REACH Regulation means that substances that are only on the candidate list must also be subjected to a substitution test.</p> <p>This raises the question of how the substitution test should be carried out and documented.</p>
<p>Question</p>	<p>How does a substitution test for the substances on the candidate list of the REACH Regulation have to be carried out and documented according to the amended point (f) of Annex C of Annex I and II to Delegated Regulation (EU) 2021/2139 regarding the DNSH criteria for pollution prevention and control?</p>
<p>View 1</p>	<p>Documentation that a process for substitution testing has been established is sufficient.</p> <p>If undertakings had to carry out and document a substitution test for every single substance on the candidate list, this would be a considerable effort. This effort would be disproportionate and would probably not be manageable for at least the 2023 financial year. In turn, this could mean that undertakings would have reported</p>



	taxonomy alignment for the same activity in the 2022 financial year and would no longer be able to do so for the 2023 financial year.
View 2	For each individual substance on the candidate list, documentation of the substitution test carried out must be provided.
Tentative solution as expressed in ASCG fora	View 1

3 Other issues concerning the reporting under Article 8

3.1 How will taxonomy-aligned group internal revenues be disclosed?

Issue

According to Article 8 paragraph 2 point a of the of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable. In Annex I chapter 1.1.1. of the Commission Delegated Regulation as of 6 July 2021 supplementing the Taxonomy Regulation (Commission Delegated Regulation on Art. 8) the term turnover is defined by reference to Article 2 point (5) of the Accounting Directive (EU/2013/34) and by paragraph 82 point (a) of IAS 1 Presentation of Financial Statements. (This paragraph requires revenue to be presented as a separate line item in the statement of profit or loss.) Furthermore, the Commission Delegated Regulation on Article 8 requires companies to present the KPIs by using the reporting templates as shown in Annex II of that Commission Delegated Regulation on Article 8. Furthermore, the relevant reporting entity is that entity which prepares and publishes a non-financial statement according to Article 8 paragraph 1 of the Taxonomy Regulation.

In addition, chapter 1.2.3.1. of Annex I of the Commission Delegated Regulation on Article 8 requires companies to provide contextual information about amounts of turnover related to taxonomy-aligned activities pursued of own internal consumption. The Commission Delegated Regulation on Article 8 is, however, silent on the presentation of that information, in particular with regard to circumstances in which the internal consumption is of fundamental significance related to nature and amounts.

Fact pattern and discussion

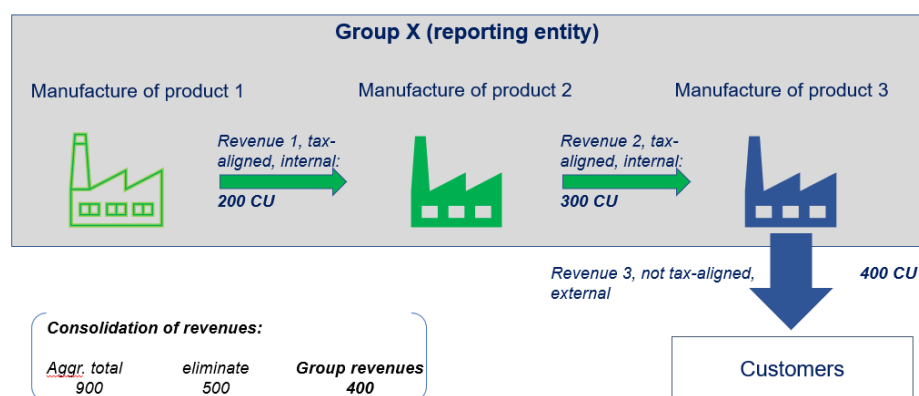
The reporting entity is a group X comprising a parent company and a number of several subsidiaries. The group is covering a significant part of its value chain by the activities of its subsidiaries. Subsidiary 1 manufactures the product 1. This product is taxonomy-aligned according to the Commission Technical Screening Criteria.¹⁴ Subsidiary 1 sells this product to subsidiary 2 exclusively. Subsidiary 2 uses this product as an input for a process resulting in product 2 that is also taxonomy-aligned according to the Commission Technical Screening Criteria. The subsidiary 2 sell the product 2 to subsidiary 3 exclusively that uses the product 2 as an input for manufacturing product 3. This product is sold to the group's customer and does not qualify for being considered economically sustainable as per the Technical Screening Criteria.

The chart below presents the flow of products and contains figures for revenues made internally (i.e. between subsidiaries) and externally (to the group's customers that are all not part of the group). The amounts mentioned shall indicate that the transactions made internally involve significant amounts of revenue. These amounts are, however, not presented on the face of the reporting entity's (=group)

¹⁴ As set out in the Commission Delegated Regulation as of 4 June 2021 supplementing the Taxonomy Regulation by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.



statement of profit or loss as group internal transactions are eliminated in full for purposes of preparing the group financial statements according to paragraph B86 of IFRS 10 *Consolidated Financial Statements*. Concluding, only the (non-taxonomy-aligned) revenues incurred from transactions with the group’s customers will be subject to the disclosures in the reporting template, regardless of significant taxonomy-aligned revenues incurred internally. This may, however, create a misleading picture of the sustainability of the group’s activities because the internal revenue amounting to 500 currency units (CU, see chart below) would only be presented as economically sustainable in case it had been incurred through the sale to external customers instead of internal ones.



