



3 February 2022

Update on plans to include gas and nuclear energy within EU Taxonomy Framework

Background

The EU Taxonomy Regulation¹ sets down the conditions which must be met in order for an economic activity to be considered “environmentally sustainable”. It is supplemented by a number of delegated acts which set down the specific technical screening criteria which must be satisfied in order for an economic activity to be considered environmentally sustainable and which must be based on “*conclusive scientific evidence*”.

The first of these delegated acts, referred to as the “[EU Taxonomy Climate Delegated Act](#)”, entered into force on 1 January 2022 and sets down the technical screening criteria which must be satisfied for an economic activity to be considered as contributing to the environmental objective of climate change mitigation or climate change adaptation. A separate delegated act, which will set down the technical screening criteria for the remaining four environmental objectives identified under the EU Taxonomy framework³, will be finalised this year and will enter into force on 1 January 2023.

The EU Taxonomy Climate Delegated Act does not address one of the most contentious and politically sensitive proposals put forward by certain EU Member States, namely the possibility of certain economic activities involving natural gas and nuclear energy being classified under the framework as environmentally sustainable activities which make a substantial contribution to climate change mitigation.

Publication of EU Taxonomy Climate Complementary Delegated Act

On 2 February 2022, the European Commission issued a [press release](#) confirming that it has published the [EU Taxonomy Climate Complementary Delegated Act](#) which has been approved by the College of Commissioners

Key Points to Note:

- Proposal published by the European Commission paves the way for certain economic activities involving gas and nuclear energy to be classified as “environmentally sustainable” under the EU Taxonomy Framework
- The draft legislation must now be considered by the European Parliament and the Council of Europe who have the power to block the Commission’s proposals

¹ Regulation (EU) 2020/852

² Commission Delegated Regulation (EU) 2021/2139

³ The four remaining environmental objectives comprise of (i) the sustainable use and protection of water and marine resources, (ii) the transition to a circular economy, (iii) pollution prevention and control and (iv) the protection and restoration of biodiversity and ecosystems.

and which will be adopted by the European Commission once translations are available in all EU languages.

The purpose of the EU Taxonomy Climate Complementary Delegated Act is to set down technical screening criteria which must be met in order for an economic activity involving gas or nuclear energy to be classified as environmentally sustainable. According to the European Commission, the criteria for the specific gas and nuclear activities included are *“in line with EU climate and environmental objectives and will help accelerating the shift from solid or liquid fossil fuels, including coal, towards a climate-neutral future”*⁴. In an [FAQ](#) published by the European Commission alongside EU Taxonomy Climate Complementary Delegated Act, it argues that its proposal *“recognises the role that certain energy activities can play in supporting decarbonisation, for a limited period of time, until better alternatives based on renewable or low-carbon technologies are sufficiently developed.”* The proposal, if implemented, will mean that such activities can be classified as “green” investments under the framework.

The publication of the EU Taxonomy Climate Complementary Delegated Act followed the publication of a [report](#) by the Platform for Sustainable Finance (**Platform**) on 21 January 2022 in which it noted that the economic activities covered by the proposed legislation were not in line with the Taxonomy Regulation and that most members of the platform were of the view that it created a *“serious risk of undermining the sustainable Taxonomy framework”*.

In its press release published alongside the EU Taxonomy Climate Complementary Delegated Act, the European Commission responded to this by noting that it had carefully reviewed the input received from each of the Platform, the European Parliament and the Member States Expert Group on Sustainable Finance which were taken into consideration in the legislative text published. It notes as an example that *“targeted adjustments to the technical screening criteria and disclosure and verification requirements were introduced to reinforce their clarity and usability”*.

Next Steps

The EU Taxonomy Climate Complementary Delegated Act must now be scrutinised by the European Parliament and the Council of Europe who have four months in which to review the proposed legislation, which can be extended by a further two months upon the request of either co-legislator. Both co-legislators have the power to object to the proposed legislation.

If no such objection is raised, the EU Taxonomy Climate Complementary Delegated Act will enter into force and apply as of 1 January 2023, allowing financial market participants to classify investments in economic activities related to gas and nuclear energy which meet the relevant technical screening criteria as “taxonomy-aligned”.

⁴ The EU Taxonomy Climate Complementary Delegated Act also provides for specific disclosure requirements associated with natural gas and nuclear energy activities included in the act by proposing to amend [Commission Delegated Regulation \(EU\) 2021/2178](#) to introduce disclosure obligations on large listed EU non-financial and financial companies to disclose the proportion of their activities linked to natural gas and nuclear energy.

Given the vocal opposition to the proposals to include certain activities involving nuclear energy and gas within the EU Taxonomy framework voiced by some Member States and many environmental groups to date, the EU Taxonomy Climate Complementary Delegated Act is unlikely to have an easy passage into the statute books of the European Union. We will keep you updated on further developments in this regard.

If you have any questions relating to this briefing, please get in touch with your usual Dillon Eustace contact.

Dillon Eustace LLP

3 February 2022



Cillian Bredin
Partner

E: Cillian.Bredin@dilloneustace.ie

DD: + 353 1 673 1889



Aisling O'Malley
Partner

E: Aisling.omalley@dilloneustace.ie

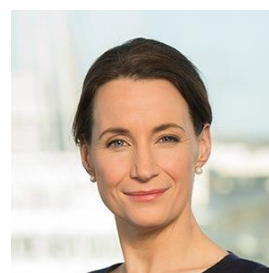
DD:+ +353 1 673 1733



Alanna Hannon
Senior Associate

E: Alanna.Hannon@dilloneustace.ie

DD: +353 1 673 1881



Áine McCarthy
Professional Support Lawyer

E: Aine.McCarthy@dilloneustace.ie

DD:+ 353 01 673 1861

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022

New York

Tower 49, 12 East 49th Street, New York, NY10017, U.S.A. Tel: +1 646 770 6080

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885

DISCLAIMER

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace LLP.

Copyright Notice:© 2022 Dillon Eustace LLP. All rights reserved.