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COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities

(Text with EEA relevance)

This draft has been approved in principle by the European Commission on 2 February 2022 and its formal adoption in all the official languages of the European Union will take place later on, as soon as the language versions are available.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1 General background and objective

Regulation (EU) 2020/852 of the European Parliament and of the Council (the 'Taxonomy Regulation')[1] establishes the framework for the creation of the EU Taxonomy of environmentally sustainable economic activities. The Taxonomy Regulation provides that these economic activities should comply with the technical screening criteria set out in the delegated acts adopted by the Commission.

The delegated act specifying the technical screening criteria under which certain economic activities qualify as contributing substantially to climate change mitigation or climate change adaptation and not causing significant harm to any of the other relevant environmental objectives ('the Taxonomy Climate Delegated Act') was adopted on 4 June 2021[2]. The Commission has also adopted on 6 July 2021 a delegated act specifying the content, methodology, and presentation of the information to be disclosed by both non-financial and financial undertakings required to report about the alignment of their activities with the EU Taxonomy ('the Taxonomy Disclosures Delegated Act')[3].

The Taxonomy Climate Delegated Act sets out technical screening criteria for economic activities having the potential to contribute to climate change mitigation and climate change adaptation in most sectors. However, not all relevant sectors and activities have been covered in that Delegated Act. Notably, it was not possible to take a decision as to the inclusion of nuclear energy in the Taxonomy Climate Delegated Act due to the need to deepen the assessment of the 'do no significant harm' ('the DNSH') aspects of nuclear energy, which was ongoing at the time.[4] As regards natural gas, the Commission announced that further reflection was needed on how to address the role of gas in the decarbonisation of the Union's economy.

In establishing the technical screening criteria for climate change mitigation, the Commission should take into account and provide incentives for the ongoing and necessary transition towards a climate-neutral economy in accordance with Article 10(2) of the Taxonomy Regulation. As announced in the Commission Communications of 21 April 2021 and of 6 of

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1 Regulation (EU) 2020/852 of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

2 Commission Delegated Regulation (EU) 2021/2139 of 4.6.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives, Brussels, 4.6.2021, C(2021) 2800 final.

3 Commission Delegated Regulation (EU) 2021/2178 of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation, Brussels, 6.7.2021 C(2021) 4987 final.

4 The complementary steps of the assessment, namely the report by the Joint Research Centre, the review by the experts under Article 31 of the Euratom Treaty and the review by the Scientific Committee on Health, Environmental and Emerging Risks (SCHEER), are available on the Commission's website.

July 2021[5], the objective of this Delegated Act is to complement the Taxonomy Climate Delegated Act. This Delegated Act sets out the technical screening criteria for climate change mitigation and climate change adaptation for additional economic activities in the energy sectors which were not included in the Taxonomy Climate Delegated Act, in particular in the natural gas and nuclear energy sectors. As regards the objective of climate change adaptation, this Delegated Act is consistent with the approach of the Taxonomy Climate Delegated Act in reflecting the fact that all economic sectors will need to adapt to the adverse impacts of climate change. It therefore sets appropriate and consistent technical screening criteria for climate change adaptation for economic activities in the fossil gas and nuclear energy sectors. However, for specific transitional activities regarding fossil gas activities for which this Delegated Act provides for a time-limited recognition of contribution to climate change mitigation, it is not necessary to provide for specific technical screening criteria for climate change adaptation in view of that time-limited recognition. For the sake of clarity, technical screening criteria on do no significant harm concerning climate change adaptation do not prevent an economic activity from qualifying as providing a substantial contribution to climate change mitigation.

Moreover, to enhance market transparency and the information of investors, this Delegated Act provides for specific disclosure requirements for the natural gas and nuclear energy sectors by amending the Taxonomy Disclosures Delegated Act.

As outlined in the Taxonomy Regulation, the Taxonomy covers more than climate neutral and renewable investments. It also covers economic activities that are clearly not climate neutral or renewable but could, under strict conditions and for a limited time, enable the transition towards a sustainable energy system, such as the economic activities in the natural gas and nuclear sector. They should not hamper the development of renewable sources.