Question How may group X report in accordance with the requirements of the Taxonomy Regulation and the supplementing delegated acts on their significant group taxonomy-aligned internal revenues? More precisely, may group X disclose their group taxonomy-aligned internal revenues by using the reporting template on the basis of chapter 1.2.3.1. of the Commission Delegated Regulation on Article 8 (regarding amounts of turnover related to taxonomy-aligned activities pursued of own internal consumption) containing unconsolidated revenue figures? This unconsolidated reporting template would be disclosed in addition to the reporting template containing consolidated group figures. Moreover, a reconciliation from unconsolidated to consolidated amounts might accompany the disclosures.

View 1 **Yes.**

Company X incurs a significant amount of group internal revenues that are taxonomy-aligned but not presented on the face of the (consolidated) group statement of profit or loss due to their internal nature. In addition to the reporting template containing consolidated group figures, the company presents in equal prominence a further reporting template. This further template contains unconsolidated revenue figures to depict the company’s taxonomy-aligned revenues and quotas that otherwise would be presented in the consolidated reporting template, hadn’t these revenues been incurred from transactions between group companies.

View 2 **No.**

The requirements set out in the Taxonomy Regulation and the supplementing delegated acts preclude a reporting entity from disclosing a second reporting template that contains turnover and turnover KPIs based on unconsolidated



amounts and that is presented in a prominence equal to the reporting template required by the Commission to contain consolidated amounts.

Tentative solution as expressed in ASCG fora

View 1.

Basically, reporting entities are allowed to present additional disclosures as long as these are considered useful from the users' perspective. Notwithstanding this, chapter 1.2.3.1. of the Commission Delegated Regulation on Article 8 requires companies to report on "own internal consumption" in addition. Any disclosure on such internal consumption will involve reporting on internal revenues. As the delegated regulation is silent on the presentation of these disclosures on internal consumption, it is at the discretion of the company how it reports on it. Therefore, the additional reporting template containing unconsolidated figures may be presented equally prominent. This view is not contrary to the ESMA Guidelines on Alternative Performance Measures of 30 June 2015 (see Annex IV, para 35).

3.2 Excluding additions from being considered CapEx if the reporting outcome is misleading (reference: discontinued operations/disposal groups)?

Issue

The Commission's understanding of CapEx

According to Article 8 paragraph 2 point b of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the proportion of capital expenditures (CapEx) associated with ecologically sustainable economic activities. Chapter 1.1.2. of Annex I to the Commission Delegated Regulation on Article 8¹⁵ includes a definition of CapEx. According to that, CapEx is defined as additions (including those resulting from business combinations) to tangible and intangible assets during the financial year considered before depreciation, amortisation, and any re-measurements, including those resulting from revaluations and impairments. Furthermore, Annex I contain detailed references to a number of IFRS Standards and relevant paragraphs, e.g., to paragraph 73(e)(i) of IAS 16 *Property, Plant and Equipment* (PPE). This paragraph addresses the "additions" figure to be reported within a single notes disclosure which is also known as "statement of changes in fixed assets" or "statement of changes in PPE" in this case. The disclosure is designed to provide additional information on fixed assets or PPE, e.g. on the effects causing changes in the amount recognised on the face of the balance sheet for property, plant and equipment in the financial year.

Fact pattern and discussion

Management decisions on restructurings, such as acquisitions or a discontinuation of a certain part of the business, are taken for various reasons. Also, the transition of the European economy to a sustainable economy as envisaged by the European Commission will lead to more such restructuring measures at European companies. Therefore, questions about discontinued operations and disposal groups are highly relevant.

A parent company preparing group financial statements decides to dispose of a part of the group's operations. The decision is taken in October (financial year equals the calendar year). According to IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations* the company is required to reclassify all assets and liabilities associated with the operation intended to be disposed of. It identifies and recognises the total of these assets and liabilities as *discontinued operations* within one line item of the balance sheet. The reclassification from the statement of changes in PPE is accounted for by posting a movement entry defined in paragraph 73(e)(ii) of IAS 16 ("assets classified as held for sale or included in a disposal group classified as held for sale in accordance with IFRS 5 and other disposals").

Capital expenditures for the purchase of assets, e.g. PPE, may be incurred before and after the time of the decision to dispose and the reclassification. For example, it may be assumed that an amount of 15 was invested prior to October, i.e. before the divestment decision regarding the discontinued operation or disposal group was made. From a full financial year perspective, these additions will remain presented

¹⁵ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation



	<p>as additions in the statements of changes in PPE for the full financial year according to IFRS standards.</p> <p>Given the activity of the discontinued operation in the example is considered taxonomy-eligible as per the technical screening criteria, the additions of 15 will be reported as taxonomy-eligible CapEx in the reporting template according to the requirements of Annex I and II to the Commission Delegated Regulation on Article 8 and IFRS 5/IAS 16.</p> <p>However, as the discontinued operation will cease to be part of the company's economic activities, it is doubtful that the investment (15) was taken with a view to maintain, develop or perform a taxonomy-eligible or taxonomy-aligned economic activity in the group.</p> <p>Therefore, and, <u>without questioning the meaningfulness of the IFRS 5/IAS 16 requirements for financial reporting</u>, the reporting outcome arising from the requirements of the Taxonomy Regulation does <u>not seem consistent with that Regulation's rationale</u> that is redirecting capital flows to projects and companies that are considered sustainable.</p>
Question	<p>Even if the formal requirements as laid down in the Commission Delegated Regulation on Article 8 may give indication to the contrary, may a company exclude additions to fixed assets in a financial year from being considered CapEx for this financial year if the investments resulting in these additions were incurred in relation to a part of the company that is intended to be disposed of, and therefore, is classified as a discontinued operation or disposal group?</p>
View 1	<p>Yes</p> <p>The rationale behind the Taxonomy Regulation, i.e. redirecting capital flows to sustainable projects and companies, shall be given priority in cases of doubt. In this very narrow case described the strict adherence to the requirements as laid down in the Commission Delegated Regulation on Article 8 might cause a misleading reporting outcome against the rationale behind the Taxonomy Regulation. The company would report sustainable CapEx although these were incurred with the view to dispose of the operation for which these expenditures were incurred. From a reporting entity's perspective these CapEx do not represent any intention to develop or perform a taxonomy-eligible or taxonomy-aligned economic activity in the group.</p> <p>The company shall duly consider the deviation and provide detailed explanation on and the reason for that deviation in the nonfinancial statement that includes the reporting under Article 8.</p>
View 2	<p>No</p> <p>All single reporting requirements set out in the Commission Delegated Regulation on Article 8 must be complied with, irrespective of whether companies have doubts as to whether these requirements are consistent with the rationale of the Taxonomy Regulation.</p>
Tentative solution as	<p>View 1.</p>



