

# EU taxonomy: Delegated acts on climate, and nuclear and gas

## SUMMARY

The EU's commitment to the objectives of the Paris Agreement, and the ambitious European Green Deal, require significant investment. It is estimated that hundreds of billions of euros are needed in the current decade to reach the carbon reduction targets.

The EU taxonomy is a classification system that aims to channel public and private investment into environmentally sustainable economic activities in order to achieve environmental objectives, such as those in the fight against climate change.

It establishes a dynamic list of economic activities considered to be environmentally sustainable, provided they contribute substantially to at least one environmental objective and do not significantly harm any other. The European Commission claims that such a common understanding of what constitutes environmentally sustainable investment can facilitate the funding of the transition to a more sustainable economy by bringing clarity to investors, avoiding market fragmentation and reducing the risk of greenwashing.

While the basic legal act for the taxonomy is already in force, the process of establishing detailed criteria on how to classify activities as green is ongoing. A first delegated act on reporting obligations of companies was adopted on 6 July 2021.

The focus of this briefing is the two delegated acts determining which activities should be considered as sustainable and contributing to the fight against climate change, and be reported as such. The first climate delegated act came into force on 1 January 2022, establishing criteria for activities helping to mitigate or adapt to climate change. Activities in the nuclear and gas sectors are the subject of a complementary delegated act proposed by the European Commission on 2 February 2022.



### IN THIS BRIEFING

- Taxonomy Regulation
- Climate delegated act
- Complementary delegated act on nuclear and gas

## Taxonomy Regulation

The [Taxonomy Regulation](#) (Regulation) entered into force on 12 July 2020 and is the basis of the EU taxonomy. The [Regulation](#) provides a **classification system for environmentally sustainable economic activities ('green list')**, which is the framework for the subsequent development, and update, of the EU taxonomy through delegated acts.

The Regulation covers **six environmental objectives** (Article 9):

- 1) climate change mitigation;<sup>1</sup>
- 2) climate change adaptation;<sup>2</sup>
- 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.

An economic activity qualifies as environmentally sustainable if it respects **four overarching conditions** (Article 3):

- a) substantially contributes (SC) to one or more of the six environmental objectives;
- b) does no significant harm (DNSH) to any of the environmental objectives;
- c) is carried out in compliance with the minimum social safeguards;<sup>3</sup>
- d) complies with technical screening criteria (TSC) established by the Commission.

For each of the six environmental objectives, the Regulation defines broadly how an economic activity may provide a substantial contribution (Articles 10-15) to the objective, or may significantly harm it (Article 17). The Regulation tasks the Commission with establishing, through delegated acts, the TSC to determine the conditions under which a specific economic activity qualifies as contributing substantially to the objective, and whether an economic activity significantly harms an objective, in application of the DNSH principle (see box).

### Do no significant harm (DNSH)

The DNSH principle enshrined in the Taxonomy Regulation (Article 17) is extremely important in fixing the rule that an economic activity may not qualify as environmentally sustainable where it significantly harms at least one of the six environmental objectives, regardless of whether it substantially contributes to one or more others. DNSH takes into account both the environmental impact of the activity itself and the environmental impact of the products and services provided by that activity throughout their life cycle, in particular by considering the production, use and end-of-life of those products and services. While the Regulation establishes how an economic activity may significantly harm an objective, Commission delegated acts define the technical screening criteria used to determine whether the activity significantly harms an objective.

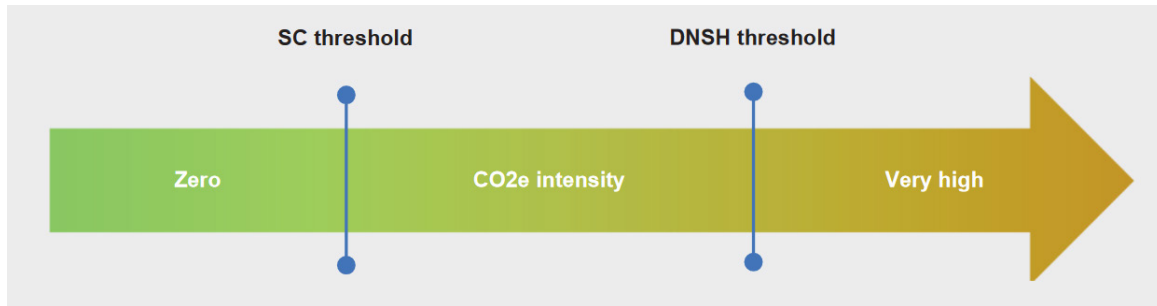
#### *Example*

*The Regulation establishes that an activity significantly harms the climate change mitigation objective, where that activity leads to significant greenhouse gas emissions.*

