

Feedback on the EU Taxonomy draft Delegated Acts published on 5th April 2023

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The EEB welcomes the progresses with the development of EU Taxonomy framework. It is positive that new sets of criteria are finally being proposed for the remaining four non-climate related environmental objectives. This should allow to establish a more holistic framework to label truly sustainable investments also beyond climate objectives, in line with the spirit and text of the Taxonomy regulation.

In general, we support the draft Delegated Acts where the proposed screening criteria adequately reflect the science-based technical recommendations developed by the Platform on Sustainable Finance. We must, however, highlight major concerns about the criteria proposed by the Commission for the economic activities listed here below. These draft criteria contain a number of problematic aspects and must be substantially improved before the formal adoption of these acts.

- **Manufacture of plastic packaging goods** (circular economy objective, Annex II)
- see detailed technical comment on this activity at the end of this feedback document
- **Construction of new buildings** and 3.2. **Renovation of existing buildings** (circular economy objective, Annex II)
- see detailed technical comment on this activity at the end of this feedback document -
- **Conservation, including restoration, of habitats, ecosystems and species** (biodiversity objective, Annex IV)
The inclusion of biodiversity offsets in this activity is a major concern and should be removed. The report from Platform on Sustainable Finance (March 2022) included a clear commitment to exclude biodiversity offsets in general (part A of the report) and very specifically for the Conservation activity, as well as transparent rationale for this exclusion. The decision by the Commission to deviate from the expert guidance is not justified. The Commission should revert to the criteria proposed by the Platform and exclude biodiversity offsets from the scope of any definition of 'substantial contribution'.
- **Inland passenger/freight water transport** (for the climate mitigation objective)
Instead of maintaining a zero-tailpipe emissions standard, a technical loophole is introduced in the draft Delegated Act, which would label as "sustainable" ships still running on fossil fuels for an indefinite period of time.
- **Aviation activities** (for the climate mitigation objective)
The draft Delegate Act confuses current best-in-class energy-efficient technologies, which are fossil-based, with the adequate technology to decarbonise aviation. The draft criteria do not set aviation on the path to achieving climate neutrality by 2050. For example, allowing leasing companies to sell used aircraft to other companies will cause the global fleet to expand and cause additional emissions.

Another important point of concern is that several critical activities, for which robust and science-based screening criteria had been proposed by the Platform on Sustainable Finance, have been left out from the draft Delegated Acts. Regrettably, the decision to exclude some activities has not been made in a transparent way as no justification was provided by the Commission for these decisions. Also, no timeline has been communicated as to when the criteria for the postponed activities will be finally published. This raises concerns with regard to the transparency and governance of the overall process to develop the EU Taxonomy framework.

We therefore recommend the prompt reintroduction of the following activities without deviations from the Platform's expert recommendations:

For the Circular economy objective (Annex II)

- Manufacture, repair, refurbishment and resale of wearing apparel;
- Manufacture, remanufacture and reselling of footwear and leather goods;
- Design, manufacture, remanufacture, and reselling of furniture;
- Manufacture of food products and beverages.

For the pollution prevention and control objective (Annex III)

- Manufacturing of chemicals and manufacturing of chemical products;
These activities represent the basis for the input of chemicals into all products and are therefore crucial with regard to the substantial contribution to pollution prevention within the EU Taxonomy. Their unjustified exclusion reduces the incentive for the chemical industry to invest in the production of safer alternatives and to offer downstream users substitution possibilities.
- Finishing of textiles;
- Tanning of leather.

For the protection and restoration of biodiversity and ecosystems objective (Annex IV)

- Manufacture of food products and beverages;
- Environmental refurbishment of facilities that produce electricity from hydropower;
- Forestry:

Forestry criteria are already included in the EU Taxonomy for the climate mitigation objective. Unfortunately, these are not science-based and inadequate. On the contrary, the new criteria for forestry activities proposed by the Platform on Sustainable Finance for the biodiversity objective are robust. We therefore recommend their rapid introduction in the Delegated Act without weakening. Note that the first Taxonomy Delegated Act on climate objectives included recital 17 explicitly stating the need to review the climate mitigation criteria for forestry once the delegated act on the other four environmental goals is tabled. Consequently, the Commission should urgently review and radically tighten the forestry criteria for climate mitigation, building on the Platform's proposal for the biodiversity objective.

