



EUROPEAN
COMMISSION

Brussels, **XXX**
[...] (2020) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

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)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. General background and objective

The European Green Deal is a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050, where the environment and the health of Europeans are protected, and where economic growth is achieved by the most efficient and sustainable use of natural resources. It also aims to protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. This will be achieved by turning climate and environmental challenges into opportunities, and making the transition just and inclusive for all.

Regulation (EU) 2020/852 of the European Parliament and of the Council¹ (the 'Taxonomy Regulation') was proposed as part of the Commission's earlier Action Plan on 'Financing Sustainable Growth' of March 2018, launching an ambitious and comprehensive strategy for sustainable finance with the aim of redirecting capital flows to help generate sustainable and inclusive growth. The Taxonomy Regulation is an important enabler for scaling up sustainable investment and therefore implementing the European Green Deal as part of the EU's response to the climate and environmental challenges. It provides uniform criteria for companies and investors to determine which economic activities can be considered environmentally sustainable, and thus aims to increase transparency and consistency in the classification of such activities and limit the risk of greenwashing and fragmentation in relevant markets. However, investors remain free to invest as they wish and the Taxonomy Regulation does not imply any obligation on investors to invest only in those economic activities that meet specific criteria.

The economic impact of the COVID-19 pandemic has highlighted the importance of sustainable development and the need to redirect capital flows towards sustainable projects in order to make our economies, businesses and societies, including our health systems, more resilient against climate and environmental shocks and risks. In this way, the European Green Deal can act as a launching pad for a strong and sustainable European recovery strategy. This recovery strategy will rely on a mix of public and private financing and, in this context, the EU taxonomy can serve as an instrument to guide financial markets towards a green recovery.

The Taxonomy Regulation establishes the framework for the EU taxonomy by setting out four conditions that an economic activity must meet in order to qualify as environmentally sustainable. A qualifying activity must:

- (i) contribute substantially to one or more of the six environmental objectives set out in Article 9 of the Taxonomy Regulation in accordance with Articles 10 to 16 of that Regulation;
- (ii) not significantly harm any of the other environmental objectives set out in Article 9 of the Taxonomy Regulation in accordance with Article 17 of that Regulation;
- (iii) be carried out in compliance with minimum (social) safeguards set out in Article 18 of the Taxonomy Regulation; and

-

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

(iv) comply with technical screening criteria established by the Commission through delegated acts in accordance with Articles 10 (3), 11(3), 12(2), 13(2), 14(2) or 15(2) of the Taxonomy Regulation. The technical screening criteria need to specify the performance criteria for a specific economic activity that determine under what conditions i) it makes a substantial contribution to a given environmental objective; and ii) it does not significantly harm the other objectives.

This Delegated Regulation specifies the technical screening criteria under which certain economic activities qualify as contributing substantially to climate change mitigation and climate change adaptation and for determining whether those economic activities cause significant harm to any of the other relevant environmental objectives.

In accordance with Article 19(5) of the Taxonomy Regulation, the Commission shall regularly review the technical screening criteria, including at least every three years in the case of activities labelled as transitional according to Article 10(2), and where appropriate, amend this Delegated Regulation in line with scientific and technological developments. These updates shall be developed based on input from the Platform on Sustainable Finance and take into account the implementation of the criteria by financial market participants and their impact on channelling of investments into environmentally sustainable economic activities.

1.2. Legal background

This Delegated Regulation is based on Articles 10(3) and 11(3) of the Taxonomy Regulation. The technical screening criteria are set in accordance with the requirements of Article 19 of that Regulation.

In accordance with Article 31 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, this Delegated Regulation combines in a single act two interrelated empowerments of the Taxonomy Regulation, namely Articles 10(3) and 11(3) on the technical screening criteria for climate change mitigation and climate change adaptation respectively. The Taxonomy Regulation requires the Commission to adopt delegated acts on these points by 31 December 2020. Further delegated acts in the Taxonomy Regulation have different timelines and will be acted upon at a later stage. These delegated acts relate to the technical screening criteria for the remaining environmental objectives and to information to be disclosed by undertakings subject to the Non-Financial Reporting Directive in their non-financial statements or consolidated non-financial statements on whether and to what degree their activities align with the Taxonomy.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

This delegated act builds on the recommendations of the Technical Expert Group on Sustainable Finance (TEG), a Commission expert group composed of diverse private and public sector stakeholders set up in 2018. The mission of the TEG included helping the Commission develop the EU taxonomy in line with the Commission's legislative proposals of May 2018 and taking into account the objectives of the European Green Deal.