1.2 Legal background

This Delegated Act is based on the empowerments set out in Articles 8(4), 10(3) and 11(3) of the Taxonomy Regulation. This Delegated Act amends the Taxonomy Climate Delegated Act by adding technical screening criteria for certain economic activities in the natural gas and nuclear energy sectors that have not been included in that Delegated Act. The technical screening criteria are set out in accordance with the requirements of Article 19 of the Taxonomy Regulation. This Delegated Act also amends the Taxonomy Disclosures Delegated Act by providing for specific disclosure requirements for natural gas and nuclear energy sectors.

In accordance with Article 31 of the Inter-institutional Agreement of 13 April 2016 on Better Law-Making[6], this Delegated Act combines in a single act two interrelated empowerments of the Taxonomy Regulation, namely those laid down in Articles 10(3) and 11(3), concerning the technical screening criteria for climate change mitigation and climate change adaptation respectively, and an empowerment of the Taxonomy Regulation laid down in Article 8(4) concerning the information to be disclosed by large non-financial and financial undertakings.

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5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal, Brussels, 21.4.2021, COM/2021/188 final; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategy for Financing the Transition to a Sustainable Economy, Strasbourg, 7.6.2021, COM/2021/390 final.

6 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

As regards natural gas, this Delegated Act builds on the recommendations of the Technical Expert Group on Sustainable Finance (the 'TEG'), a Commission expert group composed of diverse private and public sector stakeholders set up in 2018. The mission of the TEG consisted of helping the Commission to develop the EU Taxonomy technical screening criteria in line with the Commission's legislative proposals of May 2018 and taking into account the objectives of the European Green Deal.

The TEG published two interim versions of its recommendations in its reports in December 2018 and in June 2019. Both reports were subject to an open call for feedback, to which 257 and 830 responses were received, respectively. During its mandate, the TEG also engaged with over 200 additional experts to develop recommendations for the technical screening criteria for climate change mitigation and climate change adaptation[7]. The Commission also organised two meetings with stakeholders to gather views on the TEG reports in June 2019 and in March 2020.

Furthermore, the technical screening criteria for natural gas, which were initially included in the draft Taxonomy Climate Delegated Act, were published on the Better Regulation portal for a four-week feedback period between 20 November and 18 December 2020, to which 46.591 stakeholders responded. Those criteria have also 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.

As regards nuclear energy, the TEG has not included nuclear energy activities in its recommendations. Although the TEG has recognised that energy generation from nuclear energy has a high potential to substantially contribute to climate change mitigation, it was not able to reach a firm conclusion as to whether nuclear energy does no significant harm to other environmental objectives, considering in particular waste management, impact on biodiversity and water as well as potential pollution aspects. The TEG has, therefore, recommended that a more detailed assessment of nuclear energy should be carried out, involving experts with a high level of relevant expertise.

The Commission has therefore set up a specific process for an in-depth assessment of the DNSH aspects of nuclear energy. First, a technical assessment of nuclear energy under the Taxonomy Regulation and the DNSH criterion has been prepared by the Joint Research Centre (the 'JRC'), the European Commission's science and knowledge service.

The JRC report concluded that:

(i) nuclear energy can make a substantial contribution to the climate change mitigation objective and meanwhile does not do significant harm to the other four environmental objectives of the Taxonomy Regulation provided that it meets the proposed technical screening criteria;

(ii) deep geological repositories can be considered – at the state of today's knowledge – appropriate and safe means of isolating spent fuel and other high-level radioactive waste from the biosphere for very long time scales and the necessary technologies are now available;

[7] EU Expert Group on Sustainable Finance, Financing a sustainable European economy – Technical report – Taxonomy: Final report of the Technical Expert Group on Sustainable Finance, March 2020.

(iii) where and when the environmental impacts are potentially harmful, appropriate measures to prevent the impacts or to mitigate their consequences can be implemented using existing technology; and

(iv) compliance with the provisions of the Euratom legislation and licensing processes provides sufficient confidence that the impact of the nuclear energy full lifecycle, including the back end of the nuclear fuel cycle, on humans and the environment remains below harmful levels.

That report has been 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, as well as by experts from the Scientific Committee on Health, Environmental and Emerging Risks (the 'SCHEER').