*The delegated act indicates the conditions under which that specific economic activity does not lead to significant greenhouse gas emissions.*

The SC criteria may represent a minimum threshold to be reached in order to contribute substantially to an environmental objective, while the DNSH criteria may represent a maximum threshold to be respected, in order not to significantly harm an environmental objective (Figure 1 is a visual example of quantitative SC and DNSH criteria for climate change mitigation).

Figure 1 – Example of quantitative SC and DNSH criteria



Source: [TEG final report on the EU taxonomy](#), Technical Expert Group on Sustainable Finance, March 2020.

The Regulation broadly established what qualifies as a sustainable contribution. In Article 10(1), it says that an economic activity pursuing climate change mitigation should contribute substantially to the stabilisation of greenhouse gas emissions by avoiding or reducing them or by enhancing greenhouse gas removals. Article 11(1) specifies that an economic activity aiming to contribute to climate change adaptation should substantially reduce or prevent the adverse impact of the present on future climate, or the risks of such adverse impact on the activity itself, or on people, nature or assets.

## Enabling and transitional activities

To contribute to the overall objective of promoting sustainability, the Regulation introduces the concept of 'enabling activities' (Article 16) and 'transitional activities' (Article 6.1a). Enabling activities are those activities that contribute substantially to one or more of the environmental objectives by directly enabling other activities to make a substantial contribution to one or more of those objectives, provided that such economic activity: (a) does not lead to a lock-in in assets that undermine long-term environmental goals, considering the economic lifetime of those assets; (b) has a substantial positive environmental impact on the basis of life-cycle considerations.

Transitional activities relate only to the climate change mitigation objective, and are those activities for which there is no technologically and economically feasible low-carbon alternative. They shall be considered to contribute substantially to climate change mitigation objective where the activity: (a) has greenhouse gas emission levels that correspond to the best performance in the sector or industry; (b) does not hamper the development and deployment of low-carbon alternatives; and (c) does not lead to a lock-in in carbon-intensive assets considering the economic lifetime of those assets.

## Climate delegated act

The Taxonomy Regulation indicated as a priority the delivery of a delegated act on the technical screening criteria for the first two environmental objectives, climate change mitigation (Article 10(3)) and climate change adaptation (Article 11(3)). This delegated act is known as the [EU taxonomy climate delegated act](#) ('climate delegated act'), and includes:

- technical screening criteria under which certain economic activities qualify as contributing substantially to climate change mitigation and climate change adaptation (SC);
- technical screening criteria for determining whether those activities cause significant harm to any of the other relevant environmental objectives (DNSH).

The climate delegated act builds on the recommendations of the Technical Expert Group<sup>4</sup> on Sustainable Finance (TEG)'s [final report on the EU taxonomy](#)<sup>5</sup>, published in March 2020. The report took into consideration stakeholders' opinions collected through an open call for feedback, and

received feedback from the Member States Expert Group.<sup>6</sup> In March 2020, the Commission also collected feedback, before and after it published the inception impact assessment.

While the delegated act consists of only three articles, the technical screening criteria are set out in the two accompanying annexes. Annex 1 relates to technical screening criteria on climate change mitigation, and Annex 2 to TSC for climate change adaptation. The current criteria are supposed to cover the economic activities of roughly 40 % of EU-domiciled listed companies<sup>7</sup> in sectors which are responsible for almost 80 % of direct greenhouse gas emissions in Europe.<sup>8</sup>

Annex 1 defines TSC for almost 80 economic activities divided into nine sectors: 1) Forestry; 2) Environmental protection and restoration activities; 3) Manufacturing; 4) Energy; 5) Water supply, sewerage, waste management and remediation; 6) Transport; 7) Construction and real estate activities; 8) Information and communication; and 9) Professional, scientific and technical activities. Annex 2 defines TSC for almost 100 economic activities divided into 13 sectors: the nine already listed, plus 10) Financial and insurance activities; 11) Education; 12) Human health and social work activities; and 13) Arts, entertainment and recreation.

