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Feedback on the draft Delegated Acts on the EU taxonomy published in November 2020 in view of the European Commission's planned adoption of a Delegated Act on climate change mitigation and adaptation

1. Who is ASPIM?

The Association française des Sociétés de Placement Immobilier (ASPIM) – the French association for real estate investment companies – promotes, represents and defends the interests of its members, managers of alternative investment real estate fund (SCPI, OPCI and other AIFs).

Created in 1975, this not-for-profit Association is representing companies which manage portfolios of real estate assets for an asset value of €180 bn for the French market in 2019. Its 84 members, Portfolio Management Companies and other unlisted real estate AIFs, are authorised entities by the Autorité des Marchés Financiers (AMF).

Our feedback mainly focuses on our area of expertise, namely the "Construction and Real Estate" sector and on the "Acquisition and ownership of buildings" activity.

2. General feedback on the draft Delegated Acts on the EU taxonomy

We welcome the ambition of the European Commission on a taxonomy for sustainable activities. ASPIM strongly supports the sustainable finance agenda and shares the EU's political goal to channel investments towards the climate transition in order to fulfil its commitments under the Paris Agreement and the Green Deal. ASPIM is fully supportive of an ambitious and well-calibrated European taxonomy that would encourage the sector to more sustainable practices. ASPIM supports the taxonomy objective to harmonise criteria for determining whether an economic activity qualifies as environmentally sustainable in order to "help investors compare investment opportunities across borders"¹. We are resolutely committed to promote the integration of ESG standards into the management of real estate AIFs and to ensure they are involved in completing ambitious goals on social responsibility. To this end, ASPIM helped set up in 2016 a [Charter](#) for its member and led an industry-initiative for the setting-up of a public [Socially Responsible Investment \(SRI\) label](#) dedicated to the AIFs in real estate approved by the French Ministry of finance and economy.

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020, on the establishment of a framework to facilitate sustainable investment

However, we are convinced that for the taxonomy to meet its objectives, it will have to:

- Be sufficiently ambitious to meet European climate objectives while also considering current market standards;
- Be based on harmonised energy calculation methods and thresholds to ensure a consistent application of the taxonomy throughout Europe;
- Better consider the issues related to existing real estate stock improvements, which is the main lever to achieve European climate objectives, and better consider the role of real estate portfolio management companies in improving this existing real estate stock;
- Better consider the impacts related to the construction stage, which is also an important lever to reduce carbon emissions of new constructions over their lifecycle.

2.1 Reconcile ambition and consistency with market practices

ASPIM and its members believe that well-calibrated technical criteria are essential to meet climate objectives defined in the taxonomy. As proposed in Annex I of the Delegated Acts for the activity "Acquisition and ownership of buildings", the technical screening criteria for buildings built before 31 December 2020 requires buildings to have at least an Energy Performance Certificate (EPC) rating of A. We consider this standard much too ambitious to ensure a wide adoption of the taxonomy among stakeholders: only 1.8% of main residences have an EPC rating of A for the residential real estate sector in France as of 2018². For offices, the data published by the Observatoire de l'Immobilier Durable (OID) in 2018 shows that no asset has an EPC rating of A and that only 3% have an EPC rating of C³.

Based on these figures, we anticipate the taxonomy aligned portion of all existing real estate funds to be close to zero in the short and medium term. We therefore believe it would be counterproductive regarding the taxonomy objectives for several reasons:

- It would limit real estate investments' opportunities for asset managers to 2% of the existing stock, concentrating the risk rather than diluting it and would therefore go against their fiduciary obligations;
- It would risk discrediting the profession in the eyes of investors despite significant efforts already made to improve real estate assets' portfolios;
- It could create confusion among investors, especially individuals, who could invest in an SRI-labelled fund whose taxonomy alignment would be zero. It would therefore completely go against the taxonomy objectives to improve clarity and transparency;
- It could create unfair competition and be detrimental to real estate compared to other asset classes that would be able to display a greater green share;
- It would encourage stakeholders to divert from taxonomy to move towards other sectoral standards enabling them to promote their sustainable approaches, again going against the objective of standardising information across EU.

² Commissariat Général au Développement Durable (CGDD), French Ministry of Ecological Transition, Working document n°49: Housing stock by energy consumption class, September 2020

³ Observatoire de l'immobilier Durable (OID), 2018 Barometer of the energy and environmental performance of tertiary buildings, February 2019 (study based on a sample of 17,600 commercial buildings representing 37 million square meters)

Recommendation

For all reasons mentioned above, **ASPIM and its members believe it is essential to adjust the level of ambition required by the proposed thresholds. Therefore, considering this part and to be consistent with part 2.2, we recommend using the top 15% local benchmark** as proposed by the Technical Expert Group (TEG) on Sustainable Finance in its final report of March 9, 2020.