The TEG published two interim versions of its recommendations in reports in December 2018 and in June 2019. Both reports were subject to an open call for feedback, to which 257 and 830 responses were received respectively. During its mandate, the TEG also engaged with over 200 additional experts to develop recommendations for the technical screening criteria for climate change mitigation and climate change adaptation. The Commission also organised two stakeholder dialogue meetings to gather views on the TEG report in June 2019 and in March 2020.

On 9 March 2020, the TEG published its final report². Member States were given the opportunity to provide feedback on the final TEG recommendations at the meeting of the Member States Expert Group in May 2020, with observers from the European Parliament.

The Commission published the inception impact assessment in March 2020, and extended the opportunity to provide feedback until the end of April 2020 due to the outbreak of COVID-19. There were 409 respondents in total.

In accordance with the Better Regulation rules, the draft delegated act was published on the Better Regulation portal for a four-week feedback period between 20 November and 18 December 2020. In total, 46591 stakeholders provided feedback. The draft delegated act was also discussed with the Platform on Sustainable Finance on 4 December 2020. Furthermore, at several meetings with the Member States Expert Group on 10 December 2020, on 26 January 2021, 26 February 2021 and 24 March 2021, the draft delegated act was presented to Member States' expert and discussed, with observers from the European Parliament.

Following the public feedback, the draft delegated act was amended in the following ways: [XXX - Placeholder for the summary of the feedback and short explanation of the according amendments to the draft]

3. IMPACT ASSESSMENT

The Commission carried out a proportionate impact assessment to inform and accompany the Delegated Regulation. The impact assessment took account of the fact that the key elements of the EU taxonomy have been set by the European Parliament and the Council in the Taxonomy Regulation. This includes the environmental objectives, the concepts of substantial contribution and 'do no significant harm', and the requirements for technical screening criteria. These requirements frame the discretion of the Commission for the Delegated Regulation.

The impact assessment examined in detail the main technical input for this Delegated Regulation, namely the preparatory work that has been carried out by the TEG. The TEG report provided the methodology for selecting sectors and economic activities. It also provided recommendations for technical screening criteria for 70 economic activities that contribute substantially to climate change mitigation and 68 economic activities that contribute substantially to climate change adaptation. The final report also comprised detailed recommendations on the use of NACE codes to classify economic activities and a usability guide for the application of the EU Taxonomy by companies and financial market participants.

While the impact assessment concluded that the Commission should generally follow the approach and the TEG recommendations, it also helped conclude that this Delegated Regulation should deviate from the TEG report in some instances to better align with the requirements for technical screening criteria set out in the Taxonomy Regulation, notably in Article 19. The impact assessment recommended to include certain additional activities for climate change mitigation and climate change adaptation to cover further activities with significant potential while preserving the coherence of EU taxonomy. Certain activities from the TEG report, for which a complex and in-depth technical assessment still needs to be completed, have not been included in this Delegated Regulation.

² The report is available at https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/200309-sustainable-finance-teg-final-report-taxonomy_en.pdf.

Furthermore, the analysis in the accompanying impact assessment helped inform how to set certain criteria for defining a substantial contribution to climate change mitigation and climate change adaptation for certain activities. Some changes were also made to the ‘do no significant harm’ criteria in comparison to the TEG recommendations in order to ensure usability and proportionality.

The TEG recommendations on technical screening criteria were duly assessed in the impact assessment report against the detailed requirements of Article 19 of the Taxonomy Regulation. In particular, the analysis retained criteria that were considered to be consistent with EU legislation, reflect a high level of environmental ambition, promote a level playing field, and be easy for economic operators and investors to use.

The effectiveness of the EU taxonomy hinges on its uptake by market participants. The Commission carried out an indicative analysis of potential benefits and costs of the proposed approach as part of the impact assessment focused on the calibration of the technical screening criteria against the requirements of the Taxonomy Regulation. This calibration can influence the levels of uptake by ensuing robust technical screening criteria, which would bring more decision-useful information to the market on sustainable investments. Potential economic benefits from this improved transparency and consistency provided by the taxonomy criteria are therefore likely to materialise in the shape of reduced costs for investors to identify, and for corporates to fund, environmentally sustainable activities. Environmental and social benefits are then likely to arise from an increase in capital flows to environmentally sustainable activities, thereby helping to deliver a cleaner, healthier and more climate-resilient living environment.

The Delegated Regulation in itself does not generate new costs directly. However, costs are likely to arise from the requirements of the Taxonomy Regulation, in particular for companies falling under the scope of the Non-Financial Reporting Directive and for financial market participants to collect and disclose taxonomy-relevant information. This would imply both one-off and ongoing costs for entities within the scope of these provisions.