- Fishing and Agriculture:

The criteria proposed by the Platform on Sustainable finance for these activities are robust and should be introduced with no weakening or deviations. However, if the Commission is not prepared to fully align with the Platform's technical proposal, we consider that it should refrain from adopting a greenwashed delegated act covering these critical activities.

In the following, we outline other important cross-cutting remarks to support the European Commission in revising and improving the proposed draft acts for the EU environmental Taxonomy:

- In line with the spirit and wording of the Taxonomy Regulation the criteria to prove a substantial contribution to one of the six environmental objectives should not be equivalent to the Do No Significant Harm (DNSH) criteria for the same issue. Wherever a substantial

contribution criterion is equivalent to the DNSH this is inconsistent with the requirements of the framework regulation as well as from an environmental perspective.

- Mere legal compliance with already applicable EU law is highly unlikely to be sufficient for a substantial contribution criterion (and in most cases also for a DNSH criterion). The lack of ambitious measurable requirements going beyond compliance reduces the transformative potential and relevance of the EU Taxonomy by failing to distinguish sustainable investments from those which are purely tolerated. For these reasons, technical screening criteria should be consistently defined beyond mere legal compliance.
- The EU Taxonomy criteria to prove substantial contribution to one of the environmental objectives should not simply promote growth in an economic activity through the production of new "green" units without the removal of the "brown" unsustainable/polluting models.
- Wherever the draft criteria proposed by the European Commission water down the measurable thresholds and numerical recommendations put forward by the expert of Platform on Sustainable Finance, a transparent and science-based justification for the deviation should be provided (this was not the case for these set of draft delegated acts).
- A systemic analysis of the Taxonomy draft Delegate Acts reveals a clear need to cross-reference the criteria for substantial contribution for different environmental objectives in areas where "taxonomy shopping" for green labels is likely (e.g. buildings renovation vs building new). For the same reasons, it is also crucial to avoid any small 'technical loopholes' in the criteria which could lead risks of "reverse engineering" of the Taxonomy.
- As a significant share of environmental damage associated with EU economic activity takes place outside the Union, mostly hidden upstream in the value chain, the Taxonomy screening criteria need to adequately reflect and address this. This is needed to avoid the risk of defining an activity as "sustainable", while causing significant environmental harm, and human rights violations, associated with input and supply chain factors. Wherever a Taxonomy activity may be associated with significant environmental impacts along its value chain, it should not be defined as 'significantly contributing' to any of environmental objectives without ensuring that these impacts are avoided (and effective due diligence is exercised to ensure this).

Annex - feedback on the EU Taxonomy Delegated Acts

TYPE OF RESPONDENT: Non-governmental organisation (NGO)	TRANSPARENCY REGISTER NUMBER: 06798511314-27
COUNTRY: Belgium	SECTOR OF ACTIVITY: Other
ORGANISATION: European Environmental Bureau	ORGANISATION SIZE: Medium (< 250 employees)
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COMMENT

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): 1.1. Manufacture of plastic packaging goods

GENERAL COMMENT:

The proposed criteria are not fully consistent with the Platform's recommendations and no explanation is provided for the decisions to deviate from the science-based technical advice.

The main problematic aspect with the criteria proposed for this activity is that it would allow for labelling the production of single-use plastic packaging as making a substantial contribution to the transition to the circular economy. Single-use plastic packaging is the largest source of plastic waste in the EU and most of this packaging plastic waste does not get recycled but incinerated or landfilled. Also, a significant share of the plastic packaging that is placed in the market escapes the collection systems and is littered into the environment, with adverse effects to land and ocean ecosystems as well as human health.

The Do No Significant Harm (DNSH) criteria for the manufacturing of plastic packaging must therefore require measurable quantitative requirements on collection and recycling of the packaging as well as more thorough consideration of packaging prevention and the urgent need to reduce reliance on throwaway single-use packaging.

