



18 July 2022

Publication of EU Taxonomy Climate Complementary Delegated Act in the Official Journal: Implications for Funds

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.

The first of these delegated acts, referred to as the “[EU Taxonomy Climate Delegated Act](#)”², 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.

At the time of its publication last year, the EU Taxonomy Climate Delegated Act did not provide for the possibility for any economic activities relating to natural gas or nuclear energy to be classified as environmentally sustainable under the EU Taxonomy framework.

However, in February 2022, the European Commission published a “complementary” delegated act under which it proposed to extend the EU Taxonomy framework to allow certain economic activities involving gas and nuclear energy to be classified as “environmentally sustainable” subject to specific conditions being met (**EU Taxonomy Climate Complementary Delegated Act**).

Key Points to Note:

- The EU Taxonomy Climate Complementary Delegated Act has been published in the Official Journal and applies from 1 January 2023
- It extends the EU Taxonomy Framework to permit certain economic activities involving gas and nuclear energy to be classified as “environmentally sustainable”

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.

Publication of EU Taxonomy Climate Complementary Delegated Act in the Official Journal

Earlier this month, the European Parliament [voted](#) not to object to the EU Taxonomy Climate Complementary Delegated Act. The Council of Europe also held a right of veto over the proposals put forward by the European Commission but chose not to exercise this power.

On 15 July 2022, the EU Taxonomy Climate Complementary Delegated Act was [published](#) in the Official Journal of the European Union. It amends the EU Taxonomy Climate Delegated Act to set down the technical screening criteria which must be met in order for an economic activity involving gas or nuclear energy to be classified as environmentally sustainable under the EU Taxonomy framework.

Implications for funds falling within the scope of the EU Taxonomy disclosure obligations

As noted above, the EU Taxonomy framework has now been extended to permit certain economic activities involving gas and nuclear energy which meet the technical screening criteria set down in the amendments made to the EU Taxonomy Climate Delegated Act to be classified as “environmentally sustainable” (also referred to as “taxonomy-aligned” economic activities).

Consequently, funds which fall within the scope of Article 5 or Article 6 of the Taxonomy Regulation (**In-Scope Funds**) will, from 1 January 2023, be able to classify investments which provide exposure to gas and nuclear energy activities which satisfy the applicable technical screening criteria set down in the EU Taxonomy Climate Complementary Delegated Act as environmentally sustainable investments for the purposes of calculating and disclosing the extent to which their portfolio is taxonomy-aligned in their pre-contractual and periodic report disclosures.

While the EU Taxonomy Climate Complementary Delegated Act itself does not impose any additional disclosure obligations on In-Scope Funds, the European Commission had already [written](#) to the European Supervisory Authorities (**ESAs**) in April 2022 asking them to revise the existing “level 2” measures adopted by the European Commission on 6 April 2022 (**Existing SFDR Level 2 Measures**) to impose additional pre-contractual, website and periodic report disclosure obligations on all In-Scope Funds on the exposure of the relevant fund to investments in fossil fuels and nuclear gas activities. In its letter, the European Commission indicated that such revised disclosure obligations should require financial market participants to disclose the proportion such investments represent within (i) all investments held by In-Scope Funds and (ii) environmentally sustainable economic activities invested in by the relevant In-Scope Funds.

The ESAs have been asked to report back to the European Commission with their suggested amendments to the Existing SFDR Level 2 Measures by 30 September 2022 at the latest.

As a result, we can expect a revised set of SFDR level 2 measures (including updated pre-contractual and periodic report template annexes) to be published by the European Commission before these measures enter into force on 1 January 2023.

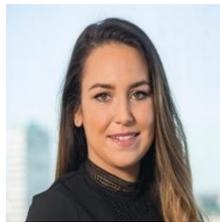
If you have any questions relating to this briefing, please get in touch with your usual Dillon Eustace contact.

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