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3.3 Equal treatment of revenues and expenses from Discontinued Operations and Disposal Groups for Taxonomy Reporting purposes even if IFRS Standards do not support this?

Issue

The Commission's understanding of turnover

According to Article 8 paragraph 2 point a of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the portion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable. Chapter 1.1.1. of Annex I of the Commission Delegated Regulation on Article 8¹⁶ includes a definition of that figure by reference to the Accounting Directive (2013/34/EU) as well as to paragraph 82 point (a) of IAS 1 *Presentation of Financial Statements*. The Taxonomy Regulation includes similar reporting requirements for operating expenditures related to assets or processes associated with economic activities that qualify as environmentally sustainable. However, the definition of OpEx (not reproduced here) is neither linked to the Accounting Directive nor to IFRS Standards.

Fact pattern and discussion

A parent company preparing group financial statements decides to sell a part of the group's operations. The decision is taken in October (financial year equals the calendar year). Paragraph 33 of IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations* requires the company to present in a single (total) amount all revenues, expenses, gains, and losses etc. associated with the operation intended to be discontinued or/and to be sold. It identifies and recognises this single amount as result from discontinued operations within one line item of the statement of comprehensive income. Regardless of the point in time the decision was taken to discontinue the operation (e.g. in October), all revenues, expenses etc. of the financial year associated with the discontinued operation are presented in the single amount, even the revenues, expenses etc. were recognised before October of that year. Therefore, even if these revenues are associated with economic activities that qualify as environmentally sustainable, they are not relevant for the turnover KPI according to the Taxonomy Regulation as they are not presented according to IAS 1.82(a).

IFRS 5 distinguishes between *discontinued operations* and *disposal groups*. With regard to the term *operation* IFRS 5.31 refers to the notion of a company's component comprising operations and cash flows that can be clearly distinguished, operationally and for financial reporting purposes, from the rest of the entity. According to IFRS 5.4 a disposal group is defined as group of assets, possibly with some directly associated liabilities. A disposal group may further be a group of cash generating units subject to an intended disposal. However, distinguishing between a discontinued operation and a disposal group is not always straightforward and, therefore, subject to judgement very often. (Sometimes this distinction is seen arbitrary.)

¹⁶ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation



	IFRS 5 does not contain a requirement for disposal groups similar to the requirement for discontinued operations regarding the presentation of revenues, expenses etc. As a result, even after a disposal group was identified, revenue associated with the disposal group will continue being recognised as revenue in the statement of comprehensive income in some cases. The same will apply to expenses that qualify as OpEx under Article 8 of the Taxonomy Regulation.
Question	Do revenues and expenses associated with a disposal group, different from revenues and expenses associated with a discontinued operation, qualify for the calculation of the turnover KPI and the OpEx KPI.
View 1	<p>No.</p> <p>A treatment of disposal groups similar to the accounting for discontinued operations with regard to the associated revenues and expenses seems appropriate for the reporting purpose of the Taxonomy Regulation. Both notions (discontinued operation, and disposal group) represent a part of a company that is subject to a disposal in many circumstances. Therefore, the accounting for revenues and expenses associated with disposal groups shall follow the accounting for revenues and expenses associated discontinued operations. Concluding, these revenues and expenses do not qualify as being considered for the calculation of the turnover KPI and the OpEx KPI.</p>
View 2	<p>Yes.</p> <p>IFRS 5 does not contain a requirement to present revenues and expenses associated with a disposal group differently from revenues and expenses incurred through the normal business activities. As long as the part of the company to be disposed of is not classified by management as discontinued operation the revenues and expenses incurred are presented as required by IAS 1. Concluding, these revenues and expenses qualify as being considered for the calculation of the turnover KPI as well as the OpEx KPI.</p>
Tentative solution as expressed in ASCG fora	View 1.

3.4 CapEx incurred by a subsidiary which the parent ceases to control

Issue

The Commission's understanding of CapEx

According to Article 8 paragraph 2 point b of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the proportion of capital expenditures (CapEx) associated with ecologically sustainable economic activities. Chapter 1.1.2. of Annex I to the Commission Delegated Regulation on Article 8¹⁷ includes a definition of CapEx. According to that, CapEx is defined as additions (including those resulting from business combinations) to tangible and intangible assets during the financial year considered before depreciation, amortisation, and any re-measurements, including those resulting from revaluations and impairments. Furthermore, Annex I contains detailed references to a number of IFRS Standards and relevant paragraphs, for example, to paragraph 73(e)(i) of IAS 16 *Property, Plant and Equipment* (PPE). This paragraph addresses the "additions" figure to be reported within a single note disclosure, which is also known as the "statement of changes in fixed assets" or "statement of changes in PPE" in this case. The disclosure is designed to provide additional information on fixed assets or PPE, e.g. on the effects causing changes in the amount recognised on the face of the balance sheet for property, plant and equipment in the financial year.

