

# Overview of the EU Taxonomy Regulation



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## What is the law/regulation?

In December 2019 the European Council and the European Parliament reached political agreement on the text of a proposed Regulation on the Establishment of a Framework to Facilitate Sustainable Investment – the so-called “Taxonomy Regulation.” The Taxonomy Regulation<sup>1</sup> was published in the Official Journal of the EU on 22 June 2020, following its adoption by the European Parliament on 18 June 2020 and entered into force on 12 July 2020.

## What is its scope and impact?

The Taxonomy Regulation establishes an EU-wide classification system or ‘framework’ intended to provide businesses and investors with a common language to identify to what degree economic activities can be considered environmentally sustainable. It aims to “provide clarity and transparency on environmental sustainability to investors, financial institutions, companies and issuers thereby enabling informed decision-making in order to foster investments in environmentally sustainable activities.”<sup>2</sup>

It is important to note that while the majority of the Taxonomy Regulation will impact asset managers who make available a “financial product” which either (a) has environmental sustainability as its objective or (b) promotes environmental characteristics, the Taxonomy Regulation also states that where financial market participants<sup>3</sup> do not take into account the criteria for environmentally sustainable investments they should provide a statement to this end, meaning that all asset managers are, effectively, in scope.

In defining “financial product,” the Taxonomy Regulation refers to the definitions embedded in the Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (the Disclosure Regulation):

- a portfolio managed in accordance with Article 4(1) of Directive 2014/65/EU (MiFID II);
- an alternative investment fund (AIF);
- an Insurance-based Investment Product;

1 For the text of the Taxonomy Regulation as published in the Official Journal, click [here](#)

2 [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/sustainable-finance-taxonomy-spotlight\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/sustainable-finance-taxonomy-spotlight_en.pdf)

3 The Taxonomy Regulation refers to the definition in Article 2 (1) of the Disclosure Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector. Click [here](#).

“financial market participant” means: (a) an insurance undertaking which makes available an insurance-based investment product (IBIP); (b) an investment firm which provides portfolio management; (c) an institution for occupational retirement provision (IORP); (d) a manufacturer of a pension product; (e) an alternative investment fund manager (AIFM); (f) a pan-European personal pension product (PEPP) provider; (g) a manager of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013; (h) a manager of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013; (i) a management company of an undertaking for collective investment in transferable securities (UCITS management company); or (j) a credit institution which provides portfolio management.”

- a pension product;
- a pension scheme;
- a UCITS fund; or
- a Pan-European Personal Pension Product.

The Taxonomy Regulation provides a definition of “environmentally sustainable” economic activities. An economic activity is environmentally sustainable if:

- It makes a “substantial contribution” to one of the following six specified environmental objectives;<sup>4</sup>
  1. climate change mitigation;
  2. climate change adaptation;
  3. sustainable use and protection of water and marine resources;
  4. transition to a circular economy;
  5. pollution prevention and control; and
  6. protection and restoration of biodiversity and ecosystems
- It does “no significant harm” to any of those six environmental objectives (i.e., avoids adverse environmental impacts). An economic activity should not qualify as environmentally sustainable if it causes more harm to the environment than the benefits it brings.<sup>5</sup>
- It avoids violation of minimum “social safeguards” (i.e., avoids adverse social impacts). When complying with those minimum safeguards, undertakings should

adhere to the principle of ‘do no significant harm’ referred to in the Disclosure Regulation.<sup>6</sup>

- It complies with “technical screening criteria”<sup>7</sup> which will be developed using delegated legislation in due course. (The Commission is required to establish a platform on sustainable finance, consisting of experts who will advise on the technical screening criteria).<sup>8</sup>

The disclosure obligations laid down in the Taxonomy Regulation supplement the rules on sustainability-related disclosures laid down in the Disclosure Regulation. Together the Taxonomy and Disclosure Regulations will require firms to disclose the degree of environmental sustainability of funds and pension products that are promoted as environmentally friendly, and include disclaimers where they do not (articles 8 and 9 of the Disclosure Regulation). In addition, firms which are subject to the Non-Financial Reporting Directive (NFRD)<sup>9</sup> will be required to disclose in their financial statement certain indicators of the proportion of their activities that are classified as environmentally sustainable according to the Taxonomy Regulation, such as the proportion of their turnover derived from products or services associated with economic activities that qualify as ‘environmentally sustainable’.<sup>10</sup>

The Taxonomy Regulation contemplates that asset managers will use the technical screening criteria to assess a company’s economic activities and determine whether each activity does or does not meet the taxonomy criteria – then aggregate the percentage of taxonomy alignment at investment and product level.<sup>11</sup> The Taxonomy Regulation will be supplemented by delegated acts that will contain detailed technical screening criteria for determining when an economic activity can be considered sustainable, and hence can be considered Taxonomy-aligned. The percentages of

4 Taxonomy Regulation, Article 9 “Environmental objectives”.

5 Taxonomy Regulation, Recital 40.

6 Taxonomy Regulation, Article 18(2) “Minimum Safeguards”.

7 Taxonomy Regulation, Article 19 “Requirements for technical screening criteria”.

8 Taxonomy Regulation, Article 20 “Platform on Sustainable Finance”.

9 Non-Financial Reporting Directive 2014 (2014/95/EU). For the text of the NFRD as published in the Official Journal, please click [here](#).