Following a first negative opinion, the impact assessment received a positive opinion with reservations upon the second submission to the Regulatory Scrutiny Board.

In response to the two opinions issued by the Board, the report improved in various aspects. Notably, the logic for prioritising and including sectors and economic activities was explained more clearly for both climate change mitigation and climate change adaptation. The assessment of the technical screening criteria against the requirements of the Taxonomy Regulation was strengthened and the analytical basis for the assessment of the different approaches to set criteria was more substantiated. Likewise, the explanations of the deviations from the TEG’s recommendations were made with regard to how the recommended technical screening criteria and subsequent deviations align to the Taxonomy Regulation’s requirements. Estimations of the coverage of the economy by EU taxonomy were presented in more detail in the impact assessment report. In general, more pedagogical explanations and examples were included with regards to applying the criteria and the potential different uses of the taxonomy. In addition, the monitoring and evaluation framework was refined. In particular, a mechanism was proposed that would allow the Platform on Sustainable Finance to give appropriate follow up to stakeholder feedback regarding possible unintended impacts of the EU taxonomy.

4. LEGAL ELEMENTS OF THE DELEGATED ACT

The right to adopt delegated acts is provided for under Articles 10(3) and 11(3) of the Taxonomy Regulation.

Article 1 specifies the subject matter of this Regulation.

Article 2 lays down the technical screening criteria for climate change mitigation.

Article 3 lays down the technical screening criteria for climate change adaptation.

Obtenu par CONTEXTE

DRAFT

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

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)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2020/852 of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088³, and in particular Articles 10(3) and 11(3) thereof,

Whereas:

- (1) Regulation (EU) 2020/852 establishes the general framework for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. That Regulation applies to measures adopted by the Union or by Member States that set out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable, to financial market participants that make available financial products, and to undertakings that are subject to the obligation to publish a non-financial statement pursuant to Article 19a of Directive 2013/34/EU of the European Parliament and of the Council⁴ or a consolidated non-financial statement pursuant to Article 29a of that Directive. Economic operators or public authorities that are not covered by Regulation (EU) 2020/852 may also apply that Regulation on a voluntary basis.
- (2) Articles 10(3) and 11(3) of Regulation (EU) 2020/852 require the Commission to adopt delegated acts establishing the technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation, respectively, and to establish, for each relevant environmental objective laid down in Article 9 of that Regulation, technical screening criteria for determining whether that economic activity causes no significant harm to one or more of those environmental objectives.

³ OJ L 198, 22.6.2020, p. 13.

⁴ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Pursuant to Articles 10(6) and 11(6) of that Regulation, those delegated acts are to be adopted by 31 December 2020.

- (3) Pursuant to Article 19(1), point (h), of Regulation (EU) 2020/852, the technical screening criteria are to take into account the nature and the scale of the economic activity and sector that they refer to, and whether the economic activity is a transitional economic activity as referred to in Article 10(2) of Regulation (EU) 2020/852, or an enabling activity as referred to in Article 16 of that Regulation. For the technical screening criteria to meet the requirements of Article 19 of Regulation (EU) 2020/852 in an effective and balanced way they should be set as a quantitative threshold or minimum requirement, as a relative improvement, as a set of qualitative performance requirements, as process or practice-based requirements, or as a precise description of the nature of the economic activity itself where that activity by its nature can contribute substantially to climate change mitigation.
- (4) The technical screening criteria for determining whether an economic activity contributes substantially to climate change mitigation or climate change adaptation should ensure that the economic activity makes a positive impact on the climate objective or reduces negative impact on the climate objective. Those technical screening criteria should therefore refer to thresholds or performance levels that the economic activity should achieve in order to qualify as contributing substantially to one of those climate objectives. The technical screening criteria for 'do no significant harm' should ensure that the economic activity has no significant negative environmental impact. Consequently, those technical screening criteria should specify the minimum requirements that the economic activity should meet in order to qualify as environmentally sustainable.
- (5) The technical screening criteria for determining whether an economic activity contributes substantially to climate change mitigation or climate change adaptation should build, where relevant, on existing Union legislation, best practices, standards and methodologies, as well as on well-established standards, practices and methodologies developed by internationally reputed public entities. Where there are no viable alternatives for a specific policy area, the technical screening criteria should also build on well-established standards developed by internationally reputed private bodies.
- (6) In order to ensure a level playing field, the same categories of economic activities should be subject to the same technical screening criteria for each climate objective. It is therefore necessary that the technical screening criteria, where possible, follow the classification of economic activities laid down in the NACE Revision 2 classification system of economic activities established by Regulation (EC) No 1893/2006 of the European Parliament and of the Council⁵. To facilitate the identification by undertakings and financial market participants of the relevant economic activities for which technical screening criteria should be established, the specific description of an economic activity should also include the references to NACE codes that can be associated with that activity. Those references should be understood as indicative and

⁵ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

should not prevail over the specific definition of the activity provided in its description.