Fact pattern and discussion

Management decisions on restructurings, such as acquisitions or a discontinuation of a certain part of the business, are taken for various reasons. Also, the transition of the European economy to a sustainable economy as envisaged by the European Commission will lead to more such restructuring measures at European companies. Therefore, questions about the loss of control over subsidiaries are highly relevant.

A parent company preparing group financial statements ceases to have control over one of its subsidiaries in October (financial year equals the calendar year) as it disposes of a major stake. (Many different circumstances may result in a loss of control; the most prevalent case is a full or partial sale of the subsidiary.) Paragraph 20 of IFRS 10 *Consolidated Financial Statements* requires parent companies to consolidate another entity's (i.e. a subsidiary's) financial statements as long as the parent company controls this entity. In case of a "loss of control" IFRS 10 contains further requirements with respect to deconsolidation procedures, e.g. for assets and liabilities as well as revenues, other income and expenses that were consolidated before. In addition, IAS 16 contains requirements on how to account for deconsolidation issues within the statement of changes in PPE relating to the subsidiary which the parent ceases to control.

The effect from deconsolidating that part of PPE in the statement of changes in PPE is accounted for by posting a movement entry defined in paragraph 73(e)(ii) of IAS 16 ("assets classified as held for sale or included in a disposal group classified as held for sale in accordance with IFRS 5 and other disposals", emphasis added).

¹⁷ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation

Capital expenditures for the purchase of PPE may, however, be incurred before the parent ceases to control the subsidiary. For example, it may be assumed that an amount of 15 was invested prior to October. From a full financial year perspective, these additions (15) will remain presented as additions in the statements of changes in PPE for the full financial year according to the aforementioned IFRS standards.

In a purely formal adherence to the requirements of the Taxonomy Regulation in conjunction with the IFRS Standards referred to in that Regulation and given the activity of the subsidiary in the example is considered taxonomy-eligible or even taxonomy-aligned, the additions of 15 will be reported as taxonomy-eligible or taxonomy-aligned CapEx in the reporting template in Annex II to the Commission Delegated Regulation on Article 8 and according to the requirements of IFRS 10/IAS 16.

The aforementioned reporting outcome seems misleading in this case. The rationale of the Taxonomy Regulation is to support the goals of the EU Action Plan on Financing Sustainable Growth, in particular redirecting capital flows to projects and to companies that are considered sustainable. Therefore, the disclosure requirements of the Taxonomy Regulation are designed to support financial market participants such as insurance companies, asset managers etc. in identifying such projects and companies to which they will provide funding. However, it seems questionable if the information provided under the Taxonomy Regulation is useful in the aforementioned case.

As the discontinued operation will cease to be part of the company's economic activities, it is doubtful that the investment (15) was taken with a view to maintain, develop or perform a taxonomy-eligible or taxonomy-aligned economic activity in the group.

Therefore, and, without questioning the meaningfulness of the IFRS 10/IAS 16 requirements for financial reporting, the reporting outcome arising from the requirements of the Taxonomy Regulation in conjunction with the IFRS Standards referred to does not seem consistent with that Regulation's rationale that is redirecting capital flows to projects and companies that are considered sustainable.

Question Even if the formal requirements as laid down in the Commission Delegated Regulation on Article 8 may give indication to the contrary, may a parent company exclude additions to fixed assets in a financial year from being considered CapEx for this financial year if the investments resulting in these additions were incurred in relation to a subsidiary or business that the parent company ceases to control during that financial year?

View 1 **Yes.**

The rationale behind the Taxonomy Regulation, i.e. redirecting capital flows to sustainable projects and companies shall be given priority in cases of doubt. In this very narrow case described the strict adherence to the requirements as laid down in the Commission Delegated Regulation on Article 8 might cause a misleading reporting outcome against the rationale behind the Taxonomy Regulation. The company would report sustainable CapEx although these were incurred with the view to dispose of the operation for which these expenditures were incurred. From a reporting entity's perspective these CapEx do not represent any intention to



develop or perform a taxonomy-eligible or taxonomy-aligned economic activity in the group.

The company shall duly consider the deviation and provide detailed explanation on and the reason for that deviation in the nonfinancial statement that includes the reporting under Article 8.

View 2

No.

All single reporting requirements set out in the Commission Delegated Regulation on Article 8 must be complied with strictly in a formal manner, irrespective of whether companies have doubts as to whether these requirements are consistent with the rationale of the Taxonomy Regulation.