10 Taxonomy Regulation, Article 8 “Transparency of undertakings in non-financial statements”.

11 The Final report of the Technical Expert Group on Sustainable Finance published in March 2020 contains a full list of revised or additional technical screening criteria for economic activities which can substantially contribute to climate change mitigation or adaptation. Click [here](#).

taxonomy alignment will help firms explain their strategies in a way that is consistent and easily comparable for investors. To ensure consistency between the Taxonomy regulations concept of “do no significant harm” and the Disclosure Regulations concept of “adverse impact indicators”, the Taxonomy Regulation amends the Disclosure Regulation mandating that the ESAs<sup>12</sup> jointly develop regulatory technical standards relating to content and presentation of information relating to the principle of do no significant harm.

### What is the timeline?

The Taxonomy Regulation was published in the Official Journal of the EU on 22 June 2020 and entered into force on 12 July 2020.

The Taxonomy Regulation states that to give sufficient time to the relevant actors to familiarise themselves with the criteria for environmentally sustainable economic activities<sup>13</sup> set out in the Regulation and to prepare for their application, the obligations set out in this Regulation should become applicable, for each environmental objective, 12 months after the relevant technical screening criteria have been adopted.

The Taxonomy Regulation contemplates a phased implementation, with certain rules set to apply from different dates:<sup>14</sup>

- from 1 January 2022 in respect of the climate change mitigation and adaptation objectives; and
- from 1 January 2023 in respect of the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystem.

### What are the key considerations for asset managers?

The overarching aim of the Taxonomy Regulation is to provide a common language to identify which activities and financial instruments can be

considered as environmentally sustainable to be used by investors, financial institutions, companies and issuers.

As a piece of EU legislation, its impact will be felt in the EU by entities such as AIFMs, UCITS management companies, investment firms authorised under MiFID II that provide portfolio management or investment advice, and these entities will need to ensure that they use the ‘framework’ taxonomy when making disclosures (including, but not limited to, in prospectuses, portfolio management agreements, annual reports, non-financial statements, and on websites). The need to conform investment practices to these disclosures means that the Taxonomy Regulation also could influence the way that many investment firms incorporate ESG into their investment processes.

While the Taxonomy Regulation is a piece of EU legislation establishing an EU-wide classification system, it will also impact non-European asset managers offering ‘financial products’ into the EU. For example, (i) a non-EU manager that has a structure that incorporates a UCITS may need to assist the UCITS ManCo with making disclosures by providing the ManCo with certain information relating to environmental sustainability, and some of these disclosures will need to consider the framework taxonomy or (ii) a non-EU manager marketing its funds in the EEA under Article 23 of AIFMD will need to consider the framework taxonomy when making certain sustainability disclosures.

Given the size of the EU market, and because the taxonomy is the most comprehensive attempt yet to set regulatory standards for ESG, the taxonomy may also influence ESG disclosures and practices outside of the EU.

### What next?

#### The impact of Brexit

The UK formally left the EU on 31 January 2020 and entered into a ‘transition period’ which (at the time of writing) is scheduled to end at 11pm on 31 December 2020. During the transition period EU law will continue to apply in the UK, however once the transition period has ended this will no longer be the case.