The opinion of the Group of Experts referred to under Article 31 of the Euratom Treaty provides a positive assessment of the JRC report[8]. The experts agree with the main findings of the report, whilst offering a small number of observations on possible improvements. For example, in their opinion, the existing European legal framework provides an adequate system to ensure the highest level of protection of workers, members of the public and the environment in the Union. For activities outside the Union, they find that international standards provide for a comparable level of protection and note that compliance with those standards should be incorporated in the technical screening criteria for such activities. Furthermore, the Group of Experts confirmed the view of the JRC that deep geological repositories are considered, at the state of today's knowledge, an appropriate and safe solution for the management of high-level waste, and noted that the technology for this is already available today. The Group of Experts confirmed also the JRC's assessment of the consequences of severe accidents which, however, was limited in scope. The Group of Experts noted that other direct and indirect impacts of severe accidents, not analysed by JRC as such, have not been assessed for any economic activities under the EU Taxonomy. Such assessment may also be important for understanding the broader impacts of severe accidents but may be more difficult to assess.

The opinion of the SCHEER experts is that the findings and recommendations of the JRC report with respect to non-radiological impacts are overall comprehensive. However, in the view of the experts, some findings require further assessment and evidence. Notably they consider that comparing nuclear power to other energy generating technologies as doing no more harm is different from the assessment of "do no significant harm" (DNSH) under the Taxonomy Regulation. The SCHEER also expressed the view that the existence of a regulatory framework is not in itself sufficient to mitigate all relevant risks and advocated for a deeper analyses of some aspects, in particular of the impacts of mining and milling (which is mostly done outside the Union):

– the uncertainties regarding the final disposal of high-level nuclear waste that is still an open research question; and

– the impact of radiation on the environment, specifically with regard to the protection of water and marine resources.

[8] A dissenting opinion (out of the 32 experts from the 27 Member States) annexed to the report stated that the focus of the JRC report left out the consideration of some key risks, such as nuclear proliferation and low-probability, but high-impact accidents which are more acute for nuclear activities than for other energy technologies covered by the Taxonomy. However, it should be noted that the assessment of those issues was not included in the scope of the work specified in the Terms of Reference provided to JRC, as the assessment framework was based on the process followed by the TEG.

When establishing the technical screening criteria for nuclear energy related activities, the Commission has duly taken into account and addressed the observations of the SCHEER. In particular, the mining and milling activities have not been included in this Delegated Act and the remaining observations have been addressed by the technical screening criteria.

As regards the process of adoption of this Delegated Act, it was decided that an impact assessment was not necessary for natural gas energy activities, given that:

– this Delegated Act will implement policy choices already made and will only complement the Taxonomy Climate Delegated Act;

– the Taxonomy Climate Delegated Act was based on advice received from the TEG and from the Platform on Sustainable Finance and was accompanied by a proportionate impact assessment;

– the criteria for most activities which are planned to be included in this Delegated Act have been already subject to an impact assessment and public consultation as part of the preparation of the Taxonomy Climate Delegated Act.

With respect to nuclear energy activities, it was decided that an impact assessment was not necessary given that a detailed technical assessment was carried out as detailed above.

The relevant technical and policy issues concerning the natural gas and nuclear energy have, therefore, been in the public domain throughout the course of legislative deliberations on the Taxonomy Regulation, the work of the TEG, and the finalisation of the Taxonomy Climate Delegated Act. They have also been discussed several times with Member States and the European Parliament. Stakeholders have submitted extensive feedback to the Commission on these activities, based on the options discussed for the Taxonomy Climate Delegated Act for gas-activities, and on the JRC report and expert committee reviews for nuclear activities. Advanced disclosure of a draft delegated act to the public would have been likely to influence the markets.

No further open consultation was, therefore, necessary to prepare this Delegated Act.

The Platform on Sustainable Finance ('the Platform') and the Member States Expert Group have been consulted in accordance with Articles 10(4) and 11(4), and respectively, Articles 23(4) and 24(2) of the Taxonomy Regulation.

The Platform feedback notes a number of perceived shortcomings and inconsistencies with the Taxonomy Regulation. It also questions whether the criteria are in line with the conditions of Articles 10(2), 17 and 19 of the Taxonomy Regulation. A preference is expressed to rather include the activities in a possible future 'intermediate' environmental performance category, pursuant to the work underway in the Platform. The Platform notes a series of concerns with the future-oriented nature of some of the criteria, and uncertainties for financial market users to ascertain compliance with the criteria by operators. The Platform's proposals relate to clarifying disclosure and verification requirements concerning activities in the Delegated Act.