**Tentative
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View 1

3.5 Disclosure on economic activities carried out by a service provider

Issue	<p>According to Article 8 paragraph 2 of the Taxonomy Regulation (Regulation (EU) 2020/852) undertakings are required to disclose the proportion of turnover, capital expenditure (CapEx) and operating expenditure (OpEx) associated with ecologically sustainable economic activities. Chapter 2 of Annex I to the Commission Delegated Regulation on Article 8¹⁸ includes the requirement that “non-financial undertakings shall identify each economic activity, including a subset of transitional and enabling economic activities”.</p> <p>The Commission Delegated Regulation as of 4 June 2021¹⁹ (incl Annex I and II) defines a number of economic activities and contains Technical Screening Criteria for assessing whether an economic activity is considered economically sustainable. There are references to several NACE-codes in the descriptions of the economic activities.</p> <p><u>Fact pattern</u></p> <p>Entity A owns real estate and rents out flats and apartments. The entity’s management determines that this activity is part of the activities governed in chapter 7 of the Technical Screening Criteria (“construction and real estate activities”). The entity’s management also determines the activity “Acquisition and ownership of buildings” (No. 7.7. of Annex I to the Commission Delegated Regulation as of 4 June 2021) as the entity’s primary economic activity. In addition, the entity appoints an external service provider to install and to maintain photovoltaic (PV) systems on its buildings with the intention to use these systems for generation of electricity.</p>
Question	Does entity A perform the economic activity "installation, maintenance and repair of renewable energy technologies" according to chapter 7.6. of Annex I to the Commission Delegated Regulation as of 4 June 2021, even if a service provider was commissioned?
View 1	<p>Yes.</p> <p>Chapter 7 of Annex I (to the Commission Delegated Regulation as of 4 June 2021) titled (“construction and real estate activities”) contains activities which, in the view of the European Commission, may typically be associated with the activities of real estate companies. Therefore, the activity of entity A comprising the installation and the use of PV facilities should be considered as "installation, maintenance and repair of renewable energy technologies" according to chapter 7.6. The appointment of a service provider does not prevent the entity from this conclusion, as the entity is the</p>

¹⁸ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

¹⁹ COMMISSION DELEGATED REGULATION (EU) of 4.6.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.



	beneficiary of the installation, and it uses the PV systems to generate electricity. Given the Technical Screening Criteria are met, entity A may report sustainable revenues, CapEx and OpEx from the sale of electricity produced in its own PV facilities.
View 2	<p>No.</p> <p>Since entity A has appointed an external service provider to install and maintain the PV facilities, this service provider is performing the activity "Installation, maintenance and repair of renewable energy technologies". In other words, this activity is the immediate performance of the service provider, but not the entity's. Thus, entity A does not carry out the economic activity itself and cannot report sustainable sales. However, the entity reports CapEx and OpEx related to assets or processes that are associated with economic activities (No. 1.1.2.2. point c) and 1.1.3.2. point c) of Annex I to the Commission Delegated Regulation on Article 8), given the activities meet the Technical Screening Criteria and are therefore taxonomy-aligned. To the extent that entity A performs the activity "Electricity generation using solar photovoltaic technology" (No. 4.1. of Annex I to the Commission Delegated Regulation as of 4 June 2021) after the installation of the photovoltaic systems is completed, the entity will report the sales and costs of maintenance under activity No. 4.1.</p>
Tentative solution as expressed in ASCG fora	View 1

3.6 Separation of economic activities for the allocation of CapEx and OpEx provided by a service provider

Issue

According to Article 8 paragraph 2 point b of the Taxonomy Regulation (Regulation (EU) 2020/852) an undertaking is required to disclose the proportion of capital expenditure (CapEx) and the proportion of the operating expenditure (OpEx) associated with ecologically sustainable economic activities.

Chapter 2 point (a) and (b) of Annex I to the Commission Delegated Regulation on Article 8²⁰ contains the requirement that “non-financial undertakings shall identify each economic activity, including a subset of transitional and enabling economic activities” and “disclose the KPIs for each economic activity”. Taxonomy-aligned economic activities are listed and defined in annex I and II of the Commission Delegated Regulation as of 4 June 2021²¹. There are references to several NACE-codes in the descriptions of the economic activities.

Chapter 1.1.2. of Annex I to the Commission Delegated Regulation on Article 8 contains a definition of CapEx. According to that, CapEx is defined as additions (including those resulting from business combinations) to tangible and intangible assets during the financial year considered before depreciation, amortisation, and any re-measurements, including those resulting from revaluations and impairments. Furthermore, Annex I contains detailed references to a number of IFRS Standards and relevant paragraphs, for example, to paragraph 73(e)(i) of IAS 16 Property, Plant and Equipment. The numerator of the CapEx-KPI equals to 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.

Chapter 1.1.3. of Annex I to the Commission Delegated Regulation on Article 8 includes a definition of OpEx. According to that, OpEx is defined as 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 to whom activities are outsourced that are necessary to ensure the continued and effective functioning of such assets. The numerator of the OpEx-KPI equals to 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.

Fact pattern

Entity A owns real estate and rents out flats and apartments. The entity’s management determines that this activity is part of the activities governed in

²⁰ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

²¹ COMMISSION DELEGATED REGULATION (EU) of 4.6.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.

chapter 7 of the Technical Screening Criteria ("construction and real estate activities"). The entity's management also determines the activity "Acquisition and ownership of buildings" (chapter. 7.7. of Annex I to the Commission Delegated Regulation as of 4 June 2021) as the entity's primary economic activity. In addition, the entity appoints an external service provider to install and to maintain photovoltaic (PV) systems on its buildings with the intention to use these systems for generation of electricity. Entity A does not intend to sell the photovoltaic systems to third parties.

The installation and maintenance of the photovoltaic systems and the generation of electricity are deemed taxonomy-aligned as defined in Article 1 No. 2 of the Commission Delegated Regulation on Article 8.