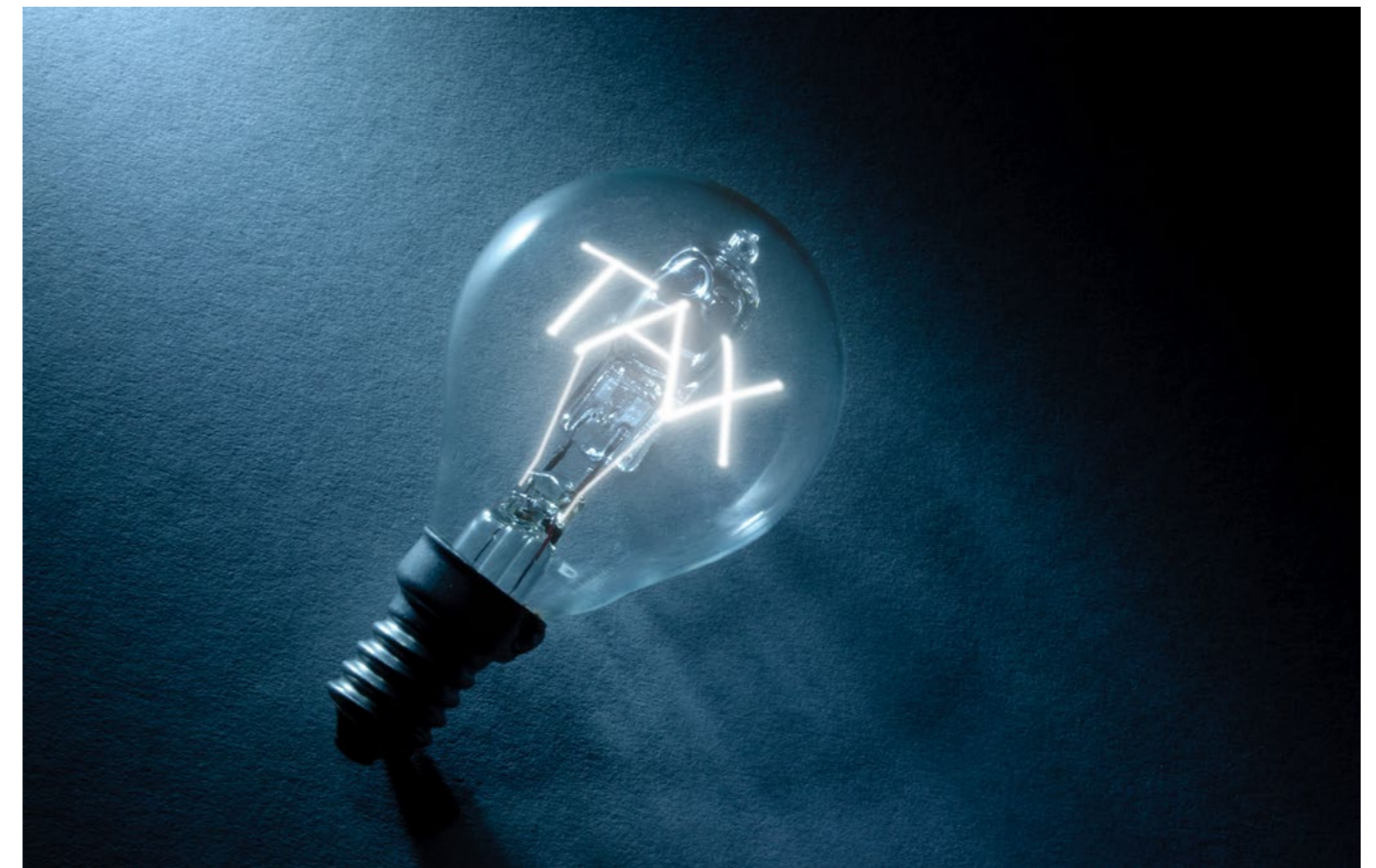
Although the Taxonomy Regulation entered into force on 12 July 2020, the key operative requirements (e.g. disclosure obligations) contained in the Taxonomy Regulation only apply after 31 December 2021. Therefore, these requirements will not form part of retained EU law in the UK unless the UK incorporates them into domestic legislation. Consequently, there may be a bifurcation of requirements depending on the location of the asset manager, with asset managers in the EU and the UK being subject to different requirements.

The UK government has explained that it cannot comment at this stage on the extent to which the UK will align with the EU on this regulation after the end of the transition period because the delegated legislation containing technical standards has not yet been published by the European Commission,

meaning that the UK does not have clarity as to the exact requirements that it would be agreeing to. The UK government stated that it will continue to monitor the EU’s legislative process as it considers the UK’s approach but at the time of writing there is no clarity as to what the UK’s approach will be.

#### Recent developments

The Taxonomy Regulation is notably focused on the environmental aspects of ESG. An investment can be branded as sustainable as long as it meets one of the six specified environmental objectives and does not significantly harm any of the remaining objectives. Following recent statements made by the head of the sustainable finance and financial technology unit at the European Commission, it seems that there is a move to explore whether the Taxonomy Regulation should be extended to cover social issues as well as a wider range of environmental factors ahead of the publication of a new sustainable finance action plan next year. At the time of writing there are no further details but expanding the scope of the Taxonomy Regulation would have an impact on market participants.



<sup>12</sup> The European Banking Authority, European Securities and Markets Authority and European Insurance and Occupational Pensions Authority, European Supervisory Authorities (collectively, the ‘ESAs’).

<sup>13</sup> Taxonomy Regulation, Recital 57

<sup>14</sup> Taxonomy Regulation, Article 27 “Entry into force and application”.