

Comments

Draft Delegated Act specifying the requirements of Article 8 of the Taxonomy Regulation

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 1,700 banks.

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General comments

The German Banking Industry Committee (GBIC) welcomes the opportunity provided by the European Commission to comment on the draft Delegated Act (DA) published on 7 May 2021 specifying the requirements of Article 8 of the Taxonomy Regulation (Regulation (EU) 2020/852).

The requirements of the Delegated Act are very extensive and appear to be too complex and impracticable, including in light of the level of detail.

We welcome the transitional periods provided for by the European Commission, but see further scope for supporting the efficient implementation of the Taxonomy Regulation (see our positions below on the timing of application).

The European Commission announced the green asset ratio (GAR) as a simple KPI for ESG in 2019. In its current version, however, the level of detail of the information required is very high, to the extent that we can no longer talk of a simple KPI. The level of detail of the information requested is not appropriate and presents all institutions, especially those institutions that will newly fall within the scope of the reporting obligations under the CSRD, with major challenges in terms of personnel, methodologies and data technology.

In addition, the GAR has hardly been publicly discussed so far. There has not been an opportunity to review the GAR in terms of its intended application and design until the present publication of the Delegated Act on Article 8 of the Taxonomy Regulation and the consultation paper on disclosing ESG risks published by the European Banking Authority (EBA) on 1 March 2021. The technical criteria and thresholds for environmental objectives 1–2 of the taxonomy on which the GAR is based only recently become available for the first time in the shape of the Delegated Act published by the European Commission on 21 April 2021. Accordingly, the remarks in our comments are extensive (see Annex).

GBIC considers the following points to be essential:

- **Harmonisation with other legislative proposals:** GBIC is voting to report the GAR exclusively under the DA and to delete the corresponding, almost identical templates for Pillar 3 disclosures under the CRR. In addition, it is necessary to harmonise the Delegated Act with the (new) CSRD in terms of the challenges relating to timing and reporting.
- **Existing business/new business:** The existing business entered into at least until December 31, 2021 should not have to be included in the calculation of the KPIs on a permanent basis, but only the future new business thereafter. An optional discretion should be granted for this.
- **Thresholds for taxonomy checks:** GBIC supports optional thresholds for taxonomy checks for individual transactions as well as for portfolios.
- **Comparability:** It should be clarified to what extent and for how long industry-specific estimates and the use of proxies are possible. We also advocate splitting the GAR into two KPIs to ensure comparability: a GAR 1 (full taxonomy compliance/alignment) and a GAR 2 (substantial contribution only).
- **Suggestions for reducing the complexity of disclosure templates:** The level of detail of the information requested from the credit institutions does not appear to be appropriate.

- **Timing of application/transitional periods:** GBIC is in favour of harmonising the timing of Article 11(3) with the initial application of the CSRD, i.e. for the 2023 reporting period.
- **Undertakings not subject to an obligation to publish non-financial information pursuant to Article 19a or 29a of Directive 2013/34/EU:** GBIC is in favour of allowing optional inclusion (“voluntary may”) in the numerator starting in the first KPI reporting period.
- **Retail exposures related to immovable property for stock:** GBIC is in favour of allowing optional inclusion starting in the first KPI reporting period and wish to request an optional threshold for the DNSH test for retail exposures beyond the transitional period (2024).

Harmonisation with other legislative proposals

We are voting to report the GAR exclusively under the DA and to delete the corresponding, almost identical templates for Pillar 3 disclosures under the CRR. If this is not possible, full equality should be established between the Pillar 3 ITS and the DA under Article 8 of the Taxonomy Regulation (in terms of both the initial requirements and, in future, with no delays when the requirements are modified). It should be noted that there will be an unnecessary and time-consuming duplication of disclosures if this is not done.

Consideration should be given to the fact that certain institutions are faced with different consolidations. To the extent that calculation of the GAR at group level will be based on the prudential scope of consolidation in order to ensure consistency with FINREP, despite its proper location in the group management report, it must be ensured that the deviation from consolidated total assets is not adversely interpreted by stakeholders. Explanatory notes, which will in turn increase the scope of the disclosures, appear to be unavoidable.

