

RESEARCH

The role of AMF (French Market Authority) in Taxonomy Reporting: an invaluable field guide to environmentally sustainable economic activities

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The 2023 AMF Taxonomy Report was published on 20 November 2023 and provides an unprecedented, highly technical overview with a valuable educational dimension. The 2024 AMF Taxonomy reporting of financial institutions is also very interesting. It provides valuable information about the “taxonomy reporting” introduced by Article 8 of Regulation (EU) 2020/852, known as the “Taxonomy Regulation,” which is already part of the vast body of information on sustainability that companies will be required to disclose according to a specific timetable based on certain criteria. It shows that the Taxonomy Regulation is the cornerstone of the sustainable finance regulation developed by the EU as part of a complex web of legislation.¹ The links between sustainable finance and non-financial reporting in general are increasingly tenuous, as this taxonomy reporting is also carried out at the interface between existing but evolving legislation (such as the SFRD regulation), which is due to come into force for the Corporate Sustainability Reporting Directive (CSRD) in 2024. The content of this reporting, along with the pursuit of evolving environmental objectives (EOs), the do no significant harm (DNSH) principle, and the classification of economic activities themselves (low-carbon, in transition, adapted, enabling, etc.), play an essential role in investors’ choices. This is the first report by the French financial market regulator Autorité des Marchés Financiers (AMF) on the alignment of activities with the taxonomy. It is therefore an invaluable aid to understanding the process and, above all, to embarking on the subsequent stages, as it presents a *genuine operating procedure* for analyzing, classifying, and narrating economic activities in order to demonstrate their degree of environmental sustainability. The AMF, which has just celebrated its twentieth anniversary, has demonstrated that, together with the European Securities and Markets Authority (ESMA), it is making a substantial contribution to helping companies implement the sustainable finance strategy that is integral to the European Green Deal.

Keywords: sustainable finance, EU Taxonomy Regulation, French Market Authority, DNSH (do no significant harm) principle, Taxonomy Report

Introduction

In the current context of a complex, intertwined abundance of European texts on sustainable finance in general, the

publication of sustainability information by undertakings Corporate Sustainability Reporting Directive (CSRD),² and sustainability standards European Sustainability Reporting Standards (ESRS), it can be difficult to unravel the Ariadne’s

¹ For information, see the list of this legislation.

² To be applied from the 2024 financial year for publication in 2025.

thread that links these different reports. What is the purpose of taxonomy reporting? Based on the Taxonomy Regulation, which has created a completely new classification of environmentally sustainable activities, this reporting process adds another layer of information. In 2023, listed non-financial companies with an obligation to provide sustainability-related disclosures were required, for the first time, to publish information about the *alignment* of their activities with the European taxonomy.³ This involves presenting the *degree of environmental sustainability* for the turnover, capital expenditure, and operating expenditure in these companies' different economic activities. These three benchmarks or criteria must therefore be applied to these activities in a highly technical manner. This is a complicated and painstaking task, made all the more complex by the fact that this was the first edition of the publication of information on the alignment of economic activities with an extremely detailed taxonomy. Although they could consult the frequently asked questions (FAQ) published online by the Commission, companies sometimes had to proceed by trial and error in order to justify themselves and produce narratives to explain how their activities could be considered environmentally sustainable. As well as introducing a new technical vocabulary (eligibility and alignment), the texts are constantly evolving (no fewer than six delegated regulations published in two years), especially with regard to the four other environmental objectives (EOs), which will be implemented in the same manner as the first two EOs,⁴ i.e., firstly through eligibility (in 2024) and secondly (in 2025) through activity alignment. In addition, the Commission itself is proposing changes to the highly formal⁵ frameworks for the dissemination of this information.

In view of such complexity, but also of such an innovative approach to interpreting economic activities, i.e., through the lens of EOs and the “do no significant harm (DNSH)” concept,⁶ this second edition of the Autorité des Marchés Financiers (AMF) Taxonomy Report is of great importance:⁷ it is the first report on “comprehensive” reporting published by the AMF, in that it no longer focuses solely on the “eligibility” of the economic activities of listed non-financial companies vis-à-vis the taxonomy, but also on the “alignment” of these companies with the taxonomy—what is known as the “degree of environmental sustainability” of their activities and investments. This report is intended to be both technical and educational, both for companies themselves and for any parties potentially interested in reading this information, which has become a recipe for the success of environmentally virtuous companies—a recipe

which, as we shall see, can be quite hard to swallow. This AMF report also refers to the European Securities and Markets Authority (ESMA) report of 25 October 2023.⁸