- (7) The specific descriptions of the relevant economic activities for which technical screening criteria should be established should correspond to the scope of those technical screening criteria. The purchase of certain assets that are essential to carry out the economic activities can also play a crucial role in enabling the operation of those economic activities. The descriptions of those economic activities should therefore include purchase of those assets. The technical screening criteria for determining under which conditions an economic activity qualifies as contributing substantially to climate change mitigation should reflect the need to avoid producing greenhouse gas emissions, to reduce such emissions or to increase greenhouse gas removals and long-term carbon storage. It is therefore appropriate to focus first on those economic activities and sectors that have the greatest potential to achieve those aims. The choice of those economic activities and sectors should be based on their share of overall greenhouse gas emissions, and on evidence regarding their potential to contribute to avoid producing greenhouse gas emissions, to reduce such emissions or to contribute to greenhouse gas removal, or to enable such avoidance, reduction, removal or long-term storage in other activities.
- (8) The methodology to calculate life-cycle greenhouse gas emissions should be robust and widely applicable and thereby promote the comparability of greenhouse gas emissions calculations within and across sectors. It is therefore appropriate to require the same calculation methodology across activities, where such calculation is required, while providing sufficient flexibility for persons applying Regulation (EU) 2020/852. Accordingly, the Commission Recommendation 2013/179/EU should be used for the calculation of life-cycle greenhouse gas emissions, with, as an alternative, the possibility to use ISO 14067 or ISO 14064-1 standards. Where alternative well-established tools or standards are particularly suitable to provide exact and comparable information on the calculation of life cycle greenhouse gas emission for a specific sector, it is appropriate to include such tool or standards as additional alternatives for that sector.
- (9) The methodology to calculate life-cycle greenhouse gas emissions for activities in the hydropower sector should reflect the specificities of that sector, including new modelling methodologies, scientific knowledge and empirical measurements from reservoirs worldwide. To allow accurate reporting on the net impact on greenhouse gas emissions for the hydropower sector, it is therefore appropriate to provide for the use of the G-res tool that is publicly available and has been developed by the International Hydropower Association in collaboration with the UNESCO Chair for Global Environmental Change.
- (10) The methodology to calculate life-cycle greenhouse gas emissions for activities in the information and communication sector should reflect the specificities of that sector, in particular the specialised work and guidance that has been provided by European Telecommunications Standards Institute (ETSI) for the operation of life cycle assessments in the information and communication sector. It is therefore appropriate to provide for ETSI standard ES 203 199 as a methodology to accurately calculate greenhouse gas emissions for that sector.
- (11) The technical screening criteria for certain activities rely on elements of considerable technical complexity and the assessment whether those criteria have been complied with may require specialist knowledge and may not be feasible for investors. To

facilitate that assessment, the compliance with such technical screening criteria for such activities should be verified by an independent third party.

- (12) Enabling economic activities as referred to in Article 10(1), point (i), of Regulation (EU) 2020/852 do not substantially contribute to climate change mitigation through their own performance. Such activities play a crucial role in the decarbonisation of the economy by directly enabling other activities to be carried out at a low carbon level of environmental performance. Technical screening criteria should therefore be established for those economic activities which play an essential role in enabling the target activities to become low-carbon or to lead to greenhouse gas reductions. Those technical screening criteria should ensure that an activity complying with them respects the safeguards of Article 16 of Regulation (EU) 2020/852, in particular the absence of lock-in of assets and substantial positive environmental impact.
- (13) Transitional economic activities as referred to in Article 10(2) of Regulation (EU) 2020/852 cannot yet be carried out in a manner that is consistent with climate-neutrality, but cannot yet be replaced by technologically and economically feasible low-carbon alternatives. Those activities can nevertheless play a crucial role in mitigating climate change by substantially reducing their currently high carbon footprint and by helping to phase out reliance on fossil fuels. Technical screening criteria should therefore be established for those economic activities, where near-zero carbon solutions are not yet viable or where near-zero carbon activities exist, but are not yet practicable at scale that have the highest potential for significant greenhouse gas reductions.
- (14) Forests are under increasing pressure as a result of climate change, which aggravates other key drivers of pressures such as pests, diseases, extreme weather events and forest fires. Other pressures come from rural abandonment, lack of management and fragmentation due to land use changes, increasing management intensity due to rising demand for wood, forest products and energy, infrastructure development, urbanisation and land take. At the same time, forests play a crucial role for reaching the Union's objectives of reversing biodiversity loss and enhancing ambition on climate change mitigation and adaptation, reducing and controlling disaster risk due in particular to floods, droughts or wildfires and promoting a circular bioeconomy. To reach climate neutrality and a healthy environment, it is necessary to improve; both the quality and the quantity of forest areas, that are the largest carbon sink in the land use, land use change and forestry ('LULUCF') sector. Forest-related activities can contribute to climate change mitigation by increasing net removals of carbon dioxide, by preserving carbon stocks, and by providing materials and renewable energy, generating co-benefits for climate change adaptation, biodiversity, circular economy, sustainable use and protection of water and marine resources, and pollution prevention and control. Technical screening criteria should therefore be laid down for afforestation, reforestation, forest restoration, forest management and forest conservation activities. Those technical screening criteria should be fully in line with Union's climate change adaptation, biodiversity and the circular economy objectives. In order to minimise administrative burden for the small forest owners, forest holdings below 25ha should not be required to perform a climate benefit analysis.

