BUSINESSEUROPE

COMMENTS

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Comments on the April Taxonomy Package

The EU Taxonomy has been developed in support of the efforts to finance the Green Deal. European companies are committed to the Green Deal's objectives and believe that the Regulation can be an important asset of the EU to support the ongoing transition efforts from the business community.

The EU Taxonomy is implemented in a critical moment, while Europe's economy is still facing an unprecedented crisis caused by the COVID-19 pandemic. The delegated acts specifying the technical screening criteria for the environmental objectives and the reporting requirements should therefore be designed in a way to not only address and attract financing to sectors which are already considered "dark green", but also to support those activities that are contributing to transitioning towards climate neutrality and environmental sustainability. This would ease the support for EU-based sustainable projects' financing, while avoiding investment leakage or a further weakening of the EU industries' ability to compete globally.

This paper spells out the business' views on the Taxonomy's initiatives announced in the "Directing finance towards the European Green Deal" Communication and ahead of the renewed Sustainable Finance strategy.

Delegated Acts for climate change mitigation and climate change adaptation

The first Delegated Act setting out the technical screening criteria for climate change mitigation and climate change adaptation objectives was finally published after lengthy technical and political discussions. We welcome the adoption of this Delegated Act, as a first step in the actual implementation of the Taxonomy framework. We appreciate the Commission's efforts in tabling a final proposal and we acknowledge that certain improvements have been made compared to the draft. However, we remain concerned by the impact and lack of clarity of several final provisions.

Following the Commission's announcement (see section III of the Communication) to adopt a complementary Delegated Act on climate objectives, it is essential for companies, investors and policy-makers that the Commission immediately clarifies the content and timing of this text. Companies and investors urgently need clarity to assess their activities (throughout their supply chains) and investments, whilst EU co-legislators require full understanding of what and how certain sectors will be covered when analysing the first Delegated Act.

Lastly, we call on the Commission to avoid using the current Taxonomy framework (and criteria) for public accounting expenditures or as a benchmark for future sectorial legislations (e.g. recovery plans, Horizon Europe or state aid rules). The current approach of the Taxonomy provides a classification system setting thresholds and performance indicators for some but not all economic activities, and it does not include impact indicators (e.g. energy consumption reduction or efficiency gains). In addition, the Taxonomy is an important but also brand-new instrument, which is still at an early state

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of implementation and extremely complex. Before considering using it for the public domain, lessons should be drawn on the current framework of the Taxonomy.

Delegated Act on reporting requirements (art. 8)
Companies find it very challenging to start preparing for reporting obligations under the Taxonomy Regulation. The draft DA gives a preliminary indication of what corporate disclosure requirements might be. We particularly welcome the improved clarity on some of the "what", "when" and "how" questions. However, we note that the current draft version of the Art. 8 DA is often unclear and sometimes even in contradiction to the Level-1 legislation. This prevents a feasible and comparable implementation of the reporting requirements. To reach the objectives indicated above, it is necessary that the disclosure obligations are legally sound, usable and proportionate. Any deviation from these principles risks undermining the overall reporting concepts of relevance and materiality.

We particularly stress that it is paramount that companies have enough time to implement the disclosure requirements. It cannot be emphasised strongly enough that Taxonomy reporting is likely to be costly and complex to implement: preparing the disclosure is likely to involve hundreds or thousands of detailed technical and accounting judgments, with a need to ensure consistency with other disclosures made in the company's financial statement. The input data required to prepare the disclosures under the Regulation is currently not readily available within the reporting systems of non-financial undertakings and great efforts are needed to set up and adapt reporting processes as well as IT and reporting systems to derive this information. Several technical and accounting judgments will therefore be necessary to generate data, the initial reporting cycles will entail significant manual efforts, and the costs associated with updating legacy systems are still very much unknown. Significantly, while workflows can eventually be automated, many of the required data points require discretionary decisions, implying a significant commitment of human resources on an ongoing basis. Considering the difficulties and uncertainties in implementing the Taxonomy disclosure obligations, we call on the Commission to delay by one year Art. 8 DA.