The AMF report, based on a study of 31 French non-financial undertakings, listed companies, and non-financial corporations, has a dual purpose: to take stock of the current situation and help companies take on the Herculean task of implementing the various overlapping reporting requirements: taxonomy reporting, CSRD, the European Financial Reporting Advisory Group (EFRAG) standards, and the current extra-financial performance statement “déclaration de performance extra financière” (DPEF). The AMF's study of the 31 companies selected is a joint educational effort undertaken with the European Commission.⁹

The interest of this report also resides in the fact that the companies chosen are of different sizes, belonging to the cotation assistée en continu (CAC) 40 or SBF 120 indexes, and small and medium-sized enterprises (SMEs) (market capitalization of less than €1 million) and, above all, belonging to a variety of business sectors generating very high levels of carbon emissions.¹⁰ It therefore concerns information published by companies in 2023 for FY 2022. It is important to note that this report focuses solely on the issues of reporting and transparency and not on the actual analysis of eligibility and alignment with the taxonomy criteria. This report is essentially based on an analysis of the following five main aspects:

1. Transparency in determining the eligibility of activities and investments
2. Transparency in analyzing the alignment of these elements
3. Definition of key performance indicators (KPIs on eligibility and alignment with the taxonomy)
4. Methods used to present information (use of compulsory tables)
5. Alternative reporting practices to taxonomy KPIs (communication of ratios calculated using a company-specific methodology in addition to regulatory ratios)

Reminder of the regulatory context: overlapping legislation

It should be remembered that the taxonomy regulation of 18 June 2020¹¹ proposes an unprecedented, EU-wide

³ In 2022, this only concerned reporting on activities eligible for the taxonomy, see the AMF's November 2022 report.

⁴ With regard to the present report, which covers the 2023 financial year.

⁵ Compulsory use of specific tables (Templates).

⁶ Do no significant harm (principle).

⁷ This report contains 93 information-packed pages, see <https://www.amf-france.org/sites/institutionnel/files/private/2023-11/rapport-taxonomie-2023.pdf>.

⁸ European common enforcement priorities for 2023 annual financial reports.

⁹ See its online tool: the EU Taxonomy Compass and the “EU Taxonomy Navigator” platform.

¹⁰ This list of activities is presented in Appendix 1 of this report.

¹¹ See Taxonomy Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020; T. Bonneau, L'originalité de la finance verte, *Revue des sociétés* 2023, p. 501.

classification tool that enables the identification of activities that can be considered environmentally “sustainable.”¹² This tool has several ambitions and is a central component of the vast European sustainable finance regulation mechanism.¹³ It serves as a *reference framework* that is included in the current Non-Financial Reporting Directive (NFRD), which will be replaced by the CSRD in 2024 when the inclusion of taxonomy information will be required in these “sustainability” reports, under the Sustainable Finance Disclosure Regulation (SFDR) targeting financial players, with the objective of ensuring the transparency of financial institutions on environmental, social and governance (ESG) issues. Consequently, to comply with the provisions of the SFDR, financial market participants will be required to calculate the alignment of their financial products with the taxonomy, for which they will need the companies’ “Article 8” taxonomy alignment data. This will enable them to market their financial products effectively under the sustainability preferences introduced by the Markets in Financial Instruments Directive (MiFID II) and the Insurance Distribution Directive (IDD). Taxonomy has therefore emerged as the cornerstone of this vast body of legislation.¹⁴

The taxonomy mechanism is well known; briefly, it consists of specific sustainability criteria for each economic activity and for each environmental objective.

The six EOs are:

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;
6. Protection and restoration of biodiversity and ecosystems.

At this stage, the two climate EOs on climate change mitigation and adaptation were published in the “Climate Delegated Regulation”.¹⁵ As the other four EOs in the

taxonomy had not yet been published in 2022, the AMF report could only focus on the two “Climate” EOs (mitigation and adaptation). A distinction should be made between two concepts: “eligible” and “aligned” activities, with eligibility being the prerequisite for alignment.