The feedback provided confirmation of widely known divided positions. The Commission has taken note of the criticism expressed by the Platform and by some Member States in the context of the consultation of the MSEG on Sustainable Finance, according to which the draft Delegated Acts would not be in line with the Taxonomy Regulation, both concerning the substantial contribution to climate change mitigation and the requirement of doing no significant harm to the other environmental objectives. The Commission rejects this criticism insofar as it seems to be based on the assumption, which is contrary to the purpose of Article 10(2) of the Taxonomy Regulation, that only the technical screening criteria that ensure the most substantial contribution to the climate change mitigation objective and do no harm, or

the least harm to the other environmental objectives could be included in the Delegated Act. Under Article 10(2) and (3) of the Taxonomy Regulation, the Commission is required to set out technical screening criteria for economic activities for which at present there is no technologically and economically feasible low-carbon alternative and which would be necessary in transition towards climate neutrality. The Commission also rejects the criticism expressed by other Member States, contesting the qualification of nuclear energy activities under Article 10(2) of the Taxonomy Regulation and arguing that they should be qualified under Article 10(1) thereof. Generating, transmitting, storing, distributing or using energy is limited, in Article 10(1), point (a), of the Taxonomy Regulation, to renewable energy in line with Directive (EU) 2018/11, and nuclear energy activities do not fall under the other categories of economic activities listed in points (b) to (i) of that provision. Targeted adjustments to the technical screening criteria and disclosure and verification requirements have been introduced to reinforce notably their clarity and usability. It is useful to recall that what does not qualify as a sustainable economic activity under the EU Taxonomy is not by definition harmful.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The empowerments to adopt delegated acts are provided for under Articles 8(4), 10(3) and 11(3) of the Taxonomy Regulation.

Article 1 lays down the amendments to the Taxonomy Climate Delegated Act.

Article 2 lays down the amendments to the Taxonomy Disclosures Delegated Act.

Article 3 specifies the dates of the entry into force and application of the Delegated Act.

Annex I to this Regulation lays down the amendments to Annex I of the Taxonomy Climate Delegated Act.

Annex II to this Regulation lays down the amendments to Annex II of the Taxonomy Climate Delegated Act.

Annex III to this Regulation adds a new Annex XII to the Taxonomy Disclosures Delegated Act.

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amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, and amending Regulation (EU) 2019/2088[9], and in particular Articles 8(4), 10(3) and 11(3) thereof,

Whereas:

(1) The technical screening criteria set out in Commission Delegated Regulation (EU) 2021/2139[10] cover several economic sectors and activities that have a potential to contribute to the Union climate change mitigation and climate change adaptation objectives. Those economic sectors and activities were chosen because of their share in overall greenhouse gas emissions, and their proven potential for avoiding the production of greenhouse gas emissions, reducing such emissions, or removing such emissions. In addition, those economic sectors and activities have a proven potential to enable such avoidance, reduction and removal for other economic sectors and activities, or to ensure long-term storage of such emissions for such other sectors and activities.

(2) The total energy use accounts for approximately 75% of direct greenhouse gas emissions in the Union. Thus, the energy sector has a crucial role in continuing to reduce greenhouse gas emissions. The technical screening criteria laid down in Delegated Regulation (EU) 2021/2139 therefore cover a wide range of economic sectors and activities related to the energy supply chain, ranging from electricity or heat generation from different sources, through transmission and distribution networks to storage, as well as heat pumps and the manufacture of biogas and biofuels. However, Delegated Regulation (EU) 2021/2139 does not contain technical screening criteria for economic activities in the fossil gas and nuclear energy sectors, despite their potential to contribute to the decarbonisation of the Union's economy.

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9 OJ L 198, 22.6.2020, p. 13.

10 Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ L 442, 9.12.2021, p. 1).

(3) As set out in Commission Communication of 21 April 2021 ('EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal') and in Commission Communication of 6 July 2021 ('Strategy for Financing the Transition to a Sustainable Economy'), the establishment of technical screening criteria for energy generation from fossil gas was postponed in view of the need for further technical assessment, notably on the transitional role of fossil gas in the decarbonisation of the economy[11]. The establishment of technical screening criteria for nuclear energy generation activities was also postponed awaiting an in-depth expert assessment, launched in 2020, of whether the nuclear life-cycle, and notably nuclear waste, could be considered compatible with the requirement, laid down in Article 17 of Regulation (EU) 2020/852, that an activity can do no significant harm to other environmental objectives. In the light of those assessments, it is necessary to recognise that the fossil gas and nuclear energy generation activities can contribute to the decarbonisation of the Union's economy.