- (15) In the follow-up to communications from the Commission of 11 December 2019, ‘The European Green Deal’⁶, of 20 May 2020 on ‘EU Biodiversity Strategy for 2030’⁷ and of 17 September 2020 ‘Stepping up Europe’s 2030 climate ambition Investing in a climate-neutral future for the benefit of our people’⁸, in line with Union wider biodiversity and climate neutrality ambitions, with the communication from the Commission of 24 February 2021⁹, the new Forests Strategy planned in 2021, technical screening criteria for forest activities should be complemented, reviewed and where necessary revised by end of 2021. Those technical screening criteria should be reviewed to take better into account biodiversity friendly practices that are under development such as close to nature forestry.
- (16) Given its importance for reducing greenhouse gas emissions and for strengthening land carbon sinks, wetland restoration has a potential to contribute substantially to climate change mitigation. Wetlands restoration can also deliver benefits for climate change adaptation, including through buffering climate change impacts, and help to reverse the loss biodiversity, to preserve water quantity and quality. To ensure coherence with the ‘The European Green Deal’, with the communication ‘Stepping up Europe’s 2030 climate ambition’ and with the EU Biodiversity Strategy for 2030, technical screening criteria should also cover the restoration of wetlands.
- (17) The manufacturing sector emits approximately 21% of direct greenhouse gas emissions in the Union. It is the third largest contributor to those emissions in the Union and thus can play a pivotal role in climate change mitigation. At the same time, manufacturing can be a key sector in enabling greenhouse gas emission avoidance and reductions in other sectors of the economy by manufacturing the products and technologies that those other sectors need to become or remain low-carbon. The technical screening criteria for the manufacturing sector should therefore be specified both for manufacturing activities associated with the highest levels of greenhouse gas emissions and for manufacturing of low-carbon products and technologies.
- (18) Manufacturing activities for which there are no technologically and economically feasible low-carbon alternatives but that support the transition to a climate-neutral economy are to be considered transitional activities, in accordance with Article 10(2) of Regulation (EU) 2020/852. To encourage the reduction of greenhouse gas emissions, the thresholds of the technical screening criteria for those activities should be set at a level that will only be achievable by the best performers of each sector, in most cases based on greenhouse gas emissions per unit of output produced.

In order to ensure that transitional activities as referred to in Article 10 (2) of Regulation (EU) 2020/852 remain on a credible pathway to decarbonisation and in line with Article

⁶ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal (COM/2019/640 final).

⁷ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final).

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Stepping up Europe’s 2030 climate ambition Investing in a climate-neutral future for the benefit of our people (COM/2020/562 final).

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

19(5) of that Regulation, the technical screening criteria for those economic activities should be reviewed at a minimum, every three years. In particular, for carbon-intensive industries, that assessment should include an analysis of whether the technical screening criteria are underpinned by the most relevant standards and whether lifecycle emissions from those activities are sufficiently taken into account. That assessment should also assess the potential use of captured carbon, in the light of technology development. For manufacturing of iron and steel, new data and evidences from low-carbon steel pilot production processes using hydrogen should be further considered.

For manufacturing activities that are to be considered to be the enabling activities referred to in Article 10(1), point (i), of Regulation (EU) 2020/852, the technical screening criteria should be based predominantly on the nature of the manufactured products, combined, where appropriate, with additional quantitative thresholds to ensure that those products can make a substantial contribution to avoidance or reduction of greenhouse gas emissions in other sectors. In order to reflect the fact that priority is given to activities that have the greatest potential to avoid producing greenhouse gas emissions, to reduce such emissions or to increase greenhouse gas removals and long-term carbon storage, the enabling manufacturing activities should focus on the manufacturing of products that are necessary for those economic activities and sectors to be carried out.