## Procedure

On 20 November 2020, the Commission published the [draft delegated act](#), launched a four-week public consultation and later published a [summary of feedback](#). Taking into consideration the reactions to the draft, the text was recalibrated and modified, with some key changes: a) natural gas activities (as transitional activities) were removed due to controversy; b) bioenergy was considered a 'green', rather than 'transitional', activity (but the TSC are subject to review); c) agriculture activities were removed due to the then ongoing CAP negotiations.

The final [delegated act](#) was approved in principle by the European Commission on 21 April 2021. Its formal adoption by the Commission took place on 4 June 2021, when all language versions were made available. The delegated act was accompanied by an [impact assessment](#), which assessed, among other things, the proposed deviations in the delegated act from the recommendations of the TEG report, and summarised the changes made to the criteria after the stakeholders' feedback.

The climate delegated act was then submitted to the Parliament and to the Council for scrutiny. Since this was a delegated act procedure, the co-legislators had no power to amend it, other than a period of 4 months (from 7 June to 7 October) to object to it. This period was extended at the Council's request by 2 months.

In the Parliament, the delegated act was examined jointly by the Committee on Economic and Monetary Affairs (ECON) and the Committee on the Environment, Public Health and Food Safety (ENVI), which had previously worked jointly on the Taxonomy Regulation. On 27 September 2021, in a joint meeting and through a joint vote, the ECON and ENVI committees [rejected](#) three draft motions for a resolution, challenging the Commission delegated act. On 5 October 2021, in its plenary sitting, the Parliament rejected, by a large majority, two motions for a resolution proposing to object to the delegated act. No opposition came from the Council.

The delegated act was thus published in the Official Journal on 9 December 2021, and entered into force on 1 January 2022.

It came into force on the same day as the [delegated act on disclosure obligations](#), adopted by the Commission on 6 July 2021. As required in Article 8 of the Taxonomy Regulation, this delegated act specifies the content, methodology and presentation of information to be disclosed by financial and non-financial undertakings concerning the proportion of environmentally sustainable economic activities in their business, investments or lending activities. The environmentally sustainable economic activities are defined by the climate delegated act, and by any future delegated act intended to cover other environmental objectives or to update any of them.

## Complementary delegated act on nuclear and gas

Since the climate delegated act did not address nuclear and gas, the European Commission announced that these would be addressed in a separate delegated act.

On 21 April 2021, in its communication on [Directing finance towards the European Green Deal](#), the Commission announced the preparation of this complementary delegated act to set out the technical screening criteria for additional economic activities in the energy sectors that were not included in the first climate delegated act, particularly in the natural gas and nuclear energy sectors.

The Regulation establishes that the technical screening criteria should include criteria for activities related to the clean energy transition, consistent with a pathway to limit the temperature increase to 1.5°C above pre-industrial levels. Furthermore, the TSC should ensure that power generation activities that use fossil fuels (e.g. coal) do not qualify as environmentally sustainable economic activities.

With the exception of solid fossil fuels, the Regulation does not exclude any specific sector or technology from the category of 'green' activities. While the production of gas and nuclear energy is excluded from 'green' activities, it is not explicitly excluded from 'enabling' or 'transition' activities. Therefore, the Regulation would potentially allow them to be defined as such, if they pass the DNSH test (including a test on waste for nuclear energy).

The Regulation text is the result of the agreement reached by the Parliament and the Council on 16 December 2019, after long negotiations. It reflects a delicate compromise by the two co-legislators to avoid the divisive subject of nuclear and gas energy production blocking the whole taxonomy.

