As co-rapporteurs of the Taxonomy Regulation, we strongly believe that the draft complementary delegated act fails to respect the letter and spirit of the Taxonomy Regulation as agreed and approved by the co-legislator.

**Remarks regarding the technical screening criteria for fossil gas**

1. The criteria set out in the draft complementary delegated act for power plants, co-generation and district hearing using fossil gas are not *"consistent with a pathway to limit the temperature increase to 1,5°C above pre-industrial levels"* as required under Article 10(2) of the Taxonomy Regulation.

In particular, allowing the operation and construction of new power plants, co-generation or district heating facilities using fossil gas which emit up to 270g CO2e/kWh and for which permits are granted by 31 December 2030 would seriously jeopardise the possibility for the EU to meet its commitments under the Paris Agreement. Even the Commission recognises in its modelling that reaching the EU's new 2030 targets implies a reduction of fossil gas consumption across the EU by 32-37%[1]. The "Net Zero by 2050" pathway from the International Energy Agency (IEA) also recognises that global demand for natural gas declines by 55% compared to 2020 in their pathway.

Based on the above, and in the absence of an impact assessment from the Commission why the EU should disregard the recommendations of the IEA, allowing the operation and construction of new fossil gas power stations seem inconsistent with a pathway to limit the global temperature increase to 1,5°C above pre-industrial levels. Even in the case that those facilities would fully switch to fully renewable-based hydrogen as of 2036, the proposed criteria still mean that those facilities would run with at least almost half of fossil gas until that date. In the words of the UN Secretary-General Antonio Guterres, we are facing a climate emergency. This requires immediate drastic action to be taken before 2030.

2. The criteria set out in the draft complementary delegated act create exemptions for facilities that do not represent the best performance in the sector, in clear breach of one of the requirements set out in Article 10(2).

Indeed, the proposed 550kgCO2e/kW of the output energy of the facility's capacity over 20 years, could include conventional gas power plants to be considered as transitional activities, as long as they run less than around 1400 hours per year on average over 20 years. This could be even more in the first years provided that emissions are reduced later on. These commitment to future emission reductions seem unenforceable given that the assessment of taxonomy-compliance is made up front. In drafting the conditions for an activity to become transitional under Article 10(2), co-legislators strongly insisted that only best available technologies should be included. Labelling heavily polluting "business as usual" facilities as "transitional" is in clear breach of this requirement. Such exemptions have not been foreseen by the co-legislators in their empowerment to the Commission for setting the technical screening criteria.

3. The criteria set out in the draft complementary delegated act for power plants, co-generation and district hearing using fossil gas provide an infringement to the *"principle of technological neutrality"* referred to in Article 19(1) of the Taxonomy Regulation.

Independent experts from the Technical Expert Group (TEG) created by the Commission confirmed that a threshold of 100g CO2e/kWh should be applied for energy generation to be compatible with a 1,5°C pathway, irrespective of the technology or fuel used. This threshold has been uphold by the Commission in the first delegated act for other sources of energy included in that delegated act, such as hydropower and geothermal energy.

[1] European Commission (2020). Impact Assessment: Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people.

We see no legal ground for the Commission to create an exemption to this principle of technological neutrality by allowing a higher threshold for power plants, co-generation and district hearing using fossil gas.

Moreover, the threshold seems inconsistent with the Commission's guidance on the application of "do no significant harm" in the context of the Recovery and Resilience Facility, where the threshold for not causing significant harm is set at 250 gCO2e/kWh over the economic life-time of the facility. Also, in the methodology for identifying economic activities that can be counted as climate action in the Recovery and Resilience plans substitution of coal with gas is counted as 0%, confirming that the co-legislators did not share the view that a switch from coal to gas would provide, even temporarily, a substantial contribution to climate change mitigation.

4. Last but not least, the proposed criteria do not provide sufficient guarantees that the criteria will be met. In particular, the condition to fully switch to renewable or low-carbon gases as of 2036 only refers to "plans or commitments". This does not provide sufficient guarantee that the switch will materialise, nor does it provide remediation options in case those plans or commitments are not uphold. Once an investment has been done, the Taxonomy lacks effective tools to ensure compliance with the threshold or effectively sanction in cases where the commitments are not honoured.

**Remarks regarding the technical screening criteria for nuclear energy**

A legal basis is lacking too for the inclusion of nuclear power in the current Taxonomy Regulation, neither under Article 10(1) nor under Article 10(2).

Article 10(1) of the Taxonomy Regulation is restricted to energy generation using renewable energy sources as defined under the Renewable Energy Directive and therefore nuclear energy can simply not fall under its scope.

Similarly, in our view nuclear power cannot be considered a transitional activity within the meaning of Article 10(2) for the following reasons. Such an inclusion in the draft DA would manifestly contradict both the letter and the purpose of Article 10(2).