Eligible activities are those included in the evolving list of activities set out in the taxonomy, covering 13 sectors and set out in the Climate Delegated Regulation. Some ten new economic activities were added by the delegated regulation, “amending the Climate Delegated Regulation,”¹⁶ including activities in the transport, manufacturing, consulting, and IT sectors. The first two Taxonomy Reports (2022 and 2023) logically concern the activities with the greatest impacts in terms of greenhouse gases (GHG). Activities relating to the gas and nuclear industries were added in 2022.¹⁷ The activities are divided into several categories in relation to the climate change mitigation or climate change adaptation EOs. For mitigation, for example, low-carbon, transition, or “enabling” activities are defined, and for adaptation to climate change, “adapted” and “enabling” activities are specified.

Looking ahead to FY 2024, the taxonomy will be enriched, which will further complicate its implementation, with other economic activities falling within the scope of taxonomy reporting. The four other EOs were published for the 2023 Delegated Regulation, known as the “Environment Delegated Regulation.”¹⁸ This broadens the scope of the eligible activities, as some of the activities already eligible for the two climate EOs may also fall within the broad scope of the four other EOs. Concrete examples include disaster risk management, buildings, water supply and sanitation, transport, services, forestry, the renewable energy sector in general, information and communications technologies (ICT) and related professional activities, and manufacturing.

An activity is aligned if it satisfies the conditions of Article 3 of the Taxonomy Regulation; very briefly, this activity must meet **three** cumulative conditions:

1. It must make a substantial contribution to one of the six EOs.
2. In line with the DNSH principle, the activity must not significantly harm any other EO. “DNSH criteria” precisely assess the negative impact of the economic

¹² A social taxonomy is currently being drawn up, see Final Report on Social Taxonomy, February 2022, p. 11 et seq., https://finance.ec.europa.eu/system/files/2022-08/220228-sustainable-finance-platform-finance-report-social-taxonomy_en.pdf.

¹³ The SFDR regulation, which is currently being amended, EU Green Bonds, the future ESG rating with the Proposal for a Regulation of 13 June 2023.

¹⁴ C. Malecki, *Le risque financier, nouvelle manifestation du risque climatique. L'exemple du règlement européen sur la taxonomie verte*, M-Torre-Schaub et A. Stevignon, B. Lormeteau (dir), *les risques climatiques à l'épreuve du droit*, Mare and Martin, 2023, pp. 235–251.

¹⁵ Regulation (EU) 2021/2139 of 4 June 2021 known as the “Climate Delegated Regulation” on climate objectives and its annexes on alignment techniques (Annex 1 on the climate change mitigation EO, Annex 2 on climate change adaptation, consolidated version: 15 June 2022).

¹⁶ “Environment” Delegated Regulation 27 June 2023 amending the “Climate” Delegated Regulation by adding new activities and amending certain technical alignment criteria for mitigation and adaptation objectives).

¹⁷ Delegated Regulation (EU) 2022/1214 of 9 March 2022, which is a complementary delegated regulation (Climate and Article 8) concerning the activities carried out in certain energy sectors (gas and nuclear) and the associated transparency rules.

¹⁸ “Environment” Delegated Regulation of 27 June 2023 on the four other EOs and its annexes, relating to the technical alignment criteria (Annexes I–IV) and amending the Article 8 Delegated Regulation on the reporting obligations for companies (Annexes V–VII) concerning mitigation and adaptation.

activity in relation to other EOs, i.e., those for which there is no proven substantial contribution. These “DNSH” criteria are established for each economic activity. However, the large number of these economic activities increases the scope of the reasoning.

3. The activity must comply with “minimum guarantees” relating to human and labour rights.¹⁹

When an activity is “aligned” with the taxonomy, it is therefore considered to be “environmentally sustainable”. It is important to distinguish between “eligible” and “aligned” activities. An activity that is merely “eligible” is not necessarily sustainable if it is not “aligned” with the taxonomy. Eligibility is not a criterion of sustainability. This may seem paradoxical, but the taxonomy relates to activities that have the greatest impact on the climate, such as cement manufacturing, which is a high-GHG-emitting activity, as opposed to a low-GHG-emitting activity. From the outset, it became clear that it is highly beneficial for a company to be able to provide information about its “aligned” activities.