The Commission addressed the DNSH aspects relating to nuclear energy through a two-step approach. It asked the JRC to prepare a [technical assessment of nuclear energy with respect to the DNSH criteria](#); this was later reviewed by Member States' experts on radiation protection and waste management, appointed by the Scientific and Technical Committee under Article 31 of the Euratom Treaty, and by experts from the Scientific Committee on Health, Environmental and Emerging Risks (SCHEER). The JRC report concluded that nuclear energy can make a substantial contribution to the climate change mitigation objective, while at the same time not harming the other four environmental objectives, and that deep geological repositories can be considered an appropriate and safe means of isolating nuclear waste. The group of experts provided a positive assessment of the JRC report.

On 1 January 2022, the Commission published a [press release](#) stating that, on 31 December 2021, it had started consultations with the Member States Expert Group on Sustainable Finance and the Platform on Sustainable Finance on a draft text of a complementary taxonomy delegated act covering certain gas and nuclear activities. The experts would have had until 12 January to provide their contributions, but the deadline was later postponed to 21 January, including due to the reactions among stakeholders and to public opinion.

On 21 January 2022, the Platform on Sustainable Finance published its [response to the complementary delegated act](#). In its document, the Platform noted that its focus is on the environmental performance of economic activities, and that the taxonomy was not intended to include every activity in the economy, particularly energy activities that must transition because emissions are currently too high or significant harm is present. The Platform also recalled that the taxonomy cannot solve energy sector transition policy beyond environmental performance. Rather, decisions on energy system transition require additional tools and financing sources to be determined by other policy mechanisms. The Platform claimed it did its best in providing feedback in the short time available for review, and that there was not time to consult outside the Platform group. Moreover, it said it is willing to support the Commission further in exploring and developing an approach that could support investments for transitioning energy supply without weakening the taxonomy as the classification of green sustainable activities for investment decisions.



On 2 February 2022, the Commission approved a [complementary climate delegated act](#) including, under specific conditions, certain nuclear and gas energy activities in the list of 'transitional' economic activities under the EU taxonomy. According to Article 10(2) of the Taxonomy Regulation, transitional activities are those which cannot yet be replaced by technologically and economically feasible low-carbon alternatives, but do contribute to climate change mitigation and may play a role in the transition to a climate-neutral economy. Article 10(2) also sets out eligibility conditions for the classification of 'transition' activities. This delegated act applies them to nuclear and gas activities: both must contribute to the transition to climate neutrality. For nuclear, this includes fulfilling nuclear and environmental safety requirements. For gas, this requires activities to contribute to the transition from coal to renewables.

The delegated act lists other specific requirements for the activities to qualify as 'transition' activities. In the case of fossil gas-related activities, for example, the facility should switch fully to renewable or low-carbon gases by 31 December 2035. The use of gas should act as a replacement for plants running on more polluting solid and liquid fossil fuels (e.g. coal). Nuclear energy activities are included under conditions specific to nuclear and environmental safety (also related to waste disposal).

The complementary delegated act therefore considers as eligible the following activities:

Nuclear-related activities:

- 1 advanced technologies with a closed fuel cycle ('Generation IV') to incentivise research and innovation into future technologies in terms of safety standards and minimising waste;
- 2 new nuclear power plant projects for energy generation, which will be using best available existing technologies ('Generation III +') will be recognised until 2045 (date of approval of construction permit);
- 3 modifications and upgrades of existing nuclear installations for the purpose of lifetime extension will be recognised until 2040 (date of approval by competent authority).

Gas-related activities:

- 1 electricity generation from fossil gaseous fuels;
- 2 high-efficiency co-generation of heat/cooling and power from fossil gaseous fuels;
- 3 production of heat/cooling from fossil gaseous fuels in an efficient district heating and cooling system.

