

# COMPETITION & ANTITRUST LAW

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EXPERT GUIDE 2022

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# EUROPEAN COMMISSION

## PROPOSES NEW EU TAXONOMY RULES GRANTING 'GREEN' LABEL FOR NUCLEAR AND NATURAL GAS PROJECTS

By Mélanie Bruneau, Giovanni Campi & Joanna Kulewska

On 2 February 2022, the European Commission (EC) presented a Taxonomy Complementary Climate Delegated Act on climate change mitigation and adaptation (Taxonomy Complementary Climate Delegated Act), which introduces additional economic activities from the energy sector into the European Union (EU) taxonomy, in particular in the natural gas and nuclear energy sectors.

The Taxonomy Complementary Climate Delegated Act sets out the technical screening criteria for climate change mitigation and adaptation for these additional economic activities, which were not initially included in the first Taxonomy Climate Delegated Act, applicable from 1 January 2022.

### Background: the EU taxonomy and the Taxonomy Regulation

The EU taxonomy is a green classification system establishing a list of environmentally sustainable economic activities, largely based on the Nomenclature of Economic Activities (NACE), the statistical classification of economic activities in the EU.

Its aim is to steer private investors and policy makers towards activities needed to achieve climate neutrality and to encourage a transition towards sustainability as part of the EU's climate and energy targets for 2030 and the objectives set by the European Green Deal.

The Taxonomy Regulation, which entered into force on 12 July 2020, establishes the basis for the EU taxonomy, and it recognises as green, or 'environmentally sustainable', economic activities that make a substantial contribution to at least one of the EU's environmental objectives, while at the same time not significantly harming any of these objectives and meeting minimum social safeguards.

The six EU environmental objectives identified in the Taxonomy Regulation are: (i) climate change mitigation, (ii) climate change adaptation, (iii) sustainable use and protection of water and marine resources, (iv) transition to a circular economy, (v) pollution prevention and control, and (vi) protection and restoration of biodiversity and ecosystems.

The Taxonomy Regulation also sets out four conditions

that an economic activity has to meet in order to qualify as environmentally sustainable, including:

- making a substantial contribution to at least one environmental objective;
- doing no significant harm to any other environmental objective;
- complying with minimum social safeguards; and
- complying with the technical screening criteria.

To assess the above conditions, the EC's delegated acts contain several technical screening criteria which specify, for each economic activity considered, the environmental performance requirements that ensure the activity makes a substantial contribution to the environmental objective in question and does no significant harm to the other environmental objectives.

### The EU Taxonomy Complementary Climate Delegated Act on climate change mitigation and adaptation

In the Taxonomy Complementary Climate Delegated Act presented on 2 February 2022, the EC includes certain nuclear and gas activities under the so-called "transitional" activities covered by Article 10(2) of the Taxonomy Regulation, which are activities that cannot yet be replaced by technologically and economically feasible low-carbon alternatives but have the potential to play a major role in the transition to a climate-neutral economy, in line with EU objectives.

### Nuclear activities

The Taxonomy Complementary Climate Delegated Act covers the following nuclear activities:

- Research, development and deployment of advanced technologies ("Generation IV") that minimise waste and improve safety standards;
- New nuclear power plant projects for energy generation of electricity or heat using best-available existing technologies ("Generation III+"), which will be recognised until 2045 (date of approval of construction permit); and
- Modifications and upgrades of existing nuclear installations for the purposes of lifetime extension, which will be recognised until 2040 (date of approval by competent authority).

Indeed, the EC has recognised that *"Nuclear energy is part of the future energy sources in a number of Member States, as part of their decarbonisation efforts"*, but also that the nuclear installations being currently exploited will need safety upgrades to extend their operational life, as well as newly built nuclear installations to replace the ones that are obsolete. Therefore, to ensure that the existing and new nuclear power installations comply with the highest achievable safety standards and with all safety requirements under the Euratom Treaty, significant public and private investments in nuclear energy will be needed throughout the period until 2050 and beyond.

The Technical Expert Group on Sustainable Finance (TEG), whose mission is to help the EC in the development of the EU Taxonomy technical screening criteria in line with the objectives of the European Green Deal, acknowledged that nuclear represents a low-carbon energy source. However, the TEG has not included nuclear energy activities in its recommendations, since it was not able to reach a firm conclusion as to whether nuclear energy does no significant harm to other environmental objectives, notably waste management, impact on biodiversity and water, as well as potential pollution aspects.

Therefore, the EC has set up a specific process on nuclear energy, involving a technical assessment by the EC's internal science and knowledge service, the Joint Research Centre, whose report was reviewed by member states' experts on radiation protection and waste management, as well as by experts from the Scientific Committee on Health, Environmental and Emerging Risks.

As a result, additional and stricter requirements have been imposed on waste disposal, funding and decommissioning planning. Overall, the report and reviews ultimately concluded that compliance with the safety standards and waste management requirements under the regulatory framework in member states ensures a high level of protection for people and for the environment.

### Gas activities

The Taxonomy Complementary Climate Delegated Act covers the following gas activities, including:

- Electricity generation from fossil gaseous fuels;
- High-efficiency co-generation of heat/cool and power from fossil gaseous fuels; and
- Production of heat/cool from fossil gaseous fuels in an efficient district heating and cooling system.

In order to qualify under the Taxonomy Complementary Climate Delegated Act, gas-related activities will have to comply with the following technical screening criteria:

- either below the technology-neutral 100g CO<sub>2</sub>e/kWh life-cycle emission threshold (i.e. using Carbon Capture and Storage technologies) or,
- until 2030 (date of approval of construction permit), and where renewables are not available at sufficient scale, direct emissions are below 270g CO<sub>2</sub>e/kWh or, for the activity of electricity generation, below the annual direct greenhouse gas (GHG) emissions of an average of 550kg 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: (i) replace a facility using solid or liquid fossil fuels, (ii) ensure a full switch to renewable or low-carbon gases by 2035, and (iii) a regular independent verification of compliance with the criteria must be carried out.

These technical screening criteria were subject to a four-week feedback period, to which more than 45.000 stakeholders responded, and have been discussed with the member states' experts and observers from the European Parliament at several meetings of the member states Expert Group on Sustainable Finance in 2020 and 2021.

### Next steps

Once translated into all official EU languages, the Taxonomy Complementary Climate Delegated Act will be formally transmitted to the European Parliament and the Council for their scrutiny.

The co-legislators will have four months to scrutinise the proposed Act (with a possibility to request additional two months), and if necessary, to object to it. The Council will have the right to object to it by

reinforced qualified majority, which means that at least 20 Member States representing 65% of the EU population are required. The European Parliament can object by a majority of its members voting against in plenary (i.e. at least 353 MEPs).

Once the scrutiny period is over and if neither of the co-legislators objects, the Taxonomy Complementary Climate Delegated Act will enter into force and apply as of 1 January 2023.



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