(4) In accordance with Article 10(2) of Regulation (EU) 2020/852 covering transitional economic activities, it is necessary to lay down technical screening criteria for electricity generation, high-efficiency co-generation of power and heat/cool, and production of heat/cool in efficient district heating and cooling systems from fossil gas, where greenhouse gas emissions from fossil gas are below an appropriate threshold. In addition, it is necessary to lay down technical screening criteria for the use of fossil gas in electricity generation, high-efficiency co-generation of power and heat/cool, and production of heat/cool in efficient district heating and cooling systems, where such electricity generation, high-efficiency co-generation of power and heat/cool, and production of heat/cool in efficient district heating and cooling systems do not yet comply with that appropriate threshold, as in addition to the use of climate-neutral energy and more investments in already low-carbon economic activities and sectors, the transition requires substantial reductions in greenhouse gas emissions in other economic activities and sectors for which there are no technologically and economically feasible low-carbon alternatives. All those economic activities should be qualified as transitional under Article 10(2) of Regulation (EU) 2020/852, given that technologically and economically feasible low-carbon alternatives may not yet be commercially available at a sufficient scale to cover the energy demand in a continuous and reliable manner. In particular, for electricity generation, it is appropriate to provide for an alternative approach to directly limiting the greenhouse gas emissions. Under this alternative approach, that should deliver similar results over a twenty years period, facilities may reach such results by limiting the number of hours in operation or by advancing the switch to renewable or low-carbon gases to an earlier date. The technical screening criteria should facilitate an accelerated phase-out from more emissions-intensive energy sources, including solid fossil fuels. In addition, in order to fulfil the requirements laid down in Article 10(2), first subparagraph, points (a), (b) and (c), of Regulation (EU) 2020/852, the technical screening criteria for the

[11] Communication from the Commission of 21 April 2021 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal (COM/2021/188 final) and Communication from the Commission of 7 June 2021 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategy for Financing the Transition to a Sustainable Economy, (COM/2021/390 final).

use of fossil gas should also ensure that robust evidence is available to demonstrate that the same energy capacity cannot be generated with renewable sources, and that effective plans are put in place for each facility, in line with the best performance in the sector, to switch entirely to renewables or low carbon gases by a specific date. Finally, the technical screening criteria should provide for a time-limited recognition of the contribution of those activities to decarbonisation.

(5) Renewables will play a fundamental role in meeting the climate and environmental goals of the Union. In that light, investments in renewables need to scale-up to meet the needs of the energy market of the Union for more renewable and clean energy.

(6) Nuclear energy-related activities are low-carbon activities, they do not constitute energy from renewable sources as defined in Article 2, second subparagraph, point (1) of Directive (EU) 2018/2001 of the European Parliament and of the Council[12], and as referred to in Article 10(1), point (a) of Regulation (EU) 2020/852 and do not fall under the other categories of economic activities listed in points (b) to (i) of that provision. Such nuclear energy related economic activities should be qualified under Article 10(2) of Regulation (EU) 2020/852, in the absence of technologically and economically feasible low-carbon alternative at a sufficient scale to cover the energy demand in a continuous and reliable manner. In addition, in the Final Report of the Technical Expert Group on Sustainable Finance from March 2020[13], it was stated that 'nuclear energy generation has near to zero green-house gas emissions in the energy generation phase' and 'evidence on the potential substantial contribution of nuclear energy to climate change mitigation objectives was extensive and clear'. Moreover, a number of Member States' plans include nuclear energy along with renewable energy in the energy sources to be used to meet climate targets, including the 2050 decarbonisation objective set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council[14]. Finally, by providing a stable baseload energy supply, nuclear energy facilitates the deployment of intermittent renewable sources and does not hamper their development, as required by Article 10(2), point (b), of Regulation (EU) 2020/852. Nuclear energy related activities should therefore be considered as complying with Article 10(2) of Regulation (EU) 2020/852.