- (19) The manufacturing of electrical equipment for electricity plays an important role for the upgrade, uptake and compensation of fluctuations of the electricity provided by the renewable sources of energy in the EU electric grids, the recharging of the zero emissions vehicles and deployment of smart, green house applications. At the same time, it may enable the development of the smart housing concept with the objective of further promoting the use of renewables and the good management of home equipment. It may therefore be necessary to complement the technical screening criteria in the manufacturing sector in the next delegated act and to assess the potential of the manufacture of electrical equipment to make a substantial contribution to the climate change mitigation and climate change adaptation objectives.
- (20) The energy sector accounts for approximately 22% of direct greenhouse gas emissions in the Union and for approximately 75% when taking into account the use of energy in other sectors. It thus plays a key role in climate change mitigation. The energy sector has significant potential to reduce greenhouse gas emissions, and several activities in that sector act as enabling activities that facilitate the transition of the energy sector towards renewable or low-carbon electricity or heat. It is therefore appropriate to establish technical screening criteria for a wide range of activities related to the energy supply chain, ranging from electricity or heat generation from different sources, through transmission and distribution networks to storage, as well as heat pumps and the manufacture of biogas and biofuels.
- (21) The technical screening criteria for determining whether electricity or heat generation activities, including cogeneration activities, contribute substantially to climate change mitigation should be established in a way that ensures that greenhouse gas emissions are reduced or avoided. Technical screening criteria based on greenhouse gas emissions signal the decarbonisation pathway for those activities. The technical screening criteria for enabling activities that facilitate the long-term decarbonisation should predominantly be based on the nature of the activity or on the best available technologies. The replacement of inefficient high-emitting power, heat or combined heat and power generation using solid or liquid fossil fuels with high-efficiency heat

and combined heat and power facilities using gaseous and liquid fuels in facilitating the energy transition for regions heavily dependent on coal and oil should be recognised as a transitional activity where such a replacement leads to substantial reductions in greenhouse gas emissions in the short-term and avoids causing significant harm and lock-in effects.

- (22) Regulation (EU) 2020/852 recognises the importance of ‘climate-neutral energy’ and requires the Commission to assess the potential contribution and feasibility of all relevant existing technologies. For nuclear energy, that assessment is still ongoing and the Commission will report on its results in the context of the review of this Regulation.
- (23) The technical screening criteria for electricity or heat generation activities as well as for transmission and distribution networks should ensure coherence with the Communication from the Commission of 14 October 2020 on an EU strategy to reduce methane emissions¹⁰. It may therefore be necessary to review, complement, and, where necessary, revise those technical screening criteria to reflect any future metrics and requirements established as follow-up to that strategy.
- (24) The technical screening criteria for the production of heating, cooling and power from bioenergy and the production of biofuels and biogas for transport should take into account the comprehensive sustainability framework for those sectors laid down under Directive (EU) 2018/2001 of the European Parliament and of the Council¹¹, setting requirements for sustainable harvesting, carbon accounting and greenhouse gas emission savings.
- (25) In the follow-up of to the European Green Deal, the European Climate Law proposal, the EU Biodiversity Strategy for 2030, and in accordance with the biodiversity and climate neutrality ambitions of the Union, technical screening criteria for bioenergy activities should be complemented, reviewed and where necessary revised by end 2021 to take into account the latest evidence base and policy developments.
- (26) Greenhouse gas emissions in the Union stemming from the water, sewerage, waste and remediation sector are relatively small. That sector nevertheless has a great potential to contribute to reduce greenhouse gas emissions in other sectors, particularly through the provision of secondary raw materials to replace virgin raw materials, through replacing fossil-based products, fertiliser and energy, and through the transport and permanent storage of captured carbon dioxide. Furthermore, activities involving anaerobic digestion as well as composting of separately collected bio-waste which avoid landfilling of bio-waste are particularly important for reducing methane emissions. The technical screening criteria for waste activities should therefore recognise those activities as substantially contributing to climate change mitigation, provided that those activities apply certain best practices for that sector. Those technical screening criteria should also ensure that waste treatment options are in line with higher levels of the waste hierarchy. The technical screening criteria should recognise as substantially contributing to climate change mitigation those activities that process a uniformly set minimum share of sorted separately collected non-

¹⁰ Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions: EU strategy to reduce methane emissions (COM/2020/663 final).