Article 8 of the Taxonomy Regulation forms the backbone of the taxonomy

Article 8 of the Taxonomy Regulation,²⁰ which concerns financial and non-financial undertakings, forms the core of the reporting regulation. On 1st January 2022, the scope of the companies concerned was extended to entities meeting the criteria of 500 employees and a balance sheet total of more than €20 m or turnover of more than €40 m, which were covered by the DPEF, i.e., the current NFRD, but for only a short time to come. However, the entry into force of the CSRD²¹ for certain companies on 1st January 2024 (report to be published in 2025 for FY 2024) will substantially broaden the scope of Article 8 taxonomy reporting. This is the link between these sustainability reports. Article 8 is included in the Taxonomy Regulation of 18 June 2020, but the technical details of this reporting process are set out in Delegated Regulation (EU) 2021/2178 of 6 July 2021, known as the “Complementary Delegated Climate Regulation and Article 8.”²² This extremely detailed text distinguishes between the reporting requirements for non-financial undertakings and

for financial institutions. As it stands, before the CSRD comes into force, this taxonomy report has been integrated into the current DPEF.

This AMF report is therefore invaluable because the presentation of taxonomy information will remain unchanged for its dissemination via the CSRD.

Familiarization with new acronyms and a specific type of presentation will gradually be required in the actual practice of this taxonomy reporting.

Three types of KPIs are therefore required.

1. The proportion of eligible/aligned or non-eligible/non-aligned turnover (TO)
2. The share of capital expenditure (CapEx) in the same manner
3. The share of operating expenditure (OpEx) in the same manner (eligible, aligned, or not eligible, not aligned)

This must be presented in compulsory tables listing the value of the indicators at the level of each economic activity, with narrative information to help contextualize the performance indicators and specify the calculation methodologies used for this data.

Growing links between green taxonomy and transition finance – In addition, the taxonomy tool is strongly encouraged by the recommendation of 27 June 2023 on transition finance.²³ For example, the taxonomy can be used to plan investments over five years, because they are already known to be “fully aligned with the taxonomy,” to plan gradual and, above all, more promising investments, and to raise transition funding for capital expenditure or even operating expenditure if these requirements meet one of the following conditions: “they are aligned with the taxonomy,” “they will be aligned with the taxonomy in the future,” or “they demonstrate continuous improvement in performance as part of a credible transition-compliant plan.”

The AMF both guides and educates

In its 2022 Report, the AMF had previously asked the companies covered by the first taxonomy report, which only concerned the eligibility of activities, to provide “clear, transparent, and comprehensive” alignment reports in preparation for the new CSRD obligations. These reports are truly Herculean “environmental” labour, especially in light of the four other EOs to come. Similarly, eligibility reporting in 2024 will precede alignment reporting in 2025. Financial institutions are also required to publish a taxonomy report based on a precise framework from 2024 onwards.²⁴ This first

¹⁹ Namely, international ILO standards, Global Compact principles, and OECD principles by multinationals.

²⁰ The above-mentioned EU Regulation of 18 June 2020. Article 8(2) of Regulation (EU) 2020/852 requires non-financial undertakings to publish information on the proportion of their turnover, capital expenditure, and operating expenditure (“KPIs”) that relates to assets or processes associated with environmentally sustainable economic activities.

²¹ Cite all references here.

²² Regulation (EU) 2021/2178 of 6 July 2021, known as the “Article 8 Delegated Regulation,” and its annexes concerning reporting, 59 pages, consolidated version of 15 July 2022.

²³ Commission Recommendation (EU) 2023/1425 of 27 June 2023 on facilitating finance for the transition to a sustainable economy.

²⁴ Asset managers, credit institutions, investment firms, insurance, and reinsurance undertakings will be required to publish such taxonomy reports, see Delegated Regulation of 6 July 2021.

“warm-up” round of taxonomy reporting is therefore all the more instructive for the future. There will be no verification by an independent third-party organization (ITO) at this stage, but the CAC will read the report.

However, with the first implementation of the CSRD scheduled for 2025, taxonomy reporting will be subject to an audit obligation, first at a “moderate assurance” level and then at a “reasonable assurance” level.

Lessons learned from the activity alignment report

Based on the sample selected by the AMF, the average levels for aligned activities are 15.3% for turnover, 20% for capital, and 13% for OpEx.²⁵ A company may declare investments that are not necessarily related to its commercial activities. The report identifies differences between eligibility levels and alignment levels. For example, the real estate sector has the highest rates of eligibility and alignment, while the Automotive and Technology sector has zero alignment. There are also significant differences between issuers classified within the same sector, such as in the Industrial Goods and Services sector. In particular, there is a degree of dispersion between the eligibility levels and alignment levels of non-financial undertakings in the CAC 40 Paris stock market index.