Question	<p>Which of the following economic activities does entity A perform in relation to the PV systems and where should CapEx and OpEx be disclosed?</p> <ul style="list-style-type: none"> • "Acquisition and ownership of buildings" (No. 7.7. of Annex I to the Commission Delegated Regulation as of 4 June 2021) • "Installation, maintenance and repair of renewable energy technologies" No. 7.6. of Annex I to the Commission Delegated Regulation as of 4 June 2021) • "Electricity generation using solar photovoltaic technology" (No. 4.1. of Annex I to the Commission Delegated Regulation as of 4 June 2021)
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View 1	<p>In relation to the PV systems the entity performs the economic activity "<u>Acquisition and ownership of buildings</u>" (No. 7.7.), as the PV installations are related to this main activity of entity A.</p> <p>The economic activities "Installation, maintenance and repair of renewable energy technologies" (No. 7.6.) and "Electricity generation using solar photovoltaic technology" (No. 4.1.) can be assigned to the main activity "Acquisition and ownership of buildings", provided that all these taxonomy-aligned activities are interrelated, and the two taxonomy-aligned activities assigned to "Acquisition and ownership of buildings" are subordinate in substance.</p> <p>Given these activities are considered taxonomy-aligned, the entity reports the costs incurred for the installation and maintenance of the photovoltaic systems as CapEx and OpEx under the economic activity "Acquisition and ownership of buildings".</p>
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View 2	<p>In relation to the PV systems the entity performs the economic activity "<u>Installation, maintenance and repair of renewable energy technologies</u>" (No. 7.6.). This is because the description of the activity as contained in the Commission Delegated Regulation as of 4 June 2021 is met, and this activity should be considered a typical activity of real estate companies due to the structure of that Commission Delegated Regulation. The economic activity "Electricity generation using solar photovoltaic technology" (No. 4.1.) can be assigned to this activity because the PV facilities are necessary for generating electricity.</p> <p>In general, the entity performs the economic activity "Acquisition and ownership of buildings" (No. 7.7.) as its main activity; however, the installation of the photovoltaic system is assigned to the economic activity "Installation, maintenance and repair of renewable energy technologies" according to the description of activity in chapter 7.6. of Annex I to the Commission Delegated Regulation as of 4 June 2021.</p>
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	<p>Given these activities are considered taxonomy-aligned, the entity reports the costs incurred for the installation and maintenance of the photovoltaic systems as CapEx and OpEx under the economic activity "Installation, maintenance and repair of renewable energy technologies".</p>
View 3	<p>In relation to the PV systems the entity performs the economic activity "<u>Electricity generation using solar photovoltaic technology</u>" (No. 4.1.) but not the economic activity "Installation, maintenance and repair of renewable energy technologies" (No. 7.6.). This is because the core element of the activity performed in relation to the PV facilities is generating electricity according to the facts presented. Furthermore, the element "generation of electricity" is not addressed by the description of activity in chapter 7.6. of Annex I to the Commission Delegated Regulation as of 4 June 2021.</p> <p>In addition, the element "installation and subsequent use of the PV facilities (generation of electricity)" shall not be assigned to the economic activity "Acquisition and ownership of buildings" (chapter 7.7.) as the generation of electricity is not addressed by the description of activity in chapter 7.7. of Annex I to the Commission Delegated Regulation as of 4 June 2021.</p> <p>Given these activities are taxonomy-aligned, the costs for the installation and maintenance of the photovoltaic systems are to be reported as CapEx and OpEx under the economic activity "Electricity generation using solar photovoltaic technology".</p>
View 4	<p>The allocation of CapEx and OpEx to specific economic activities as listed in the Commission Delegated Regulation on Article 8 is subject to judgement by the entity's management. I.e. the entity may assign certain taxonomy-aligned activities to main taxonomy-aligned activities for the reporting under the Taxonomy Regulation provided that these taxonomy-aligned activities are interrelated, and the taxonomy-aligned activities assigned to one or more main taxonomy-aligned activities are subordinated in substance. The most important aspect when allocating CapEx and OpEx to economic activities is, that all taxonomy-aligned, taxonomy-eligible and taxonomy-non-eligible turnover, CapEx and OpEx are disclosed.</p> <p>Non-financial undertakings shall explain how turnover, CapEx and OpEx were determined and allocated to the numerator (Chapter 1.1.2. of Annex I to the Commission Delegated Regulation on Article 8).</p>
Tentative solution as expressed in ASCG fora	View 4

3.7 CapEx incurred from the construction of a new headquarters/ administration building

Issue	<p>According to Article 8 paragraph 2 point b of the Taxonomy Regulation (Regulation (EU) 2020/852) an undertaking is required to disclose the proportion of capital expenditure (CapEx) associated with ecologically sustainable economic activities.</p> <p>Chapter 2 point (a) and (b) of Annex I to the Commission Delegated Regulation on Article 8²² require non-financial undertakings to “identify each economic activity, including a subset of transitional and enabling economic activities” and “disclose the KPIs for each economic activity”. Taxonomy-aligned economic activities are listed and defined in annex I and II of the Commission Delegated Regulation as of 4 June 2021.²³</p> <p>Chapter 1.1.2. of Annex I to the Commission Delegated Regulation on Article 8 contains a definition of CapEx. According to that definition, CapEx is defined as additions (including those resulting from business combinations) to tangible and intangible assets during the financial year considered before depreciation, amortisation, and any re-measurements, including those resulting from revaluations and impairments. Furthermore, Annex I contains references to a number of IFRS Standards and relevant paragraphs, for example, to paragraph 73(e)(i) of IAS 16 Property, Plant and Equipment. The numerator of the CapEx-KPI equals to 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.</p> <p><u>Fact pattern</u></p> <p>The entity A is getting a new headquarters’ building constructed. The entity’s business model comprises a variety of economic activities including those that are considered taxonomy-aligned and others that are not. The new headquarters will serve as the central location for all administrative tasks including the management of all of the entity’s economic activities.</p>
Question	How are the CapEx incurred from the construction to be treated with respect to the taxonomy reporting?
View 1	As the headquarters building is necessary for the entity A to perform its activities including those that are considered taxonomy-aligned, it has to be deemed “related to assets or processes that are associated with taxonomy-aligned economic activities” in general (Chapter 1.1.2.2. point a of Annex I to the Commission Delegated Regulation on Article 8). Since, on the other hand, the building is also related to assets or processes that are not taxonomy-aligned, the CapEx incurred from the construction of the new headquarters have to be allocated based on an

²² COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.