COMMENT ON THE ACTIVITY DESCRIPTION:

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

While we support the proposed requirements regarding recycled content:

- being based only on post-consumer waste;
- having recycled content claims being based on batch-level mass balance methodology;
- having lower GHG emission of recycled plastic compared to virgin plastic;
- minimum material conversion rate of chemical recycling of at least the rate of existing mechanical recycling technologies for that material; we regret the Commission's decision to propose a lower threshold for recycled content in packaging.

In the technical screening for substantial contribution criteria, we recommend referring to "Use of circular feedstock: at least 65% of the packaging product by weight consists of mechanically recycled post-consumer material for non-contact sensitive packaging and at least 50% for contact sensitive packaging, with claims on recycled content made using a batch-level mass balance method. For chemical recycling technologies the material conversion rate should be at least the rate of existing mechanical recycling technologies for that material".

In addition, it is not clear why the mere fact of being made of biobased feedstock would make a packaging product contribute substantially to the circular economy, since growing crops or cutting down forests is not inherently circular. In fact, producing biobased feedstock can be intensely linear and may increase the use of natural resources - such as water and soil -, increase the amount of hazardous chemicals used and released to the environment - such as pesticides and fertilisers - and increase the incineration of waste if the packaging produced is single-use.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA:

The Do No Significant Harm (DNSH) criteria for the manufacturing of plastic packaging therefore must require measurable quantitative requirements on collection and recycling of the packaging as well as more thorough consideration of packaging prevention and the urgent need to reduce reliance on throwaway single-use packaging.

For the Climate change mitigation DNSH criteria, it should not be sufficient to require that the GHGs emissions from the lifecycle are “lower” than those made of virgin fossil feedstock. The lifecycle of single-use plastic packaging is incredibly intensive. If the lifecycle of the packaging is 1g CO₂equivalent lower than virgin fossil-based plastic, this would clearly not make it not significantly harmful. A measurable quantitative threshold is therefore required for the DNSH criteria.

For more background: [Do No Significant Harm to Circular Economy in the Climate Taxonomy](#)

COMMENT

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY (e.g. CCM 3.19 Manufacture of rail constituents): 3.1. Construction of new buildings & Renovation of existing buildings

GENERAL COMMENT:

The proposed criteria are not consistent with the Platform’s recommendations and no explanation is provided for the decisions to deviate from the science-based technical advice.

There is also a lack of conditionality between the building of new construction and renovating what is currently available. This draft proposal could lead to significant greenwashing in the construction and real estate development sector, as it would be theoretically possible to demolish a functional building, meet the requirement of the demolition proposal, and rebuild a new building that will meet the EU Taxonomy criteria. This process would result in massive environmental impacts, and yet, the entire project would be regarded as substantially contributing to the circular economy (completely disregarding sufficiency and true circularity).

The draft criteria do not adequately reflect that renovation is a more circular approach than building new in the first place. The eligibility of new construction should be dependent on a lack of feasibility for client or societal needs to be met by the use of existing buildings and/or purchase and renovation within a reasonable geographical radius or reference point.

COMMENT ON THE ACTIVITY DESCRIPTION:

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

For activity 3.1. criterion 2 is lacking transparency. The Platform’s recommendation required the results of the building’s life cycle assessment to be made publicly available. The Commission proposal reduced the transparency by requiring that this information is to be disclosed to investors and clients on demand (third party verification would no longer be possible).

The original Platform’s recommendations set minimum criteria for certain forms of circularity, going down the entire waste hierarchy. Now the Commission proposes the opposite limits to use of primary raw materials, where the rest are replaced by secondary raw materials. While the

Commission did include reuse of the structure and building elements as a way of achieving the limits proposed, the terminology and emphasis on secondary raw materials risks deprioritising building and product reuse as criteria can be met with new constructions with materials using recycled content in new products, which is not in line with the priorities laid down in the waste hierarchy. Recommendation is to revert to the Platform approach which promotes circularity at different levels and with higher ambition.