2.2 Harmonise energy thresholds beforehand to ensure a consistent application of the taxonomy at a European level

The objective of the taxonomy is to provide a common language to all economic stakeholders at European level. However, if the directive on the energy performance of buildings (EPBD) is common to all European countries, its transposition into local law is specific to each country. Thus, the NZEB thresholds (corresponding to RT 2012 and soon to RE 2020 in France), as well as the calculation methods and rating scales used for the energy performance certificate are specific to each country and vary greatly from one country to another (e.g. an EPC rating of A in a particular EU country is not equivalent to an EPC rating of A in another EU country).

Consequently, the most ambitious countries with respect to their local transposition of the EPBD directive will be penalised compared to others, which could encourage investors wishing to increase their green share to concentrate their investments in countries where regulations are less binding.

Recommendation

For the reasons mentioned above, if the taxonomy is based on thresholds and calculation methods of the NZEB and EPBD directive, **ASPIM and its members believe it is essential to harmonise these thresholds, methods and rating scales at a European level beforehand to ensure reliability and comparability of information communicated to investors.**

In case the European Commission identifies obstacles to harmonise thresholds and methods, ASPIM and its members believe that a transparent “top 15% local benchmark in absolute value” approach would be more relevant as it was proposed by the Technical Expert Group (TEG) on Sustainable Finance in its final report of March 9, 2020.

2.3 Better consider the role Real Estate Asset Managers have to play in improving the existing real estate stock

ASPIM and its members would like to draw attention to the proposed criteria that only target investments in the best performing new assets at the risk of diverting investments from improving the existing stock, which is in fact the main issue for the real estate sector to reach the Green Deal's objective of climate neutrality by 2050.

The current renewal rate of the building stock is about 1% per year, which means that the largest part of the building stock for 2050 already exists. Action must therefore be taken first and foremost on this existing stock to achieve the European climate objectives.

Moreover, the real estate fund manager, by the nature of its activity, manages both the fund and the underlying, i.e. the building and its stakeholders. The manager is therefore a key stakeholder to contribute to the improvement of the real estate existing stock and has a strong leverage based on:

- Awareness and training of occupants;
- Optimisation of building operations;

- Maintenance and renewal of technical equipment;
- Renovation and restructuring.

Recommendation

For the reasons mentioned above, **ASPIM and its members believe that the “Acquisition and ownership of new buildings” activity should include a specific technical criterion regarding the improvement of existing assets which could be similar to the one set up for the “Renovation of existing buildings” activity.**

In addition, and beyond the renovation of existing assets, **ASPIM and its members also consider that the achievement of the 30% reduction target in energy consumption described in the technical criteria for the “renovation of existing buildings” activity should not be made possible only by renovation works for the “acquisition and ownership of buildings” activity but should be expanded by integrating other levers for improvement such as optimisation of building operations, maintenance and renewal of technical equipment, engagement with tenants, etc.**

2.4 Better consider efforts related to the construction phase of new buildings

ASPIM and its members would like to highlight the fact that in recent years, efforts to improve energy efficiency have been concentrated on the use phase of the building so that over the life cycle, the share of energy consumption of the use phase for a new construction has generally become lower than the share of the construction phase’s energy consumption. In its current state, the taxonomy only focuses on the energy consumption of the use phase, which is already efficient for new constructions, and neglects the energy consumption of the construction phase where greater efforts can be made to reach climate mitigation objectives.

This paradigm shift therefore involves integrating the construction phase of the building to consider energy consumption related to the production and use of construction materials.

Recommendation

For the reason mentioned above, ASPIM and its members believe the taxonomy should better integrate efforts related to the construction phase to improve energy efficiency of new buildings over their life cycle.

3. Detailed feedback on the Delegated Acts criteria

3.1 Detailed feedback regarding technical screening criteria for climate change mitigation

From our understanding, the technical screening criteria for the activity "acquisition and ownership of buildings" have been split into two cases:

- Case A: For buildings built before 31 December 2020, the building has at least Energy Performance Certificate (EPC) class A;
- Case B: For buildings built after 31 December 2020, the building meets the criteria set out for the activity ‘construction of new buildings’ in Section 7.1 of this Annex that are relevant at the time of the acquisition.