In addition, it is necessary to harmonise the Delegated Act with the (new) CSRD in terms of the challenges relating to timing and reporting. The CSRD will lead to more data being made available by additional actors. This will enable the credit institutions to assess their lending business more comprehensively and to report it separately. In this regard, the concrete application dates for the reporting should be synchronised and specified in greater detail (see below) in order to provide clearer guidance.

Existing business/new business

A problem that will face a large number of institutions is that their existing business is also supposed to be included in the information/KPIs to be reported by the banks. In our view, they must therefore be granted an option that existing business entered into at least until 31 December 2021 does not have to be included at any time, but only new business entered into after that date. In addition, it should be ensured that transactions that were taxonomy-aligned when the contract was entered into do not lose their status as taxonomy-aligned during their lifetime due to subsequent changes to the taxonomy legislation.

Going forward, we urge presenting the existing business, including changes in the existing business, under “stock”, and only the actual “new business” under “flows”; see the distinction between “stock exposures” and “new exposures” in the EBA report, starting on page 58.

A phase-in could look like this: first, the new business in the reporting period should be reported, followed, e.g. one year later, by the existing business as at 1 January 2023. A clear and consistent

definition of the “new business” to be reported should be made so as to clarify the accuracy of eligibility for new working capital loans. Additionally, the first year should be recognised as a learning year that can be used to establish efficient workflows for calculating the quality-assured GAR. The final templates, which will be elaborated within the framework of the Delegated Act, are not yet known. To do this, the European Commission should also make available documents on the application and interpretation of the GAR, for example in the form of guiding documents; see also the section entitled “Suggestions for reducing complexity”.

The time until the first reporting obligations for banks subject to NFRD reporting requirements apply (starting in 2022 for the 2021 reporting period) appears to be far too short in light of the remaining preparatory period, so that a later across-the-board application date (at least one year later) is required for all reporting obligations under Article 8 of the Taxonomy Regulation, i.e. including for the planned reporting obligations on the share of their exposures to taxonomy non-eligible risk-weighted assets and taxonomy-eligible risk-weighted assets in total assets.

Thresholds for taxonomy checks, data requirements

We support optional thresholds for taxonomy checks for individual transactions as well as for portfolios (e.g. EUR 10 million with regard to the granularity of the retail business).

So that they can report anything at all in accordance with Article 8 of the Taxonomy Regulation, credit institutions first need data from the real economy in a standardised audited format. The data has to be quality checked by an external examiner assigned by the real company. We are therefore in favour of deferring the start date for reporting by credit institutions until 1 January 2023, i.e. for the 2023 reporting period. If this is not possible, we are asking you to clarify that the first report by credit institutions based on the report tables/templates that will be developed as annexes to the DA must only cover the reporting period from 1 January 2022 to 31 December 2022. The taxonomy share should not be reported retrospectively for years earlier than 2022. We assume in this case that only the total percentage of taxonomy-eligible risk-weighted assets and taxonomy non-eligible risk-weighted assets in the first year (2022) must be reported for 2021.

Comparability

Please clarify the extent to which industry-specific estimates and the use of proxies is possible, and for how long. In its original proposal on the GAR, the EBA allowed estimates and proxies. Processing real economy data that does not (yet) exist or is missing in the credit institutions’ IT systems is one of the challenging implementation issues relating to the GAR. We are in favour of allowing proxies that are authorised by the EU to be used to a limited extent still to be defined.

We also advocate splitting the GAR into two KPIs to ensure comparability: a GAR 1 (full taxonomy compliance/alignment) and a GAR 2 (substantial contribution only). GAR 2 should be limited to compliance with the substantial contribution criteria. The do no significant harm (DNSH) criteria and the minimum social safeguards (MSS) significantly reduce the comparability of GAR 1 (full taxonomy compliance/alignment) because of their (often) qualitative nature.

