

General Court Upholds European Commission's Approach to Nuclear and Gas in Taxonomy Regulation

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The European Union's (the "**EU**") General Court has dismissed two legal challenges against the European Commission's delegated legislation under the Taxonomy Regulation ((EU) 2020/852) (the "**Taxonomy Regulation**"). These rulings confirm the European Commission's discretion in setting technical screening criteria for sustainable economic activities.

Nuclear and Gas: Austria v Commission (Case T-625/22)

Austria had sought to annul the Taxonomy Complementary Climate Delegated Act, objecting to the inclusion of certain nuclear and fossil gas activities. The Court held that:

- the European Commission was entitled to view the nuclear and fossil gas activities as transitional solutions that can contribute to climate change mitigation and adaptation, provided certain conditions are met;
- the "do no significant harm" (DNSH) criteria, as set out in Article 17 of the Taxonomy Regulation, were not breached by this inclusion;
- article 10(2) of the Taxonomy Regulation, which addresses economic activities where low-carbon alternatives are technically and economically feasible, should be understood as covering transitional activities where no realistic or practicable alternatives currently exist to meet the EU's energy needs; and
- the European Commission did not exceed its legal powers, as the technical screening criteria are not "essential elements" requiring full legislative amendment.

This outcome confirms that nuclear and gas can continue to play a role in the EU's transition finance framework, particularly where no realistic low-carbon alternatives are available.

Bioenergy, Chemicals and Plastics: ClientEarth v Commission (Case T-579/22)

Environmental NGO ClientEarth challenged the Taxonomy Climate Delegated Act, arguing that the European Commission had misapplied the technical screening criteria when classifying certain activities as sustainable. In particular, ClientEarth objected to the inclusion of:

- bioenergy;
- manufacture of organic base chemicals; and
- manufacture of plastics in primary form.

The General Court rejected these arguments, confirming that the European Commission has wide discretion in setting and applying the technical screening criteria established in Article 19 of the Taxonomy Regulation.

Considerations for Investors and Businesses

These rulings reinforce the European Commission's discretion in shaping the EU's sustainable finance framework. They also confirm that politically sensitive sectors, such as nuclear, gas and bioenergy, may continue to be recognised as taxonomy-aligned, provided certain conditions are met.

For businesses and investors, the decisions provide greater legal certainty that the delegated acts (Taxonomy Complementary Climate Delegated Act and the Taxonomy Climate Delegated Act, as challenges in the cases above) will remain in force, guiding disclosure obligations and investment considerations in the European Union.

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