¹¹ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

hazardous waste into secondary raw materials. However, it is not possible at this stage for technical screening criteria based on a uniformly set target for reprocessing waste to address fully the climate mitigation potential of individual material streams. It may therefore be necessary to further assess and review those technical screening criteria. The uniformly set target should be without prejudice to waste management targets addressed to Member States in Union legislation on waste. For activities related to water collection, treatment and supply as well as centralised wastewater treatment systems, those technical screening criteria should take into account absolute performance and relative performance improvement targets in relation to energy consumption and alternative metrics, where relevant, such as leakage levels in water supply systems.

- (27) Transport operations consume one third of all energy in the Union and account for approximately 23% of total direct greenhouse gas emissions in the Union. Decarbonising the transport fleet and infrastructure can therefore play a central role in climate change mitigation. Technical screening criteria for the transport sector should focus on reducing the main emission sources from that sector, while also considering the need to shift the transport of people and goods to lower emission modes and for the creation of an infrastructure that enables clean mobility. Technical screening criteria for the transport sector should therefore focus on the performance within one transport mode, while also taking into account the performance of that transport mode in comparison with other transport modes.
- (28) Given their potential to reduce their greenhouse gas emissions and thus contribute to greening the transport sector, maritime shipping and aviation constitute important transport modes for the transition to a low-carbon economy. According to the Sustainable and Smart Mobility Strategy¹², zero emission vessels are expected to become ready for market by 2030, and large zero-emission aircraft by 2035 for short distance, while for longer distance decarbonisation would rely on renewable and low-carbon fuels, until then these sectors continue to be transitional activities. Separate studies have been conducted on sustainable financing criteria for those sectors. Shipping is one of the least carbon intensive ways to transport goods and to ensure its equal treatment in comparison with other modes, therefore the technical screening criteria should be established for maritime transport until the end of 2025. It is however necessary to assess those transport modes further and establish rapidly relevant technical screening criteria, where appropriate, including for maritime shipping applicable as from 2026. Likewise, the technical screening criteria for some of the transport modes currently cover only low carbon infrastructure; in light of their potential to contribute to modal shift it is necessary to assess and where appropriate establish relevant technical screening criteria for overall infrastructure that is essential for low carbon transport mode, notably inland waterways.
- (29) To ensure that the transport activities considered as sustainable do not facilitate the use of fossil fuels, the technical screening criteria for several activities in the taxonomy exclude assets, operations and infrastructure dedicated to transport of fossil fuels. While applying this criterion, it is necessary to recognise the multiple uses, different ownership, user arrangements and fuels blending rates, in line with the relevant

-

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future (COM/2020/789 final).

existing market practices. The Platform on Sustainable Finance will assess the usability of this criterion in the context of fulfilling its mandate.

- (30) Buildings across all sectors in the Union are responsible for 40 % of energy consumption and 36 % of carbon emissions. Buildings can therefore play an important role in climate change mitigation. Technical screening criteria should therefore be laid down for the construction of new buildings, for building renovation, installation of different energy efficiency equipment, on-site renewables, provision of energy services, and for the acquisition and ownership of buildings. Those technical screening criteria should be based on the potential impact of those activities, on the energy performance of buildings and on related greenhouse gas emissions and embedded carbon.
- (31) The construction of an asset or facility that is an integral part of an activity, for which technical screening criteria determining under which conditions that activity qualifies as contributing substantially to climate change mitigation should be established, may represent an important condition for that economic activity to be carried out. It is therefore appropriate to include the construction of such assets or facilities as part of the activity for which that construction is relevant, in particular for activities in the energy sector, the water, sewerage, waste and remediation sector as well as the transport sector.
- (32) The information and communication sector is a constantly growing sector representing an increasing share in greenhouse gas emissions. At the same time, information and communication technologies have the potential to contribute to climate change mitigation and to reduce greenhouse gas emissions in other sectors, such as by providing solutions that may help decision making enabling greenhouse gas emission reductions. Technical screening criteria should therefore be laid down for data processing and hosting activities that emit high volumes of greenhouse gas, and for data-driven solutions that enable reductions in greenhouse gas emissions in other sectors. The technical screening criteria for those activities should be based on the best practices and standards in that sector. They may need to be reviewed and updated in the future to take into account the greenhouse gas reduction potential from increased durability of information and communication technologies hardware solutions and the potential for digital technologies to be deployed in each sector directly to enable greenhouse gas emissions. Moreover, the deployment and operation of electronic communications networks use considerable amounts of energy and have the potential to bring significant reductions of greenhouse gas emissions. It may therefore be necessary to assess those activities and establish relevant technical screening criteria, where appropriate.
- (33) Furthermore, information and communication technology solutions that are an integral part of those economic activities for which technical screening criteria for substantial contribution to climate change mitigation should be established for their own respective performance, can also be of particular importance in assisting those different activities to reach the standards and thresholds established under those criteria.
- (34) Research, development and innovation have the potential to enable other sectors to meet their respective climate change mitigation targets. The technical screening criteria for research, development and innovation activities should therefore focus on the potential of solutions, processes, technologies and other products for reducing greenhouse gas emissions. Research dedicated to enabling activities as referred to in

