



NOTE

7. juni 2021

Response to the European Commission's public consultation regarding the Delegated Act on Article 8 of the Taxonomy Regulation

The Danish Government welcomes the work of the Commission to clarify the content and presentation of the information to be disclosed by financial and non-financial undertakings in order to comply with the requirements in Article 8 of the Taxonomy Regulation (EU 2020/852).

The Danish Government supports the Action Plan on Sustainable Finance and is committed to work with the Commission and stakeholders to ensure a market-based transition to a sustainable economy through improved transparency. We strongly support the Taxonomy Regulation adopted by the Council and European Parliament establishing a common classification system for sustainable economic activities. The Taxonomy Regulation can contribute to facilitate the necessary sustainable investments needed to deliver on the EU's commitments towards climate neutrality by 2050.

In that perspective, the Danish Government welcomes the Commission's proposal for a delegated act on Article 8 of the Taxonomy Regulation, as it will provide important data that several other regulations depend on. Thus, the delegated act will aim at creating a flow of sustainability information from the real economy to the financial sector, thereby increasing transparency and help preventing greenwashing.

The Taxonomy Regulation entails that the companies concerned will disclose the proportion of their turnover, capital expenditure (CapEx) and operating expenditure (OpEx) associated with economic activities that qualify as environmentally sustainable. The Danish Government recognizes the comprehensive advice provided by the European Supervisory Authorities (ESA's) on how to specify the Article 8 reporting requirements. We believe this advice constitutes a good basis for the delegated act.

The delegated act should in particular establish a clear and comparable methodology for the three KPI's of Article 8 (turnover/CapEx/OpEx) to be disclosed. This should minimize the need to provide further description of the accounting policy and reduce complexity for both reporting undertakings and for users of the information. We do however recognize the need to allow some flexibility to account for diverse business models.

The delegated act should ensure that the reported information to a high degree fulfills the needs of the users of the information, while not imposing disproportionate costs for the reporting undertakings. Therefore, with a view to ease the considerable challenge for companies to provide very comprehensive information on sustainability for the first time within a tight deadline, we support a phased entry into force of the delegated act that allows companies to get used to the new requirements. In this regard we find it important that the delegated is clear on the requirements for the first year, as we find it unclear at this point. We suggest that a separate annex is made that clearly explains which information should be included in the first year. This should be accompanied by a specific template for the first year in tabular form.

As the reporting requirements will be very detailed, it is of paramount importance to help companies to apply the rules by ensuring easy access to guidance regarding the interpretation of the complicated provisions of the delegated act. This would help ensure the full potential of the regulation and correct reporting. We therefore encourage the Commission to establish a Q/A on the Commission website as known from other regulations and would welcome illustrative examples to help companies understand how to practically apply the rules. Further guidance especially regarding the information to be reported for the first year would help companies in the transition.

Considering the very detailed reporting required, we believe there is a need to carefully consider whether it is possible to include a threshold for when reporting on individual economic activities is required. We recommend that the Commission is looking towards the thresholds for reportable segments in IFRS 8 Operating Segments for inspiration. This will contribute to alignment with the accounting regulation and protect companies from being obliged to publish information they consider business sensitive. Companies should still be able to publish information that is even more granular voluntarily, and could be encouraged to do so. As the reporting after the Taxonomy Regulation Article 8 is part of the non-financial reporting after NFRD, it should in the delegated act be clearly stated which kind of materiality should be applied. It is unclear whether the double materiality perspective as applicable for NFRD also applies to the information regarding the Taxonomy.

According to Article 9.3, the undertakings shall provide the key performance indicators covering the previous five reporting periods. We believe including a transitional provision is needed to clarify that undertakings should not report for previous years, e.g. before the Regulation was adopted. This would be a very burdensome exercise and in some cases impossible and would be in contradiction with fundamental legal principles.

The Danish Government supports the inclusion of a review clause to assess the functioning of the delegated act and to consider future policy developments. In particular, the Danish Government stress the importance of ensuring alignment and coherence between the Reporting Directive (2013/34/EU), the Non-Financial Reporting Directive (NFRD) and the Taxonomy Regulation. The Commission has published a proposal to replace NFRD with a Corporate Sustainability Reporting Directive (CSRD). The CSRD proposal extends the current scope from approximately 11.600 companies to approximately 49.000 companies, including listed SMEs. The companies that will become subject to the CSRD will also become subject to Article 8 of the Taxonomy Regulation, since this Article refers to companies that are obliged to report after the NFRD/future CSRD. If the CSRD is adopted with a much wider scope than the existing NFRD, as the Commission has proposed, the Commission should assess the impacts this will have for the reporting requirements under Article 8 in the Taxonomy Regulation, as it would be expected to have a considerable impact, and clarify whether new simplified and more proportionate requirements should be introduced. Further, the cumulative requirements from sustainability related EU-regulation should be assessed for the full policy areas, in order to ensure coherence and proportionality¹.

As regards the wording of the proposed delegated act, the Danish Government, having consulted with Danish business organizations, points out that some of the requirements should be further clarified, e.g. the definitions of CapEx and OpEx, the requirements for the CapEx plan and how companies not using the calendar year as their financial year should report.

We are at your disposal for further discussion and elaboration on these points.

¹ As recently acknowledged in COM (2021) 219: Better regulation: Joining forces to make better laws