²³ COMMISSION DELEGATED REGULATION (EU) of 4.6.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.



allocation key reflecting the portions of entity A’s activities with regard to its whole business. Chapter 1.2.2.3. of Annex I to the Commission Delegated Regulation on Article 8 contains guidance on the disaggregation of KPIs, “in particular where production facilities are used in an integrated manner.” As the Commission Delegated Regulation on Article 8 does not contain any limitation to the meaning of the notion “production facilities”, the headquarters could be considered as such.

View 2 The construction of the new headquarters building cannot be considered related to assets or processes that are associated with taxonomy-aligned economic activities (Chapter 1.1.2.2. point a of Annex I to the Commission Delegated Regulation on Article 8), because the construction itself is not directly linked to those assets or processes. Therefore, CapEx incurred from the construction of the headquarters building cannot be considered sustainable in general.

In contrast, the expenditures incurred for the construction of a new building that comprises relevant “production facilities” for assets or processes that are associated with taxonomy-aligned economic activities could be reported as CapEx. However, this is not the case in the fact described.

Tentative solution as expressed in ASCG fora

View 1

3.8 Is there a materiality threshold for the reporting according to Art. 8?

Issue	<p>According to Article 8 paragraph 1 of the Taxonomy Regulation (Regulation (EU) 2020/852) any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable</p> <p>According to Article 8 paragraph 2 of the Taxonomy Regulation (Regulation (EU) 2020/852) companies are required to disclose the proportion of their turnover derived from products or services associated with economic activities and the proportion of their capital expenditure (CapEx) and the proportion of their operating expenditure (OpEx) related to assets or processes associated with economic activities that qualify as environmentally sustainable.</p> <p>Section 1.1.3.2. subparagraph 5 point (a) of annex I to the Commission Delegated Regulation on Article 8²⁴ states that: "Where the operational expenditure is not material for the business model of non-financial undertakings, those undertakings shall be exempted from the calculation of the numerator of the OpEX KPI in accordance with point 1.1.3.2 and disclose that numerator as being equal to zero."</p> <p>However, the regulation does not contain a comparable clause for turnover and for CapEx.</p>
Question	<p>Can turnover and CapEx from taxonomy-aligned and taxonomy-eligible economic activities be omitted in the KPI determination due to immateriality and reported as taxonomy-non-eligible instead?</p>
View 1	<p>Yes.</p> <p>The principle of materiality generally applies to taxonomy disclosures, as taxonomy disclosures must be included in the non-financial statement or consolidated non-financial statement. Article 19a paragraph 1 point (e) of Directive 2013/34/EU includes the notion of materiality as it states: "Large undertakings [...] shall include in the management report a <u>non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to</u>, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including: [...] <u>non-financial key performance indicators relevant to the particular business.</u>" (emphasis added)</p> <p>The non-financial statement or consolidated non-financial statement may be a part of the management report or the consolidated management report (Article 19a or Article 29a of Directive 2013/34/EU). The principle of materiality applies to the management report in general. Article 19 paragraph 1 subparagraph 3 of Directive 2013/34/EU states: "<u>To the extent necessary for an understanding of the</u></p>

²⁴ COMMISSION DELEGATED REGULATION (EU) as of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.



undertaking's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters. [...]". (emphasis added)

View 2

No

The principle of materiality only applies to OpEx according to Section 1.1.3.2. subparagraph 5 point (a) of annex I to the Commission Delegated Regulation on Article 8. If the Commission had intended to apply a materiality clause for turnover and CapEx accordingly, such clause would have been included in the text of that regulation.

Thus, turnover and CapEx related to taxonomy-aligned and taxonomy-eligible economic activities have to be reported in any case.

Tentative solution as expressed in ASCG fora

View 1

3.9 **NEW:** How to interpret the descriptions of the activities according to Table 1 in Annex XII of Delegated Regulation (EU) 2021/2178?

