

## Nuclear power and natural gas

– criteria for classifying activities as environmentally sustainable and new information obligations

Updated alert from 7 April 2022

We present an updated version of the alert published in April this year<sup>1</sup>, where we explain the changes resulting from the adopted regulation that expands the catalogue of activities that can be qualified as environmentally sustainable, and the information obligations covering such qualified entrepreneurs.

### TAXONOMY – OVERVIEW OF CHANGES

The Delegated Regulation<sup>2</sup> introduces changes to the so-called taxonomy<sup>3</sup>, i.e. the criteria to qualify an economic activity as environmentally sustainable regarding the nuclear and natural gas sectors. The draft also introduces new information obligations.

The taxonomy gains increasing importance due to, i.a. the policies of funding institutions excluding support for activities that qualify under the taxonomy as high-emission while making it easier to obtain funding for environmentally sustainable activities.

The Delegated Regulation supplements existing regulations for one of the three kinds of environmentally sustainable activities, i.e. **transitional activity**, including **investments in nuclear power and natural gas**<sup>4</sup>. Transitional activities include producing cement, aluminum, iron and steel, and plastics in primary forms; retrofitting inland waterway passenger and freight transport; renovating existing buildings; and data processing or hosting<sup>5</sup>.

### The obligations of the financial sector and other entrepreneurs are related to the taxonomy:

a) Financial sector entrepreneurs must disclose:

- information on their environmental objectives; and
- a description of how and to what extent an investment qualifies as environmentally sustainable (by way of a percentage figure); and

b) Other entrepreneurs must disclose:

- the percentage of turnover derived from products or services related to environmentally sustainable activities; and
- the percentage of capital expenditures and operational expenditure corresponding to the assets or processes associated with environmentally sustainable activity.

**The change in the material scope of environmentally sustainable activities in the nuclear and gas sectors will change entrepreneurs' obligations. It will be necessary to verify the scope of the information disclosed and statements made.**

The Delegated Regulation extends the catalogue of economic transitional activities to include certain nuclear and natural gas activities by introducing technical eligibility criteria.

<sup>1</sup> See L. Wyszomirski, A. Pinkas, SK&S Legal alert, Nuclear power and natural gas criteria for classifying activities as environmentally sustainable and new information obligations, 7 April 2022, <https://skslegal.pl/en/legal-alert-nuclear-power-and-natural-gas-criteria-for-classifying-activities-as-environmentally-sustainable-and-new-information-obligations/>

<sup>2</sup> Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 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) (Official Journal of the European Union L from 2022 Nr 188).

<sup>3</sup> 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 (Text with EEA relevance) (Official Journal of the European Union L from 2020 Nr 198 with amendments).

<sup>4</sup> The taxonomy distinguishes three categories of environmentally sustainable activities, i.e. low-carbon activity, transitional activity, and enabling activity.

<sup>5</sup> 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 (Text with EEA relevance) (Official Journal of the European Union L from 2021 Nr 442).

Due to the diversified structure of energy production (the dominance of high-carbon sources), achieving climate neutrality requires investment in low-carbon fuels (nuclear and natural gas) during the transitional period. The regulation indicates that investments in nuclear energy will be needed throughout the period until 2050 and beyond. The technical eligibility criteria will be reviewed to use the technology that is most capable for reducing energy-system emissions. Concrete dates for the periodic review of these criteria have not been specified yet.

## CHANGE OF QUALIFICATION CRITERIA

**The following nuclear activities will be recognised as sustainable:**

- the pre-commercial stages of advanced technologies to produce nuclear energy<sup>6</sup>;
- the construction and safe operation of new nuclear power plants for the generation of electricity or heat, including for hydrogen production<sup>7</sup> and
- electricity generation from nuclear energy in existing installations<sup>8</sup>.

**The following natural gas activities will be recognised as sustainable:**

- electricity generation from fossil gaseous fuels<sup>9</sup>;
- the high-efficiency co-generation of heat or cool and power from fossil gaseous fuels<sup>10</sup> and
- the production of heat or cool from fossil gaseous fuels in an efficient district heating and cooling system<sup>11</sup>.

## NEW INFORMATION OBLIGATIONS

Financial sector undertakings as well as others are obliged to disclose the amount and share of nuclear and natural gas activities, i.e.: taxonomy-aligned; taxonomy-eligible, but not taxonomy-aligned; and taxonomy non-eligible<sup>12</sup>. Information in this regard should be submitted using the templates in Annex 12 to the Regulation.

## ENTRY OF THE CHANGES INTO FORCE AND SCOPE OF APPLICATION

The Delegated Regulation entered into force on 4 August and **will apply directly to all Member States from 1 January 2023.**



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<sup>6</sup> This means the activity of research, development, demonstration, and deployment of innovative electricity generation facilities in nuclear power plants.

<sup>7</sup> This means the activity of the construction and safe operation of new nuclear installations to produce electricity or heat, including, i.a. hydrogen production.

<sup>8</sup> This means the activity of extending existing nuclear installations or modifying the time of safe operation for the generation of electricity or heat.

<sup>9</sup> This means the activity of the construction or operation of electricity generation facilities that produce electricity using fossil gaseous fuels.

<sup>10</sup> This means the activity of construction, refurbishment, and operation of combined heat or cool and power generation facilities using fossil gaseous fuels.

<sup>11</sup> This means the activity of the construction, refurbishment, and operation of heat generation facilities that produce heat or cool using fossil gaseous fuels connected to efficient district heating and cooling.

<sup>12</sup> Amendment of Art. 8 of 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 (Text with EEA relevance) (Official Journal of the European Union L from 2021 Nr 443).