As explained previously in 2.2, ASPIM and its members consider that it is a priority to promote efforts to improve the existing real estate stock. **We therefore propose to add a third case to the two existing cases. This case C would be specific to renovated buildings and would refer to the technical screening criteria for the "renovation of existing buildings" activity.**

Moreover, in view of the elements exposed in 2.1 and 2.3 regarding EPC class A and the associated standardisation issues, we believe that the criterion for buildings built before 31 December 2020 is too restrictive considering the current market standards. **We therefore recommend returning to the already ambitious criterion proposed by the TEG in its final report of March 9, 2020 where the calculated performance of the building must be within the top 15% of the local existing stock in terms of operational primary energy demand.**

In addition, as this top 15% benchmark is at the discretion of fund managers, ASPIM and its members believe that the EU taxonomy should include a transparency requirement on the benchmark's methodology. In particular, **we recommend that the geographical scope and classes of assets included in the benchmark should be disclosed.**

Finally, in view of elements exposed in 2.4, focusing only on energy savings during the use phase tends to miss the real issue of energy and emissions' performance. Other key levers to reach energy efficiency rely on materials used during the construction phase. We therefore consider that setting thresholds only for primary energy demand forget other initiatives to reduce energy consumption along the life cycle such as actions in favour of circular economy. **Thus, these initiatives related to materials used should therefore appear in the technical screening criteria and not only on the DNSH criteria.**

Main proposition

Case A – Existing buildings

The calculated performance of the building must be within the top 15% of the local existing stock in terms of operational primary energy demand, expressed as kWh/m² per year. Alignment with this criterion can be demonstrated by providing adequate evidence comparing the performance of the relevant asset to the performance of the local stock built before 31 December 2020. Such evidence should be based on a representative sample of the building stock in the respective area where the building is located, distinguishing at the very least between residential and non-residential buildings, and ideally distinguishing between asset classes (offices, commercial buildings, logistic, etc.). The area can be defined as a city, a region or a country. Certification schemes such as EPCs may be used as evidence of eligibility when adequate data is available to demonstrate that a specific level clearly falls within the top 15% of the respective local stock.

Case B – New buildings

The building meets the criteria set out for the activity "construction of new buildings" that are relevant at the time of the acquisition, for buildings built after 31 December 2020:

- The primary energy demand, defining the energy performance of the building resulting from the construction, meets the threshold set for the nearly zero-energy building (NZEB) requirements in national measures implementing Directive 2010/31/EU of the European Parliament and of the Council. The energy performance is certified using an as built Energy Performance Certificate (EPC);
- In addition to the NZEB requirement, the materials used during the construction phase must promote a circular economy approach with initiatives such as reuse, recycling or use of biomaterials (threshold to be defined);
- Specific criteria for buildings larger than 5000 m² are also met.

Case C – Buildings to be renovated (e.g. old buildings, etc.)

The building meets the criteria set out for the activity “renovation of existing buildings” which states that:

- The building renovation complies with the applicable requirements for major renovations implementing Directive 2010/31/EU;
- Alternatively, it leads to a reduction of primary energy demand of at least 30 %. The 30% reduction target in primary energy consumption can be achieved through different levers such as: renovation works, optimisation of building operations, maintenance and renewal of technical equipment, engagement with tenants, etc;
- In addition to this reduction target, the materials used during the renovation phase must promote a circular economy approach with initiatives such as reuse, recycling or use of biomaterials.

Alternative proposition

In case the European Commission identifies obstacles to take into consideration the preceding recommendations, we would like to emphasize the possibility to enlarge the scope of “renovation of existing buildings” activities.

From our understanding, renovation is intended for developers and contractors only. Along the same lines as indicated above in part 2.3, ASPIM and its members recommend that real estate portfolio managers can also value renovation work within the taxonomy.

- In case the main proposition presented above could not be implemented, **enlarge the scope of “Building renovation” activities in order to allow portfolio managers to value renovation work, optimisation of building operations, maintenance and renewal of technical equipment, engagement with tenants, etc.**

3.2 Detailed feedback regarding the DNSH criteria for climate change mitigation

3.2.1 DNSH to climate change adaptation

From our understanding, the “acquisition and ownership of buildings” activity is subject to the “do no significant harm” (DNSH) criteria for climate change adaptation which require analysis of the physical risks related to the climate and implementation of an adaptation action plan to reduce the most material risks. Those adaptation solutions do not adversely affect the adaptation efforts or the level of resilience to physical climate risks of other people, of nature, of assets and of other economic activities and are consistent with local, sectoral, regional or national adaptation efforts. The assessment must be proportionate to the scale of the activity and its expected lifespan.

This DNSH criteria does not seem different from the technical screening criteria for the climate change adaptation objective. ASPIM and its members consider that having the same criteria is redundant and does not correspond to DNSH criteria definition as mentioned in the taxonomy regulation which must “avoid that investments qualify as environmentally sustainable in cases

where the economic activities benefitting from those investments cause harm to the environment to an extent that outweighs their contribution to an environmental objective"⁴.