(7) Scientific review conducted by experts[15] concluded that technical screening criteria for nuclear energy related economic activities should ensure that no significant harm is done to other environmental objectives due to potential risks arising from the long-term storage and final disposal of nuclear waste. Those technical screening criteria should therefore reflect the highest standards of nuclear safety, radiation protection and radioactive waste management, building upon requirements laid down in the Treaty establishing the European Atomic Energy Community ('Euratom Treaty') and in legislation adopted under that Treaty, and in particular in Council Directive

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12 Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

13 The TEG report available on: https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/200309-sustainable-finance-teg-final-report-taxonomy_en.pdf

14 Regulation (EU) 2021/1119 of the European Parliament and of the Council[14] of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1)

15 JRC report: Technical assessment of nuclear energy with respect to the 'do no significant harm' criteria of Regulation (EU) 2020/852 ('Taxonomy Regulation') available on: https://ec.europa.eu/info/file/210329-jrc-report-nuclear-energy-assessment_en

2009/71/Euratom[16]. That Directive contains a high-level nuclear safety objective covering all stages of the life-cycle of each nuclear installation, including the siting, design, construction, commissioning, operation and decommissioning of such installations. In particular, that Directive calls for significant safety enhancements in the design of new reactors, including the so-called Generation III+ reactors, for which state of the art knowledge and technology should be used, taking into account the latest international safety requirements. Those requirements provide for an effective implementation of the nuclear safety objective, including the application of the defence-in-depth principle and of an effective safety culture. Those requirements ensure that the impact of extreme human-made and natural hazards, including earthquakes and floods, is minimised and that accidents, abnormal operations and failures or loss of control systems are prevented, *inter alia* by protective structures or back-up cooling and electricity supply systems.

(8) Accident-tolerant fuel for nuclear power plants which provides additional protection against accidents resulting from structural damages to fuel or reactor components has become available in the market. In order to take into account those recent technological developments, the use of that type of fuel should be set out as a requirement in the technical screening criteria, taking into account its licensing within the Union.

(9) Worldwide, research and development efforts are ongoing to develop new nuclear reactor technologies that use, among others, closed fuel cycles or fuel self-breeding concepts and that minimise the production of high-level radioactive waste ('Generation IV reactors'). Although those Generation IV reactors are not yet commercially viable, technical screening criteria should be laid down for such reactors in light of their potential contribution to the objective of decarbonisation and minimisation of radioactive waste.

(10) Nuclear energy is part of the future energy sources in a number of Member States, as part of their decarbonisation efforts. The scenarios assessed by the Commission lead to a decarbonised energy system based on renewables to a very large extent and on nuclear energy with a stable installed capacity compared to current levels. As the nuclear installations being currently exploited age, they need safety upgrades to extend operational life as well as newly built nuclear installations to replace obsolete installations. This is a continuous process that should ensure the availability of the necessary capacity for the decarbonisation of the energy system by 2050 and beyond this date as needed. Accordingly, significant investments in nuclear energy will be needed throughout the period until 2050 and beyond. It is necessary to ensure that new nuclear power plants use the most advanced solutions resulting from technological progress. The technical screening criteria for such new nuclear power plants should therefore provide for regular reviews of each investment project, and for technical parameters that correspond to the best-available technology in view of the outcomes of sustained research and development efforts and the continuous improvements of technologies. Specific dates should be defined to ensure phasing in of new technologies compatible with sustainable decarbonisation as soon as they become available.

[16] Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p. 18)

(11) Annex II to the Euratom Treaty and Council Regulation (Euratom) No 2587/1999[17] establish thresholds and other requirements for the notification to the Commission of investments in nuclear energy. To ensure, for the purpose of meeting the goals of the taxonomy, the highest possible regard to the principles and requirements of the Euratom legislation, including the nuclear safety objective, such investments should be subject to an opinion from the Commission, irrespective of whether Annex II to the Euratom Treaty and Regulation (Euratom) No 2587/1999 require any notification. For the same reason, all issues concerning the application of Article 10(2) and Article 17 of Regulation (EU) 2020/852 and the technical screening criteria identified by the Commission in its opinion should be satisfactorily addressed.

(12) In view of the long lead times for investments in new nuclear generation capacity, extending the service time of selected existing nuclear installations can support the decarbonisation of the energy system in the near to medium term. The technical screening criteria for such extensions should, however, require modifications and safety upgrades to ensure that those nuclear installations comply with the highest achievable safety standards and with all safety objective requirements laid down in legislation adopted under the Euratom Treaty.