Criterion 4 has been significantly watered down: the Platform's recommendations planned for 50% of the building material (by weight or surface area) to be a combination of re-used, recycled and responsibly sourced, renewable material. The Commission's draft now only imposes primary raw material limits on the 3 heaviest material categories used in the building. For most of the materials the allowed primary raw material percentage is way above 50%. Therefore, the incentive to use re-used or recycled building material is reduced.

Criterion 5 has been left out completely. It is not covered by the DNSH criteria for Pollution Prevention and Control. *"Components and materials used in the construction do not contain asbestos nor substances of very high concern as identified on the list of substances subject to authorisation set out in Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council unless authorised or exempted for the specific use through the appropriate processes in REACH."*

Excluding buildings on arable land and forest areas, irrespective of their biodiversity value is deemed positive as well as the exclusion of buildings that are used for fossil fuels-related activities. We also recommend exclusion of offices that are used for fossil fuels-related activities.

For activity 3.2. Renovation of existing buildings we echo the criticism from activity 3.1 above regarding criterion 2, 4 and 5.

On criterion 4 critics argued that 50% of reused, recycled and/or renewable material requirement from the Platform would most likely have resulted in only the heaviest materials being reused/recycled since it was not material specific. This means that some of the most critical material in the buildings (e.g. wires) would most likely be sourced from primary raw material. Therefore, a material-specific approach is positive. The thresholds are too high. For most of the materials the allowed primary raw material percentage is way above 50% and it is even much higher for renovations.

Therefore, there is much less incentive to use reused or recycled building material. It is incomprehensible why there is so much more primary raw material allowed for renovations with for example up to 85% of brick or glass. The limit should be the same as for new buildings. As far as preparation for reuse and recycling is concerned, the level of ambition has dropped from 90% down to 70% despite strong justification from the platform with reference to 79% already being the norm. The bar should be raised back up to 90%.

On criterion 5 we echo the comments from activity 5.1. above and add that we are now setting the baseline for future reuse of building material. Therefore, non-toxic building materials are crucial. This criterion should absolutely be reinstated.

We are additionally concerned that criterion 8 requiring energy efficiency standards and a reduction in primary energy demand for the renovation building has been cut completely from the Platform's draft. However, it sets the objective for a useful renovation and defines what should be accomplished. The standard is essential to meet the EU's energy performance objective. It is in line with the EU's Fit for 55 strategy and should absolutely be reinstated in the delegated act. We are surprised that for renovation the substantial contribution (SC) criterion for circularity is "At least 70% (by weight) of the non-hazardous construction and demolition waste generated on the construction site is prepared for re-use or recycling" when the DNSH level for renovation in SC for mitigation is already 70% in this area: This has been an area already preventing many financial

institutions from funding renovation as they see the DNSH for circularity as too stringent - which this suggests it is - as SC for circularity should not be equal to DNSH for mitigation.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA:

The DNSH climate mitigation criteria set for the renovation of buildings does not include any minimal objective regarding the energy performance of renovated buildings. However, such criteria are essential to meet the energy performance objectives of the EU. They are therefore set for new buildings in the draft DA. Concretely, a criteria should be added to ensure taxonomy-aligned renovations significantly contribute to reach the zero emission building target of the EU and ensure that renovated buildings reach at least the energy class C. We recommend that this is reconsidered and taking into account in the context of the discussions on the 2023 recast of the Energy Performance of Buildings Directive.

Economic activities involving commodities associated with high deforestation risks do not yet systematically account for supply chains in the definitions of DNSH criteria for objective 6. The construction of new buildings is a clear example of an economic activity that involves materials linked to deforestation, yet not providing additional DNSH criteria on top of “Appendix D” of the Annex of the Taxonomy Regulation, which is too generic to capture key environmental risks such as deforestation. As Appendix D is part of the Taxonomy Regulation and can no longer be changed, additional DNSH criteria that safeguard against deforestation (through entire supply chains) must be included in this new set of technical screening criteria at least for all economic activities linked to the commodities covered by the EUDR. With regards to supply chain materials for building renovation or construction we support a reference to the Corporate Sustainability Reporting Directive or the new proposal for Corporate Sustainability Due Diligence Directive with the accompanying references to international conventions incorporated in these directives.