Issue	<p>Any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of the Directive 2013/34/EU (Accounting Directive) shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable (Article 8 paragraph 1 Regulation (EU) 2020/852, Taxonomy Regulation). Delegated Regulation (EU) 2021/2178 specifies the content and presentation of information to be disclosed by undertakings subject to Article 19a or Article 29a of the Accounting Directive.</p> <p>Undertakings shall disclose key performance indicators associated with nuclear energy related activities and fossil gas related activities (Article 8 paragraphs 6 and 7 Delegated Regulation (EU) 2021/2178). This information shall be presented in tabular form by using the templates set out in Annex XII of Delegated Regulation (EU) 2021/2178 (Article 8 paragraph 8 Delegated Regulation (EU) 2021/2178). This Annex XII includes 5 templates that require various information associated with nuclear energy related activities and fossil gas related activities.</p> <p>Table 1 in Annex XII requires information on which nuclear energy related activities and fossil gas related activities are carried out. However, the descriptions of the activities used in Table 1 differ from the descriptions of the activities in sections 4.26, 4.27, 4.28, 4.29, 4.30 and 4.31 of Annexes I and II to Delegated Regulation (EU) 2021/2139. For example, the description of the activity in line 1 of Table 1 is as follows: "The undertaking carries out, funds or has exposures to research, development, demonstration and deployment of innovative electricity generation facilities that produce energy from nuclear processes with minimal waste from the fuel cycle." In contrast, the description of the activity in section 4.26 of Annex I to Delegated Regulation (EU) 2021/2139 is as follows: "Research, development, demonstration and deployment of innovative electricity generation facilities, licenced by Member States' competent authorities in accordance with applicable national law, that produce energy from nuclear processes with minimal waste from the fuel cycle. [...]"</p> <p>The main difference between the descriptions of the activities is that Table 1 in Annex XII also mentions that the undertaking funds or has exposures to nuclear energy related activities and fossil gas related activities. The activities in Table 1 therefore appear to be broader than the activities in sections 4.26, 4.27, 4.28, 4.29, 4.30 and 4.31 of Annexes I and II to Delegated Regulation (EU) 2021/2139. However, it is unclear what exactly is meant by the wording "The undertaking [...], funds or has exposures to [...]" in the descriptions of the activities in Table 1. In particular, it is unclear whether "has exposures to" also means that services are provided.</p>
Question	How to interpret the descriptions of the activities according to Table 1 in Annex XII of Delegated Regulation (EU) 2021/2178?
View 1	The wording in the descriptions of the activities shall be interpreted strictly.



	<p>Therefore, the undertakings funding shall only be disclosed if the funding is explicitly dedicated to the activities described in Table 1 of Annex XII, e.g. to research, development, demonstration and deployment of innovative electricity generation facilities that produce energy from nuclear processes with minimal waste from the fuel cycle (Line 1 of Table 1).</p> <p>Moreover, an undertaking also has exposures to the described activities when the activities are carried out by the undertaking itself or in the tier-1 value chain of a nuclear energy related activity or fossil gas related activity (e.g. an undertaking provides services to another undertaking to develop a nuclear energy related product or fossil gas related product).</p>
View 2	<p>The wording in the descriptions of the activities shall be interpreted broadly.</p> <p>Therefore, the undertakings funding of the activities described in Table 1 of Annex XII also includes the deposit of money in a corporate bank account of a credit institution which funds, among other activities, nuclear energy related activities or fossil gas related activities.</p> <p>Moreover, an undertaking has exposures to the described activities when the activities are carried out by the undertaking itself or at any level of a value chain business relationship (independent of upstream/downstream or tier, e.g. an undertaking provides services to another undertaking to develop a product that is neither nuclear energy related nor fossil gas related. However, this other undertaking also carries out nuclear energy related activities and fossil gas related activities).</p>
View 3	<p>The wording “The undertaking [...], funds or has exposures to [...]” refers only to financial undertakings.</p> <p>The wording “funds or has exposures to” outside of Annex XII of Delegated Regulation (EU) 2021/2178 is only used in provisions for financial undertakings and therefore does not apply to non-financial undertakings. Non-financial undertakings shall therefore only disclose information on which nuclear energy related activities and fossil gas related activities are carried out by the non-financial undertaking itself.</p>
Tentative solution as expressed in ASCG fora	View 1 and View 3

3.10 **NEW:** How to interpret the additional template in footnote (c) to the three amended templates of Annex II to Delegated Regulation (EU) 2021/2178?

Issue	<p>Any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of the Directive 2013/34/EU (Accounting Directive) shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable (Article 8 paragraph 1 Regulation (EU) 2020/852, Taxonomy Regulation). Delegated Regulation (EU) 2021/2178 specifies the content and presentation of information to be disclosed by undertakings subject to Article 19a or Article 29a of the Accounting Directive.</p> <p>Non-financial undertakings shall disclose key performance indicators (KPIs) associated with economic activities that qualify as environmentally sustainable and contextual information the KPIs (Article 2 paragraph 1 Delegated Regulation (EU) 2021/2178). This information shall be presented in tabular form by using the templates set out in Annex II of Delegated Regulation (EU) 2021/2178 (Article 2 paragraph 2 Delegated Regulation (EU) 2021/2178). This Annex II and the templates contained therein have been amended by Delegated Regulation (EU) 2023/2486.</p> <p>The amended Appendix II contains three amended templates for each of the KPIs turnover, capital expenditure and operating expenses. There is a footnote (c) for each of these three amended templates. According to this footnote (c) non-financial undertakings shall report the extent of eligibility and alignment per environmental objective, that includes alignment with each of environmental objectives for activities contributing substantially to several objectives, by using an additional template.</p> <p>The information required in these additional templates appears to be redundant with the information in the three amended templates. Both templates require the proportion of taxonomy-eligible and taxonomy-aligned KPIs per environmental objective. The subtotals "A.1" of columns "5" to "10" of the three amended templates precisely contain this information already.</p>
Question	<p>How to interpret the additional template in footnote (c) to the three amended templates of Annex II to Delegated Regulation (EU) 2021/2178?</p>
View 1	<p>The information in the additional template in footnote (c) corresponds exactly to the information in the three amended templates of Annex II to Delegated Regulation (EU) 2021/2178.</p> <p>Therefore, the same information must be provided in the tables.</p>
View 2	<p>The additional template requires information other than the information in the subtotals "A.1" of columns "5" to "10" of the three amended templates.</p> <p>In this case, it should be made clear exactly what information is required in the additional templates.</p>
Tentative solution as expressed	<p>View 1</p>



**in ASCG
fora**