Subtle differences are noted for large European non-financial undertakings (DJ Stoxx 600), because although the average levels of aligned and eligible KPIs (turnover, CapEx, and OpEx) are lower than those of the CAC 40 non-financial undertakings in the sample, the difference between eligibility and alignment is smaller for these same KPIs.

With regard to the general analysis of eligibility, it should be noted that more than a third of companies have identified new eligible activities compared with 2022. In particular, this is due to the extension of the taxonomy to new eligible activities such as the gas and nuclear industries. The report acknowledges the fact that all the companies have clearly presented the nature of their eligible and even ineligible activities, even specifying when they are not eligible for an EO.

The AMF has issued the following recommendation on the need for a clear presentation of eligible and ineligible activities, transparency concerning the judgments made using the European tool and, above all, transparency concerning changes in the eligibility analysis and possible variations in indicators from one financial year to the next.

²⁵ See p. 24 of the AMF report.

Lessons learned from the AMF activity alignment report

Alignment, subject to compliance with the three cumulative conditions, is therefore much more difficult to implement. The notion of “substantial contribution” is closely scrutinized by the AMF. This is indeed an essential notion for the alignment of an activity, and it is noted that the mitigation EO rather than the adaptation EO is overwhelmingly targeted, with the pursuit of both EOs being an even rarer occurrence.²⁶

In fact, this Herculean reporting task has its limitations (lack of data on a given activity, constant changes in legislation), and the difficulty therefore mainly resides in the transparency of the choices made²⁷ by undertakings in order to apply the contribution criteria. This key contribution criterion must be verified by an independent third party in accordance with the Climate Delegated Regulation.

Satisfying the second condition—DNSH—is also problematic, even though, in principle, the taxonomy defines a DNSH requirement for each activity and for each EO.²⁸ Naturally, this first edition is, to a certain extent, a “warm-up round” for alignment and therefore for the DNSH requirement. However, the AMF notes that it is most often when access to data (e.g., on the supply chain) is lacking that the DNSH requirement cannot be analyzed and the activity cannot be considered as being “aligned” with the taxonomy.

In reality, the significant differences in the activities of the companies selected have an influence on the DNSH information provided.²⁹

On the question of minimum guarantees, the AMF’s assessment is “could do better.” The analysis of minimum guarantees is the third and final cumulative condition for “aligning” an activity with the taxonomy, defined by Article 8 of the Taxonomy Regulation, and consisting of procedures (implemented by an undertaking to ensure its alignment with the “standard” texts on fundamental rights at work), but also the implementation of procedures, establishing an important link which clearly shows that European sustainable finance forms a coherent whole.³⁰

The European Commission provides a valuable tool in the form of FAQs, published on 16 June 2023, to help companies meet the transparency requirements relating to minimum guarantees.³¹ On this point, most of the companies in the sample applied this third criterion to a group or a restricted scope, but the coverage of the value chain and

²⁶ A single issuer, see above-mentioned report, p. 35.

²⁷ See the aforementioned report, p. 38.

²⁸ With some exceptions, such as “Acquisition and ownership of buildings.”

²⁹ See the aforementioned report, p. 43.

³⁰ See Art. 2, point 17 of the SFRD regulation.

³¹ FAQ 5, see Notice 2023/C 211/01 “Commission Notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Regulation and its links to the Sustainable Finance Disclosure Regulation.”

commercial relations, which is essential for minimum social guarantees, is the most difficult aspect to analyze. On this last criterion, however, the AMF found significant variations³² between issuers.

The EU Platform on Sustainable Finance will provide invaluable assistance³³ with the links to be established between Article 3 and Article 18 of the Taxonomy Regulation. Since October 2022, this platform has clearly insisted on the need for links between minimum guarantees and existing EU regulations, i.e., the SFDR, the CSRD, and the future CS3D. It is clear that these texts are closely intertwined.

These minimum guarantees cover four topics: human rights, corruption, taxation, and unfair competition. It should be specified that these are “minimum guarantees” rather than “minimum social guarantees”; companies cannot therefore settle for merely using the term “social.” The AMF highlights companies that have correctly completed the four items for the minimum guarantees while clearly specifying that there are no convictions or that any convictions are of a non-material nature.³⁴ Unsurprisingly, this last criterion is linked to the French extra-financial performance statement (DPEF), the “Mr Sapin was a French Minister of Economy (SAPIN II)” Law on transparency, anti-corruption, and economic modernization, and even the human rights vigilance plan (see Art. L225-102-4 C.com).