1. Article 10(2) should only apply to economic activities "for which there is no technologically and economically feasible low-carbon alternative", which implies that transitional activities are by definition not low-carbon. Recital 41 of the Taxonomy Regulation confirms that transitional activities should have "a credible path towards climate-neutrality", confirming that they are at the moment not low-carbon. We therefore strongly disagree with the view that the Commission has the power to include nuclear-related activities in the EU Taxonomy as transitional activities on the basis that they are supposedly "low-carbon activities [...] that have near to zero greenhouse gas emissions" (recital 6 of the draft complementary DA).

Even if this objection is set aside, there is no scientific consensus that nuclear power meets the requirement of Article 10.2 that "there are no technologically and economically feasible low-carbon alternatives" to nuclear power given the existence of renewable energy alternatives. Moreover, it is likely that nuclear power investments come at the expense of renewable energy which is a violation of the provision in Article 10.2 that it "does not hamper the development and deployment of low-carbon alternatives".

2. The construction of new nuclear plants is also not consistent with a 1.5°C pathway. The climate emergency we are in requires immediate action to be taken within this decade, as recently confirmed by the IPCC. Even if we were to consider nuclear as a low-carbon source of energy, the construction of new nuclear plants for which the permits would be granted by 2045 would only be running in the second half of this century, while global GHG emissions should already been reduced to net-zero by 2050 if we are to limit global warming to 1.5°C.

3. The high cost of nuclear energy does hamper the development and deployment of low-carbon alternatives like renewable energy. Nuclear needs to operate at high capacity on a long-term basis in order to compensate for high investments and fixed costs, while wind and solar require a flexible backup. Therefore there is no consensus that nuclear power and renewables can actually complement each other. Studies tend rather to suggest that nuclear power and renewables cannibalise rather than complement each other[2].

**Disclosure**

Even though a separate disclosure obligation will provide transparency on the share of fossil gas and nuclear activities as part of taxonomy aligned activities of companies and within financial products, this cannot in any way compensate for the failure of the economic activities in the complementary delegated act to meet the legal requirements of the EU taxonomy regulation. We call on the Commission to speed up the work on a proposal for extending the EU taxonomy to "significant harm" and "no significant impact" for which the Platform on sustainable finance already provided preparatory work. This gives the Commission the proper legal tools, if appropriate, to include controversial economic activities such as fossil gas and nuclear energy in different categories of a comprehensive taxonomy framework, without compromising the credibility of the taxonomy category of "substantially contributing to environmental objectives".

**Lack of impact assessment**

We deplore the lack of a proper impact assessment. The Commissions argument *"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 first Taxonomy Climate Delegated Act; - the first 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"* is flawed given that the criteria proposed in this complementary delegated act are very different from the advice given by the TEG. Thirteen (former) members of the TEG have expressed their concerns over any inclusion of gas activities beyond the 100g threshold[3].

Regarding the inclusion of economic activities in the field of nuclear energy, no impact assessment has been undertaken by the Commission. The review by the SCHEER opinion of the technical report on nuclear energy by the JRC revealed severe shortcomings in the report. "The SCHEER is of the opinion that there are several findings where the report is incomplete and requires to be enhanced with further evidence. For the DNSH criteria, in many cases the findings (comparing Nuclear Power Plant (NPP) to other energy generating technologies already in Taxonomy) are expressed as do less harm than at least one of the comparator technologies, which in the SCHEER view is different to "do no significant harm". It is the opinion of the SCHEER that the comparative approach is not sufficient to ensure "no significant harm.".

**Conclusions**

- Based on the above, we have serious doubts as to the legality of the proposed technical screening criteria in the complementary delegated act. Due to the complexity of the matter, we demand more time from the Commission to be able to seek further legal advice on the matters above.

---

[2] See for instance Institute for Advanced Sustainability Studies (IASS), Can reactors react?, IASS discussion paper, January 2018; Verbruggen, Renewable and nuclear power: A common future, Energy Policy 36 (2008), 4036; Brown et al., Response to 'burden of proof', Renewable and Sustainable Energy Reviews, 92 (2018), 834.

[3] https://www.politico.eu/wp-content/uploads/2021/11/30/Op-Ed-on-EU-Taxonomy-100g-threshold-vf.pdf

- We insist that the Commission conducts a proper impact assessment and opens a proper public consultation on such a controversial proposal for a delegated act, as prescribed in the Inter-institutional Agreement on Better Law Making and as recalled under Article 23(4) of the Taxonomy Regulation.

Bas Eickhout MEP, co-rapporteur Taxonomy Regulation
Sirpa Pietikäinen MEP, co-rapporteur Taxonomy Regulation