The guidance on the assets to be included in the calculation of the GAR is based essentially on the FINREP report to be submitted by institutions and the asset categories under the IFRS accounting standards included in it. It should be noted that a large number of undertakings and institutions in Germany use the national accounting standards (nGAAP). For nGAAP institutions, the definitions and descriptions for calculating the KPIs are only transferable to a limited extent. In order to ensure

comparability of the KPIs, we would very much welcome the inclusion of templates and descriptions for nGAAP users in the DA. This is already practised by the EBA, for example, in the supervisory reporting system.

Sustainability activities in institutions are very diverse. As a general rule, the risk of a simple KPI is that it enables institutions to be ranked. This can then obscure the fact that, although institutions with a high GAR as defined by the Taxonomy Regulation report extensive taxonomy-eligible assets, other sustainability services offered by institutions (e.g. SME loans to undertakings that are not reportable or that are not in a position to provide sustainability information) are not taken into account. A focus solely on the GAR alone can lead to social and environmental policy misallocations. Moreover, the green asset ratio does not in any way reflect regional specificities that apply in particular to smaller institutions and that significantly impact the business activities of individual institutions. The business territory of some institutions is located in structurally weak areas or in areas dominated by legacy industrial structures. Many institutions are striving to master the transformation towards a more sustainable world together with the corresponding corporate clients, but are placed at a disadvantage by the lack of taxonomy-eligible investment opportunities, at least with regard to the GAR ratio, and could experience disadvantages in terms of their reputation despite their comprehensive efforts, for example in the area of socially targeted sustainable financing objectives. Institutions that have a large business territory or that operate internationally could more easily offset such regional specificities.

Suggestions for reducing the complexity of disclosure templates

The level of detail of the information requested from the credit institutions does not appear to be appropriate. Stakeholders are interested in clear key information. In our opinion, the desired transparency can also be achieved by disclosures that are reduced to a certain extent or located elsewhere. There is also potential for optimisation when it comes to specifying the requirements in greater detail.

If templates have to be disclosed in full, rather than just few final key KPIs, we would be pleased to make suggestions for reducing complexity. Even in our role as addressees of the sustainability reports, we do not discern in particular any added value in breaking down the information on financial corporations into credit institutions, investment firms, management companies and insurance undertakings. We therefore believe that it would be appropriate to delete the breakdown of the information on financial corporations or at least on other financial corporations (see the corresponding lines in templates 1, 3, 4, 6, 7). Please consider at this point that the information required to be disclosed on the first two environmental objectives will be followed by further requirements. If they are just as granular, this will overstretch not only the scope of the reports and the resources of the preparers, but also the stakeholders' evaluation tools. The decision-usefulness of such "data cemeteries" would need to be questioned.

In addition, it is unclear, for example, which companies are to be understood to mean the management companies referred to above. In general, many terms are not sufficiently defined. It would be helpful if the terms that are used in templates were to be unambiguously defined in Annex V or VI, and if the DA were to contain structured explanations for each column and row (similar to the requirements for Pillar 3 disclosures and FINREP). This would encourage the comparability of information, make it easier for institutions to adapt to new structures and reduce complexity.

The requirements should be consistent, and only those fields that are actually required to calculate the GAR should have to be populated in templates. For example, we understand the European Commission's intention and the explanations in Annex V to mean that only loans collateralised by residential immovable

property and building renovation loans made to undertakings that are not subject to NFRD reporting requirements are required to be included in the GAR calculation, and must therefore be categorised as eligible, aligned, transitioning and enabling. To ensure consistency, lines 26 and 27 from column E onwards in Annex VI would have to be greyed out so that only the “of which” information in lines 28 and 29 will have to be assessed in terms of classification under the Taxonomy Regulation.

Timing of application/transitional periods

We welcome the fact that the European Commission has provided exemptions for the first 2021 reporting period. Disclosure of the new key performance indicators (KPIs) is not required until the 2022 reporting period (Article 11(3)). Because of the complexity of the IT implementation projects, but above all due to the persistently critical data situation for evaluating the taxonomy, we are in favour of harmonising the timing of Article 11(3) with the initial application of the CSRD, i.e. for the 2023 reporting period. A significantly larger amount of standardised data will then be available and it will be possible to calculate the KPIs.