(13) In the light of the expected technological and scientific developments, investments in the construction and safe operation of new nuclear installations using best available technologies and approved by an appropriate date by Member States' competent authorities in accordance with applicable national law should be subject to technical screening criteria and to time-limits that will encourage the development and future use of Generation IV reactors with closed fuel cycle or fuel self-breeding once they become commercially available. These time-limits should be appropriately reviewed in light of progress in the development of such technologies.

(14) The technical screening criteria related to climate change mitigation or climate change adaptation objectives should ensure that economic activities do not cause significant harm to any of the other environmental objectives. Specifically for nuclear energy related economic activities, it is necessary to ensure that the long term disposal of waste does not cause significant and long-term harm to the environment, as referred to in Article 17(1), point (d)(iii), of Regulation (EU) 2020/852. It is therefore appropriate to set out in the technical screening criteria specific requirements for a radioactive waste management fund and a nuclear decommissioning fund, which can be combined, in line with the principle that waste generators should be responsible for the cost of managing it, and to require operational final disposal facilities for all radioactive waste, which should prevent any export of radioactive waste for disposal in third countries. In several Member States, low and intermediate level radioactive waste is currently being disposed of in near-surface disposal facilities already, and substantial experience and know-how in waste management have been accumulated during decades of operating those near-surface disposal facilities. For high-level radioactive waste and spent fuel, deep geological disposal represents the state of the art solution that is broadly accepted in the expert community world-wide as the safest and the most sustainable option for the end point of the management of high-level radioactive waste and spent fuel considered as waste. Member States, while retaining responsibility for their policies in respect of the management of their spent fuel and

[17] Council Regulation (Euratom) No 2587/1999 of 2 December 1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty establishing the European Atomic Energy Community (OJ L 315, 9.12.1999, p. 1).

low, intermediate or high-level radioactive waste, should include planning and implementation of disposal options in their national policies, in particular under the national programmes for the management of spent fuel and radioactive waste, covering all types of spent fuel and radioactive waste and all stages of spent fuel and radioactive waste management from generation to disposal. The national programmes' content is specified in Council Directive 2011/70/Euratom[18] and includes key performance indicators to monitor progress transparently. The Member States have to report regularly on the progress of implementation of the national programmes to the Commission. Reporting from Member States from 2021 demonstrates that substantial progress is made in the realisation of the first deep geological disposal facilities on the Union territory. Realistic solutions are becoming available for Member States to develop and operate such facilities by 2050. Therefore, the inclusion of a corresponding requirement in the technical screening criteria ensures that no significant harm is caused to the environment.

(15) It is necessary that non-financial and financial undertakings provide investors with a high degree of transparency concerning their investments in fossil gas and nuclear energy generation activities for which technical screening criteria should be laid down. To provide that transparency, specific disclosure requirements for non-financial and financial undertakings should be laid down. In order to ensure comparability of the information disclosed to investors, that information should be presented in the form of a template that indicates clearly the proportion of fossil gas and nuclear energy activities in the denominator and, where appropriate, the numerator of key performance indicators of those undertakings. In order to provide a high degree of transparency to investors in financial products referred to in Article 5 and Article 6 of Regulation (EU) 2020/852 concerning exposures to fossil gas and nuclear energy activities, for which technical screening criteria are laid down, the Commission will amend or propose to amend the disclosure framework pertaining to those financial products as appropriate to provide for full transparency over the whole life of those financial products. To ensure that such information is clearly identified by end-investors, the Commission will consider amending the requirements on the financial and insurance advice given by distributors.

(16) To enhance investor confidence, compliance with the technical screening criteria related to fossil gas activities should be verified by an independent third party. To ensure an impartial and diligent verification of compliance, the independent third-party should have the resources and expertise to perform that verification, be independent to avoid any conflict of interest with the owner or the funder, and should not be involved in the development or operation of such fossil gas activities. In addition to the verification mechanism, financial and non-financial undertakings may be subject to specific verification requirements provided in other Union legislation on sustainable finance that cover compliance with the technical screening criteria. In accordance with Article 26(1), point (c), of Regulation 2020/852, the Commission should review the provisions required for setting up verification mechanisms of compliance with the criteria set out in that Regulation.