With regard to the alignment analysis, the AMF³⁵ stresses the need to consider the EOs and ensure transparency in the assessment of technical alignment criteria by “precisely” and specifically presenting the significant assumptions, judgments, and methodological trade-offs made, and recommends that undertakings refer to the European Commission’s invaluable FAQs tool. It points to the low level of transparency regarding minimum guarantees and therefore insists that companies must “reinforce”³⁶ the transparency “of the key elements of their analysis of compliance with minimum guarantees” by insisting on the scope, which must include the value chain. The Gordian knot appears to remain intact.

The necessary link and “coherence” between taxonomy reporting and sustainability information. However, the link between the DNSH requirement and the DPEF’s environmental actions will be the most instructive aspect.

KPIs

Three taxonomy-eligible and aligned KPIs therefore apply (TO, CapEx, and OpEx), which are based on a ratio (aligned

turnover to total net turnover, aligned CapEx to total CapEx, aligned OpEx to total OpEx). Once again, the Commission’s FAQs provide considerable help with this process.

For example, the AMF’s first taxonomy alignment report notes that few companies have defined CapEx plans³⁷ covering capital expenditure that is either intended to expand an already aligned activity or intended to finance an eligible activity so as to enable it to satisfy the alignment conditions in the future. Progress needs to be made, as none of the 31 companies in the sample published “all of the required contextual information.”³⁸ However, Annex I of Art. 8 of the Delegated Act provides guidance for issuers on the actual content of CapEx plans, and especially on the information to be provided in the event of changes to the CapEx plan during the financial year.

Progress also needs to be made on the transparency of the methodology used to calculate the CapEx, TO, and OpEx amounts allocated to the numerator of the taxonomy KPIs, bearing in mind that “estimates” using “financial allocation keys” are required.³⁹

Similarly, the use of “extrapolation” to determine KPI alignment levels⁴⁰ does not systematically enable compliance with the DNSH requirement or substantial contribution criteria for all components of an activity. The highly technical attributes of KPIs have yet to be fully applied in practice.

Issuers will therefore need to master a number of technical terms, such as “reconciling” the denominator of the TO KPI with the accounts and the adjusted CapEx KPI, which provides information on the capital expenditure aligned with the taxonomy and financed by these bonds or debt securities. One highly encouraging point is the increase of more than 10 percentage points in eligibility rates (CA, CapEx, and OpEx). Generally speaking, as the AMF report is extremely comprehensive, the issuers in the sample fail to provide sufficient narrative and commentary, both on the changes in eligible activities and in their explanations of aspects such as for changes in the method used to calculate the KPIs,⁴¹ the choice of the definition used,⁴² or the disposal of an activity or a significant acquisition.

Annex I of the Article 8 Delegated Act provides a guide to the specific contextual information to be published, especially changes in the TO, CapEx, and OpEx KPIs during the financial year, as well as the risks of “double counting” for the calculation of taxonomy KPIs.⁴³ Examples include the installation of a wind farm that meets the mitigation EO and

³² Aforementioned report p. 47.

³³ See its October 2022 report.

³⁴ See Eiffage, aforementioned report, p. 48, or Arkéma, aforementioned report, p. 49.

³⁵ Aforementioned report, p. 51.

³⁶ Aforementioned report, p. 52, again using the Commission’s FAQ tool published in June 2023.

³⁷ Aforementioned report, p. 56.

³⁸ Aforementioned report, p. 57.

³⁹ Aforementioned report, p. 58.

⁴⁰ This is based on a representative sample of an activity that is extrapolated to this activity as a whole; see the above-mentioned report, p. 59.

⁴¹ Case of Michelin, aforementioned report, p. 61.

⁴² Case of Véolia, which decided to use the Commission’s definition to determine its OpEx denominator.

⁴³ When an issuer has activities that contribute to two EOs, e.g., Schneider Electric, see the AMF report cited above, p. 63.

the financing of adaptation solutions in response to the risk of rising sea levels or coastal erosion.