As the timing for mandatory applicability in the real and financial economies runs in parallel, financials will have difficulty in accessing the data of non-financials in time for the KPI disclosures for the first reporting period. If a phased application of financials and non-financials is not granted, please clarify how this is to be managed in practice.

Undertakings not subject to an obligation to publish non-financial information pursuant to Article 19a or 29a of Directive 2013/34/EU

We welcome the European Commission’s proposal for a transitional period until at least 2025 for the voluntary inclusion of exposures to undertakings not subject to a reporting requirement when calculating the KPIs (exclusion from the numerator) in Article 11(5). In the proposed Article 8(3), however, the exclusion of the corresponding volumes from the denominator would also be consistent in order to avoid technically low shares. In light of the broad lack of data for small undertakings not subject to NFRD reporting requirements, this proposed rule is also appropriate. Nevertheless, we are in favour of allowing optional inclusion (“voluntary may”) in the numerator starting in the first KPI reporting period, and independently of any review by the European Commission (see Article 11(5)). This could allow smaller undertakings also to be successively included in the GAR on an optional basis, provided that the corresponding data is available and depending on the business model (e.g. if sustainable new business is intensified), and transparency could be improved at an earlier point.

Retail exposures related to immovable property for stock

We welcome the relief granted by the European Commission until June 2024 for the inclusion in the calculation of the KPIs of immovable property for stock relating to retail exposures. However, we are in favour of allowing optional inclusion starting in the first KPI reporting period and wish to request an optional threshold for the DNSH test for retail exposures beyond the transitional period (2024) because there are long-term and small-volume fixed-rate loans in the retail segment.

Further comments

Please specify in greater detail precisely where the GAR templates are to be disclosed under Article 8. If they are to be disclosed in the non-financial statement in the management report, it is important to ensure that the management report is not inflated by templates, and another disclosure location for the templates should be specified if necessary (e.g. ESAP). By granting an option allowing separate

sustainability reporting under the CSRD and under Article 8 of the Taxonomy Regulation, the templates could be published outside the management report.

If the objective is to continue to require inclusion in the management report, this is all the more reason for limiting the disclosure to a few simple KPIs. The detailed templates should then only be maintained internally and serve as documentation for the review of the non-financial statement.

Eligible and non-eligible assets

We are requesting consistency in the definition of the KPI calculation. This refers primarily to contradictory guidance on the inclusion of "eligible" assets in the relevant KPI calculation.

The European Commission is proposing disclosure of the proportion of taxonomy-aligned activities in the credit institutions' portfolio to the credit institutions' total portfolio. It can therefore be assumed that the percentage of taxonomy-aligned activities will be no more than very low. We would like to propose focusing the scope of the GAR on the taxonomy-eligible activities. Additional disclosures can be made, e.g. on the total portfolio or the trading book, if relevant.

We suggest starting with the banking book in the first instance and defining further transitional periods for trading KPIs.

Sovereign bonds

The draft stipulates that sovereign bonds must be excluded from both the numerator and denominator in the calculation of KPIs (green asset ratio, etc.). The European Commission will then review in 2025 whether this exclusion is appropriate.

Permanent exclusion could obstruct the efforts of the Member States (e.g. the Federal Republic of Germany) to issue green sovereign bonds that may be classified as taxonomy-aligned at some point. The reason is that acquiring such bonds would be less attractive for the institutions if they were to be permanently excluded.

Green bonds

We assume that more specific information is only required for taxonomy-eligible activities where green bonds are concerned.

Article 8(4) states that bonds issued as environmentally sustainable bonds (green bonds) under Union legislation on environmentally sustainable bonds (which is still to be developed) must be included in the measurement basis for calculating the KPIs. We assume that this Union legislation refers to the frequently mentioned, but as yet unpublished, proposal for an "EU standard for green bonds". Please clarify this in greater detail.

In addition, internationally accepted green bonds should also be eligible for inclusion in the calculation of the ratios (GAR, etc.).

Derivatives

Derivatives should not be included in the denominator of the KPIs if they are also excluded from the numerator. We therefore support the total exclusion of derivatives, as proposed by the EBA. Institutions are to be given the option of providing additional voluntary information on derivatives.