From our understanding of the definition, the DNSH criterion for climate change adaptation is therefore intended to only assess that the resilience of buildings is not reduced while the technical screening criteria related to energy consumption is met.

Proposition

In view of the elements mentioned above, we believe having a DNSH criteria for adaptation similar to the technical screening criteria for climate change adaptation objective lacks consistency. **We therefore recommend considering the following criteria:**

- **The measures adopted to improve the resilience of the building must not increase the rates of operational carbon emissions of the building.** Exceptions are allowed if it can be demonstrated that increase in emissions is necessary to carry out the measures, and there is a positive trade-off.

3.2.2 DNSH to pollution prevention and control

From our understanding, one of the DNSH criteria for pollution prevention and control (applying to "Construction of new buildings" and "Renovation of existing buildings" activities) states that building components and materials used in the construction that may come into contact with occupiers emit:

- less than 0,06 mg of formaldehyde per m³ of material or component;
- less than 0,001 mg of categories 1A and 1B carcinogenic volatile organic compounds (VOC) per m³ of material or component [...].

ASPIM and its members consider that these standards are disparate regarding their requirement level. On one hand, the threshold set for formaldehyde corresponds to category A for construction materials' VOC labelling and is also twice less challenging compared to public buildings regulation regarding indoor air quality set in France. On the other hand, the threshold set for VOC is too restrictive as it is a thousand times more demanding than the category A+ for construction materials. We therefore believe that these thresholds need to be changed in order to improve consistency with market standards.

Proposition

To harmonise the thresholds for pollution prevention and control, **we recommend for this specific DNSH criteria to refer to labels (related to health, etc.) for construction products with a minimum rating of A.**

3.3 Detailed feedback regarding the DNSH criteria for climate change adaptation

3.3.1 DNSH to climate change mitigation

From our understanding, the "acquisition and ownership of buildings" activity is subject to the DNSH criteria for climate change mitigation based on the following principles:

⁴ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020, on the establishment of a framework to facilitate sustainable investment

- The building is not dedicated to extraction, storage, transport or manufacture of fossil fuels;
- For buildings built before 31 December 2020, the building has at least an Energy Performance Certificate (EPC) rating of B;
- For buildings built after 31 December 2020, the primary energy demand defining the energy performance of the building resulting from the construction does not exceed the threshold set for the nearly zero-energy building (NZEB) requirements in national regulation implementing Directive 2010/31/EU. The energy performance is certified using an as built Energy Performance Certificate (EPC).

The DNSH criteria for the mitigation objective require a minimum class B energy performance certificate for buildings constructed before 12/31/2020. For the residential sector in France, 4.8% of main residences falls under EPC class B as of January 1st, 2018⁵. For offices, the data published by the Observatoire de l'Immobilier Durable (OID) in 2018 show that only 1% of assets have an EPC rating of B⁶.

ASPIM and its members consider this DNSH criteria too demanding : it goes beyond the DNSH criteria definition as mentioned in the taxonomy regulations which must "avoid that investments qualify as environmentally sustainable in cases where the economic activities benefitting from those investments cause harm to the environment to an extent that outweighs their contribution to an environmental objective"⁷.

From our understanding, the DNSH criteria are therefore intended to assess the absence of significant impacts on other environmental objectives set by the taxonomy and do not aim at an additional performance such as EPC class B, which could already be considered as a technical screening criteria for climate change mitigation objective given the current market practices

Proposition

ASPIM and its members support the criterion stating that “the building is not dedicated to extraction, storage, transport or manufacture of fossil fuels”.

However, in view of the elements mentioned above, we believe the criterion related to class B is too restrictive considering the current market standards. **We therefore recommend returning to the criteria proposed by the TEG in its final report of March 9, 2020** where:

- **The measures adopted to improve the resilience of the building must not increase the rates of operational carbon emissions of the building.** Exceptions are allowed if it can be demonstrated that increase in emissions is necessary to carry out the measures, and there is a positive trade-off.

3.3.2 DNSH to pollution prevention and control

As the DNSH criteria for pollution prevention and control are the same for climate change mitigation objective and climate change adaptation objective, ASPIM and its members recommend applying the proposition from part 3.2.2 (page 7).

⁵ Commissariat Général au Développement Durable (CGDD), French Ministry of Ecological Transition, Working document n°49: Housing stock by energy consumption class, September 2020

⁶ Observatoire de l'immobilier Durable (OID), 2018 Barometer of the energy and environmental performance of tertiary buildings, February 2019 (study based on a sample of 17,600 commercial buildings representing 37 million square meters)

⁷ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020, on the establishment of a framework to facilitate sustainable investment