The AMF rightly stresses the importance of the need for a CapEx plan (generally five years), a “reasoned use of estimates”,⁴⁴ and, above all, the need for contextual information that is absolutely essential to understanding the taxonomy KPIs and their variations, the publication of “adjusted” indicators and, lastly, because this must be presented using specific table templates, a better documented use of exemption of OpEx on the grounds of non-materiality.

The requirement to use compulsory table templates can only be welcomed. This constrained formalism (see Annex III—Article 8 of the Delegated Act) is appreciated as it ensures the clear readability of the information presented and has helped issuers to carry out their taxonomy reporting.

The AMF gives a positive assessment of this aspect,⁴⁵ noting certain shortcomings concerning the fields to be respected.⁴⁶ This formalism goes so far as to require undertakings to download table templates from the Commission’s website.⁴⁷ This formalism is adaptive and can include gas and nuclear activities, for example. The Nomenclature statistique des activités économiques dans la Communauté européenne (NACE: numbers used for all industries and service activities in the European Union) code is used to identify activities.

This formalism, which in certain respects may seem discouraging, is essential for the comparability of data, especially in view of the future digitalization of this information.

There is no doubt that artificial intelligence can be a valuable tool for analyzing this enormous amount of information.

The AMF also appreciates the fact that some companies have carried out voluntary reporting on their activities, such as by providing additional information about activities that are not aligned but which nevertheless provide information about the DNSH criteria or minimum guarantees.⁴⁸

It should be noted that this first AMF report on Article 8 Taxonomy reporting is along the same lines as the ESMA study on taxonomy reporting practices,⁴⁹ especially with regard to the information published by issuers on their climate objectives. These objectives are useful if they are measurable and are accompanied by precise deadlines, such as the benefits arising from climate-related opportunities or the impact on populations and the environment.

ESMA and the AMF place great emphasis on the notion of choosing climate objectives, the progress made, their consistency with the issuer’s strategy and policies, and the

targets for reducing greenhouse gas emissions. The inclusion of this key information is logical in view of the EU’s “net zero carbon” horizon for 2050 and the ambitions of the European Green Deal. Detailed decarbonization solutions must therefore be chosen⁵⁰ with precise indications of collaborative actions with key players in the value chain, for example. The taxonomy is a valuable tool for implementing objectives that support transition trajectories, i.e., the trajectory of an issuer towards a more sustainable business model.

There are also links between the Commission Recommendation on Transition Financing⁵¹ and Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 on GHG emission reduction targets. Indeed, a correct GHG emission declaration enables issuers to obtain a higher weighting in EU climate benchmarks. One important focus is highlighted by ESMA: Scope 3 GHG emissions. Information about these emissions plays a key role in sustainable investment decision-making. This highly technical aspect of Scope 3 emissions reporting is essential to understanding, *inter alia*, the raw data for Scope 3 GHG emissions.⁵²

This AMF report also addresses the sensitive issue of Alternative Performance Indicators (APIs).

The use of these indicators is strictly regulated by ESMA guidelines.⁵³ Using such indicators enables issuers to focus on activities that are not included in the texts in force (and therefore not eligible) but which nevertheless have a positive impact on the environment, for example. The AMF presents the issuers in the sample that have used an “alternative-scope” API⁵⁴ in a “narrative” section, or an “alternative-activity” API,⁵⁵ which enables an issuer to take account of an activity that is not eligible within the meaning of the taxonomy but that is included in the composition (for a market or a product composition) of eligible end products. In this first report on activity alignment within the meaning of the taxonomy, issuers must follow ESMA guidelines and pay particular attention to the name of APIs to avoid any risk of confusion with the regulatory indicators. This “labelling” of APIs clarifies whether or not a particular indicator has been calculated in accordance with the Taxonomy Regulation.

The general aim is to ensure the reliability and reader-friendliness of this complex report for its readers and users.

Formalism is therefore the key to the success of this objective, in line with Ihering’s still highly topical formula.⁵⁶

⁴⁴ Aforementioned report, pp. 65 and 66.

⁴⁵ Aforementioned report, p. 66.

⁴⁶ Aforementioned report, p. 67.

⁴⁷ EU Taxonomy Calculator.

⁴⁸ Aforementioned report, p. 69.

⁴⁹ Cite this report and the link to the online pdf document here.

⁵⁰ ESMA32-63-1320 “Public Statement European common enforcement priorities for 2022 annual financial reports”

⁵¹ See aforementioned recommendation.

⁵² All these aspects must follow the GH6 Protocol methodology, in particular.