Among other conditions, gas-related activity needs to meet either of the following emission thresholds:

- life-cycle emissions are below 100 g CO<sub>2</sub>e/kWh; or
- until 2030 (date of approval of construction permit), and where renewables are not available at sufficient scale, direct emissions are below 270 g CO<sub>2</sub>e/kWh or, for the activity of electricity generation, their annual direct GHG emissions must not exceed an average of 550 kg CO<sub>2</sub>e/kW of the facility's capacity over 20 years. In this case, the activity must meet a set of cumulative conditions: e.g. it replaces a facility using solid or liquid fossil fuels; the replacement leads to a reduction in GHG emissions of at least 55 % over the lifetime of the newly installed production capacity; the newly installed production capacity does not exceed the capacity of the replaced facility by more than 15 %; the refurbishment of the facility does not increase the production capacity for co-generation of heat/cooling and power from fossil gaseous fuels; the activity takes place on the territory of a Member State which has committed to phasing out the use of energy generation from coal; the activity ensures a full switch to renewable or low-carbon gases by 2035; and a regular independent verification of compliance with the criteria is carried out.

## Next steps

Once translated into all official EU languages, the complementary delegated act will be formally transmitted to the co-legislators. The European Parliament and the Council have 4 months to scrutinise the text, and, should they find it necessary, to object to it; either institution may request an additional 2 months of scrutiny time. The Parliament may reject it by a majority of its component members (i.e. at least 353 MEPs) in Plenary. The Council may object to it by reinforced qualified majority (which means at least 72 % of Member States, i.e. at least 20 Member States, representing at least 65 % of the EU population). Once the scrutiny period is over, and assuming neither of the co-legislators objects, the complementary climate delegated act will enter into force and apply as of 1 January 2023.

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## ENDNOTES

- <sup>1</sup> Climate change mitigation refers to efforts to reduce or prevent emission of greenhouse gases. Mitigation can mean using new technologies and renewable energies, making older equipment more energy efficient, or changing management practices or consumer behaviour. It can be as complex as a plan for a new city, or as simple as improvements to a cooking stove design. Efforts underway around the world range from high-tech subway systems to bicycling paths and walkways (Source: [UNEP](#)).
- <sup>2</sup> Climate change adaptation is the process of adjustment to actual or expected climate and its effects. In human systems, adaptation seeks to moderate or avoid harm or exploit beneficial opportunities. In some natural systems, human intervention may facilitate adjustment to expected climate and its effects (Source: [IPCC](#)).
- <sup>3</sup> Alignment with the OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights, ILO core labour conventions, International Bill of Human Rights.
- <sup>4</sup> The Commission set up a technical expert group on sustainable finance (TEG) in June 2018 to assist it in developing the EU taxonomy, the EU green bond standard, methodologies for EU climate benchmarks and disclosures for benchmarks, and guidance on improving corporate disclosure of climate-related information. The TEG was composed of 35 members from civil society, academia, business and the finance sector, as well as additional members and observers from EU and international public bodies. The TEG worked both through formal plenaries and subgroup meetings for each workstream. Its mandate ended in September 2020 and its work has been the basis for the EU taxonomy design, currently continued by the Platform on Sustainable Finance established by the Taxonomy Regulation.
- <sup>5</sup> On 9 March 2020, the TEG published its [final report on the EU taxonomy](#), containing recommendations for the design of the EU taxonomy, for the technical screening criteria for economic activities that make a substantial contribution to climate change mitigation or adaptation, and providing implementation guidance for companies and financial institutions. The report was accompanied by a [technical annex](#) containing TSC for 70 climate change mitigation and 68 climate change adaptation activities, including criteria for doing no significant harm to other environmental objectives. The report builds on previous TEG deliveries: the [TEG report on EU taxonomy](#) (June 2019), and the [taxonomy pack for feedback](#) (December 2019). Both reports were subject to an open call for feedback to gather views from stakeholders.
- <sup>6</sup> Under Article 24 of the Taxonomy Regulation, a [Member State Expert Group on Sustainable Finance](#) is advising the Commission on the appropriateness of the technical screening criteria and the approach taken by the Platform on Sustainable Finance regarding the development of those criteria. Its meetings with the Commission aim to facilitate an exchange of views, particularly regarding the main outputs of the Platform, such as new TSC or draft reports.
- <sup>7</sup> Share of EU-domiciled companies with more than 500 employees active in economic sectors covered by the EU taxonomy climate delegated act (source: Bloomberg).
- <sup>8</sup> Source: Eurostat.

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