To better clarify the concerns and questions that companies have on the draft Art. 8 DA, we have responded[1] to the public consultation and described the legal, usability and coherence problems that have been identified by the business community.

Legislation to support the financing of the transition
The newly announced legislation (section IV of the Communication) could be a valid addition to make the Taxonomy more inclusive. To be effective, it should notably support those enabling and "light green" activities that are incrementally contributing and transitioning towards climate neutrality and environmentally sustainability, but still not reaching the 'Substantial Contribution' criteria. This would support Europe's leadership in green innovations and as a decarbonised economy.

Considering its importance for the transition, we recommend the Commission to accelerate the work on this proposal and present it as soon as possible. Any delay would not only risk undermining the very functioning of the EU Taxonomy, but more importantly affect the EU's transition capacity.

[1] BusinessEurope Response to Art. 8 DA Consultation (2 June 2021) https://www.businesseurope.eu/publications/taxonomy-disclosure-obligations-response-draft-art-8-delegated-act-businesseurope

Possible extensions of the Taxonomy

Co-legislators have agreed to assess the possible extension of the Taxonomy Regulation to cover significantly harmful and no significant impact activities, as well as other objectives, including social. Before taking any decisions on both extensions, it would be essential to take stock of the market uptake of the current Taxonomy. It should therefore be bear in mind that the recommendations by the Platform on Sustainable Finance will be issued before the current Taxonomy is widely implemented, and well before any assessment of the impact of the framework is possible. Also, we encourage the Commission to ensure there is a broad discussion on the points highlighted below before taking any decisions on these aspects.

Specifically on the possible significantly harmful and no significant impact extension, we recommend that the Commission maintains the current positive approach of the Taxonomy, which aims at incentivising the transition. Instead, an extension would introduce a “punitive” approach, which will not help closing the financial gap, but on the opposite risks hampering companies’ access to finance, and therefore their ability to transform. From a usability perspective, we fear that an extended taxonomy will significantly add complexity to the system and add unproportionate reporting burden for companies with no clear added value. Finally, we expect that an extended Taxonomy would lead to multiple unintended consequences if socio-economic impacts are not properly assessed ex-ante.

Specifically on the possible extension to social objectives, whilst we agree that investment should support sustainability, including on social aspects, we are not convinced that an extension of the Taxonomy Regulation to social objectives is the right approach. We are concerned that this would be inappropriate and not necessarily feasible. Social aspects differ from environmental ones as the EU Treaties[2] only allow for minimum standards in the area of social affairs. This is to safeguard the delicate balance between EU, national and social partner competences. Given the EU competences, what determines companies’ compliance is adherence to the national transposing legislation and/or collective agreements. Specifying in an EU regulation criteria that companies need to adhere to, in order to be considered as socially sustainable (for the purposes of access to finance), is likely to go against this. Moreover, it is difficult to see how activities could be defined as either socially positive or negative at EU level: this depends on the national context and industrial relation system. Also, a good part of social investments by employers is related to the way that the business or industrial relation system functions or is governed (e.g. collective bargaining), rather than to a specific economic activity. It would be more complex to quantify the contribution of a company on social aspects, as the impact of e.g. collective bargaining, investments in skills is difficult to measure. Therefore, a detailed, prescriptive approach fixed in the current Taxonomy regulation would not fit social aspects.

[2] TFEU Article 153, para 2. “To this end, the European Parliament and the Council: (a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States; (b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.” TFEU Article 151. “To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.”

Conclusion

We expect this paper will inform the Commission about the expectations and questions that companies have on the initiatives announced in the "Directing finance towards the European Green Deal" Communication and ahead of the renewed Sustainable Finance strategy.

Companies are committed to make the EU Green Deal a success and are willing to support an effective implementation of the Sustainable Finance agenda. Clear communication of Taxonomy's potentials and requirements will be key to succeed. We are convinced that the Taxonomy can become a facilitator of the businesses' transition. However, only by working closely with companies and considering the impact on both EU's environmental objectives and competitiveness, the transition can be successful.