⁵³ Insert the link to the AMF report, p. 71—footnote on p. 16.

⁵⁴ Aforementioned AMF report, p. 72, the case of Valéo.

⁵⁵ Aforementioned AMF report, p. 72, the case of NEXANS.

⁵⁶ “Form is the twin sister of freedom.”

The AMF therefore stresses the need to use APIs with moderation, to present them without any particular emphasis that could detract from the overall objectivity of taxonomy reporting, and to present them “separately from and after all of the regulatory information”.⁵⁷

Many new acronyms will become a familiar part of the landscape,⁵⁸ and new categories of activities are appearing, such as the field of new adapted activities. Indeed, the Climate Change Adaptation EO specifies three cases of adapted activities: “only adapted” activities (around 80), which are currently considered resilient and for which adaptation solutions have already been put in place; “only enabling” activities, i.e., those that do not need to be adapted but which are necessary to enable the adaptation of other economic activities to climate risks (e.g., the insurance sector); and finally, “adapted and enabling” activities. This last, more complex category encompasses activities that are adapted but can also be enabling if they satisfy additional sustainability criteria,⁵⁹ which means that these types of activities must necessarily be adapted in order to be aligned (e.g., the education sector). The European Commission’s invaluable information tool (EU Taxonomy Compass) provides a clearer understanding and visibility of these various adapted activities and Annex 1 of the Taxonomy Regulation, Article 8.⁶⁰

Unanswered questions: AI-based tools can make short work of analyzing this report, but will there be abuses or any risk of this information being mishandled? How much leeway will be allowed for interpretation, given that the issuers concerned will be responsible for the processes used to analyze the eligibility and alignment of activities? What about the role of the organisme tiers indépendant (OIT)?

Conclusion

By publishing this 2023 Taxonomy Report, the AMF is acting both as a technical guide to the complex web of ever-changing EU regulations and as an invaluable educator. As it stands,

this first activity alignment report shows that both EOs (Climate Change Mitigation and Adaptation) require in-depth knowledge not only of the NACE Code but also of the detailed provisions of the Taxonomy Regulation (EU) 2020/852, which to a certain extent form the “backbone” of this scheme, with the other regulations (nuclear, gas, and climate) adding technical provisions whose implementation is equally complex. This enormous task of analyzing and classifying their various activities has only just begun and will become a habit for companies in the future. The progress already made leaves no doubt that this will lead to greater awareness of climate issues in general and of the technical means of tackling these challenges. A period of “adaptation” to the European texts is necessary. A glimmer of optimism is provided by the fact that this considerable mass of information must be presented in a highly formalized manner,⁶¹ aided by EU tools.⁶²

One point should be developed in the future: “the general public.” We should indeed bear in mind that the recipients of this information are “investors and the public who should be able to assess the proportion of aligned economic activities.”⁶³ The increasing power of stakeholders is a factor that will need to be taken into account in the future. This information is certainly highly technical, but the existence of a novel tool is worthy of mention: the EU Taxonomy Stakeholder Request Mechanism, which has enabled stakeholders to make suggestions concerning the online taxonomy framework.

As the CSRD and the EU Taxonomy work in tandem to enhance corporate transparency and accountability in sustainability practices, this French AMF Guide is very useful. It provides the use of mandatory table templates and new terminology, new abbreviations, and now-familiar acronyms. In the future, the choice of climate objectives will be more and more crucial. One might wonder about the future of taxonomy reports in view of the next Omnibus text to be published by the Commission. Whether simplification is necessary in the way of implementing article 8, the EU Taxonomy Report remains a great and innovative tool to achieve the Net Zero Carbon by 2050.

⁵⁷ Aforementioned AMF report, p. 74.

⁵⁸ To name but a few examples: CCM (Climate Change Mitigation)- CCA (Climate Change Adaptation)- WTR (Water and Marine Resources)- CE (Circular Economy)- PPC (Pollution Prevention and Control)- BIO (Biodiversity and Ecosystem).

⁵⁹ Aforementioned report, p. 75.

⁶⁰ Annex 1, section 1.1.1 (§3); see the aforementioned AMF report, pp. 76 and 77 (highly instructive illustrative table).

⁶¹ Specific tables.

⁶² The Commission’s FAQs and the “EU Taxonomy Compass.”

⁶³ Recital 4 of the Delegated Regulation of 6 July 2021 referred to above.