(17) The fossil gas and nuclear energy sectors are characterised by rapid technological development. It is therefore necessary to review the technical screening criteria covering energy generation activities in those sectors regularly, as required by Article

[18] Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste (OJ L 199, 2.8.2011, p. 48).

19(5) of Regulation (EU) 2020/852. In addition, based on the conditions laid down in Article 10(2) of Regulation (EU) 2020/852, such review should cover the appropriateness of the periods of time laid down in the technical screening criteria.

(18) Delegated Regulation (EU) 2021/2139 and Commission Delegated Regulation (EU) 2021/2178[19] should therefore be amended accordingly. The amendments to Delegated Regulation (EU) 2021/2139 and Delegated Regulation (EU) 2021/2178 do not mandate any investments, but are intended to help financial markets and investors to identify, subject to strict conditions, relevant gas and nuclear related activities needed for the transition of the Member States' energy systems towards climate neutrality in line with Union climate goals and commitments.

(19) The amendments to Delegated Regulation (EU) 2021/2139 and Delegated Regulation (EU) 2021/2178 laid down in this Delegated Regulation are closely linked. In order to ensure coherence between those provisions, which should enter into force at the same time to facilitate a comprehensive view of the legal framework for stakeholders and to facilitate the application of Regulation (EU) 2020/852, it is necessary to include those provisions in a single Regulation.

(20) It is necessary to provide non-financial and financial undertakings with sufficient time to assess whether their economic activities related to fossil gas and nuclear energy comply with the technical screening criteria laid down in this Regulation, and to report on the basis of that assessment in accordance with Delegated Regulation (EU) 2021/2178. The date of application of this Regulation should therefore be deferred to 1 January 2023,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2021/2139

Delegated Regulation (EU) 2021/2139 is amended as follows:

(1) the following Article 2a is inserted:

'Article 2a

Review

When performing the review referred to in Article 19(5) of Regulation (EU) 2020/852, the Commission shall also review and assess the necessity to amend the dates referred to in Annex I, Section 4.27, Section 4.28, Section 4.29, point 1(b), Section 4.30, point 1(b) and Section 4.31, point 1(b).

Any review of the date referred to in point (2) of Sections 4.27 and 4.28 to Annex I shall take into account the technical progress in accident-tolerant fuel commercialisation in the Union and world-wide.'

(2) Annex I is amended in accordance with Annex I to this Regulation.

(3) Annex II is amended in accordance with Annex II to this Regulation.

[19] Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (OJ L 443, 10.12.2021, p. 9).

Article 2

Amendments to Delegated Regulation (EU) 2021/2178

Delegated Regulation (EU) 2021/2178 is amended as follows:

(1) in Article 8, the following paragraphs 6, 7 and 8 are added:

‘6. Non-financial undertakings and financial undertakings shall disclose the amount and proportion of:

(a) the taxonomy-aligned economic activities referred to in Sections 4.26, 4.27 and 4.28 of Annexes I and II to Delegated Regulation (EU) 2021/2139 in the denominator and the numerator of their key performance indicators;

(b) the taxonomy-eligible, but not taxonomy-aligned, economic activities referred to in Sections 4.26, 4.27 and 4.28 of Annexes I and II to Delegated Regulation (EU) 2021/2139 in the denominator of their key performance indicators;

(c) the taxonomy-non-eligible nuclear energy related activities in the denominator of their key performance indicators.

7. Non-financial undertakings and financial undertakings shall disclose the amount and proportion of:

(a) the taxonomy-aligned economic activities referred to in Sections 4.29, 4.30 and 4.31 of Annexes I and II to Delegated Regulation (EU) 2021/2139 in the denominator and the numerator of their key performance indicators.

(b) the taxonomy-eligible, but not taxonomy-aligned, economic activities referred to in Sections 4.29, 4.30 and 4.31 of Annexes I and II to Delegated Regulation (EU) 2021/2139 in the denominator of their key performance indicators;

(c) the taxonomy-non-eligible fossil gas related activities in the denominator of their key performance indicators.

8. The information referred to in paragraphs 6 and 7 shall be presented in tabular form by using the templates set out in Annex XII to this Regulation.’

(2) the text set out in Annex III to this Regulation is added as Annex XII.

Article 3

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 January 2023.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN