Statement by the Sustainable Finance Committee of the German federal government on the Consultation to the draft delegated act on disclosure obligation under Art.8 Taxonomy Regulation

The Sustainable Finance Committee advises the German federal government on the development and implementation of its Sustainable Finance Strategy. It was appointed by the Federal Government on 6 June 2019 for the duration of the current legislative period of the German parliament in order to pool existing expertise and promote dialogue between the relevant stakeholders. Its members are practitioners from the financial and the real economy, civil society and academia. The feedback provided here does not reflect the view of the German Government.

The EU Commission issued the draft delegated act specifying the exact details to be followed by eligible undertakings subject to article 8 under the taxonomy regulation. In following the logic and understanding of the underlying objectives of the taxonomy regulation, i.e. to help channel funding towards the green recovery and to guide companies and investors in the transition towards sustainability, the Sustainable Finance Committee of the German federal government would like to highlight the issues outlined below for consideration in adjusting the presented draft delegated act.

- The transformation towards sustainability affects and needs to be delivered by large parts of the EU's economy. Almost every company and undertaking will have to incur capital or operational expenditures in that regard in the near term as well as continuously over at least the next decade. Likewise, company turnover will increasingly be linked to transformation-relevant activities. As such, it is essential to provide regulation and guidance in as user-friendly a format as is feasible. We recommend the Commission to adjust the presented draft delegated act and provide clearer and easier to use documents, tables and guidance, which would be less prone to misinterpretations. We also recommend providing spreadsheet-based overviews in that regard, such as the TEG provided when the TEG presented the technical recommendations to the screening criteria for economic activities. This relates for instance to the assessment of taxonomy-eligible and taxonomy-aligned activities as well as enabling and transitional activities.
- We assume that the reference to Art. 19a and 29a of Directive 2013/34/EU is intended to ensure that changes to the requirements of reporting corporate sustainability information (in particular with regard to the scope of undertakings) will correspond with this delegated act. In this regard, we welcome the principle that financial institutions' disclosure requirements are based on data and information directly provided by companies and undertakings that they invest in and provide capital to.
  A significant number of the companies financed through credit institutions will, however, not be subject to the NFRD/CSRD or other disclosure regulation. As such, it seems plausible that the underlying data is incomplete. The exemptions in Article 8 (to only account for undertakings that provide the required information) substantially limits the expected value and purpose of the regulation related to the transparency on financial flows to enable the transition as well as forming a solid basis for informed investment decisions e.g. in the context of the eco-label.
  We therefore recommend clearer guidance on data and information that should be provided or calculated for those segments in portfolios where direct company data will not be reported or provided through the CSRD. Such guidance could for example clarify how credit institutions should proceed in assigning sustainability assessment results to the assets etc. as described in Annex V where data and information is not available. As such, it might be feasible for credit

institutions to request specified relevant information from a debtor company during the credit process.

- We do not think that the exemption in Article 8.1 is justifiable given the structure of large portfolios of financial undertakings. Large proportions of respective portfolios have exposures to central governments and central banks, e.g. through government bonds. Excluding this asset class from assessments of the underlying sustainability performance directly objects to the intention of the regulation, i.e. to provide robust transparency and to allow for informed decisions. Financial institutions reporting in accordance with this draft delegated act and providing the KPIs suggested herein would in relative terms systematically present a distorted result - systematically too positive compared to investors or portfolios less exposed to the asset class of sovereign debt, for instance, or compared to those providing finance to companies not subject to the disclosure requirements by the CSRD.

- Further, the exclusion of exposures in the numerator of the KPIs according to Article 8.3 presents a huge problem of comparability between financial undertakings with regard to the sustainability status of a given portfolio; e.g. a different regional exposure would lead to very different sustainability KPIs based on available data irrespective of the actual sustainability performance. The provision in Article 10 to assess only in 2025 whether and how to include such data seems inappropriately far in the future.

- The Commission should consider providing orientation to help users of the information provided through the reported KPIs. The static KPIs will as such provide little direct clarity if one tries to set them into perspective to, for instance, the contribution of a portfolio of an investment firm reporting for example a KPI of 45%. Would 45% as such be an inferior value, or on the right track in the sense of improving year on year by 10%? Once the European Single Data Access point is available where sustainability data is uploaded in a machine-readable format, up-to-date statistics could be calculated and provided ad-hoc across industries.

- Investment plans and evolving TSC: At the moment the Taxonomy includes TSC only for the year of publication. It thus creates uncertainty with regard to future changes in substantial contribution and significant harm criteria. This uncertainty implies a need to adjust operations and Capex reporting when TSC change during the investment phase to preserve the “aligned” status of investment plans for reaching the TSC.
  The uncertainty regarding future TSC should be resolved at the earliest possible stage by developing TSC trajectories necessary to meet the EU targets from scientific results, sector analyses etc. The taxonomy alignment of CapEx and OpEx can then be evaluated against TSC and DNSH trajectories during the predicted lifetime of the investment, reducing the need for ex-post adjustments. In addition, to provide as much predictability as possible, there should be clarity on the principles and ambition levels that the criteria development is based on, and the kind of technological development to be considered. This should be as science-based as possible and fully aligned with the ambition level reflected in policy agreements such as the 1,5° warming limit in the Paris Climate Agreement.
  With TSC-trajectories provided and/or predictability regarding evolving TSC ensured, the need for grandfathering is greatly reduced. It should therefore be limited to a maximum of 3y to allow for portfolio adjustments.

The green asset/investment ratios of financial institutions should be required to be restated to reflect the progressive evolution of TSC. Multiple Objectives: If an activity needs to make substantial contributions to several environmental objectives in order for the EU environmental objectives to be met, TSC for multiple objectives are developed. KPI-reporting needs to account for the difference between an activity's contributing to only one or all relevant objectives if it is to provide transparency and incentives to make all necessary contributions. We therefore recommend that Capex should count for investments aligned with TSC for <u>at least one</u> objective, while Capex and Turnover should count if TSC for <u>all relevant</u> objectives are met.