Article 10(1), point (i) of Regulation EU 2020/852 can also play an important role in enabling those economic activities and their target activities to substantially reduce their greenhouse gas emissions or to improve their technological and economic feasibility and ultimately facilitate their scaling up. Research can also play an important role in further decarbonisation of transitional activities as referred to in Article 10(2) of Regulation EU 2020/852, by enabling those activities be carried out with substantially lower greenhouse gas emissions levels compared to the thresholds specified in the technical screening criteria for substantial contribution to climate change mitigation for those activities.

- (35) Furthermore, research, development and innovation that are an integral part of those economic activities for which technical screening criteria for substantial contribution to climate change mitigation have been established for their own respective performance, can also be of particular importance in assisting those different activities to reach the standards and thresholds established under those criteria.
- (36) The technical screening criteria for determining under which conditions an economic activity qualifies as contributing substantially to climate change adaptation should reflect the fact that climate change is likely to affect all sectors of the economy. As a result, all sectors will need to be adapted to the adverse impact of the current climate and the expected future climate. It needs to be ensured, however, that an economic activity that contributes substantially to climate change adaptation also causes no significant harm to any of the other environmental objectives laid down in Article 9 of Regulation (EU) 2020/852. It is therefore appropriate to first establish technical screening criteria for climate change adaptation for those sectors that are covered by the technical screening criteria for climate change mitigation, including the relevant 'do no significant harm' criteria to the environmental objectives. Furthermore, technical screening criteria should also be laid down for education, human health, social work, arts, entertainment and recreation activities. Those activities provide essential services and solutions towards increasing collective resilience of the whole society, they can increase climate literacy and awareness and pose no risk of causing significant harm to other environmental objectives.
- (37) Economic activities that, in accordance with Article 10(1), point (i), of Regulation (EU) 2020/852, are to be considered as enabling climate change mitigation activities should also be considered as contributing substantially to climate change adaptation if they have been made climate resilient and insofar as they comply with the technical screening criteria for determining under which conditions those activities qualify as contributing substantially to climate change mitigation. The technical screening criteria for determining whether an enabling activity contributes substantially to climate change mitigation are, however, based on the specific description of the nature of the activity itself. To prevent the risk of greenwashing, that description of the nature of those activities should be included in the general description of those activities for the purpose of the technical screening criteria for substantial contribution to climate change adaptation.
- (38) However, where those activities enabling climate change mitigation as referred to in Article 10(1), point (i), of Regulation (EU) 2020/852 are energy transmission or storage infrastructure, or transport infrastructure, those activities should also be considered as contributing substantially to climate change adaptation where they have been made climate resilient. It should not be required that those activities also comply with the technical screening criteria for determining under which conditions they qualify as contributing substantially to climate change mitigation. This is necessary to

ensure that the broadest possible range of these critical infrastructures is adapted to the adverse impact of the current climate and the expected future climate, thereby preventing serious negative impacts on the health, safety, security or economic well-being of citizens or the effective functioning of governments in Member States. In this context, the technical screening criteria should be reviewed to take better account of the specificities of infrastructure for defence against floods.

- (39) The technical screening criteria for determining whether an economic activity contributes substantially to climate change adaptation by including adaptation solutions in accordance with Article 11(1), point (a) of Regulation (EU) 2020/852 should aim at increasing the resilience of the economic activities against identified climate risks that are material to those activities. The technical screening criteria should require that the economic operators concerned perform a climate change risk assessment and implement adaptation solutions that reduce the most important risks identified in that assessment. The technical screening criteria should also take into account the context- and location-specific nature of adaptation needs and solutions. Furthermore, the technical screening criteria should ensure the integrity of the environmental and climate objectives and should not be disproportionately prescriptive as to the type of solutions implemented. Those technical screening criteria should take into account the need to prevent climate and weather related disasters and manage risk of such disasters and to ensure the resilience of critical infrastructure, in accordance with relevant Union law relating to assessing the risk and mitigating the effects of such disasters.
- (40) The technical screening criteria for determining whether an economic activity qualifies as contributing substantially to climate change adaptation by providing adaptation solutions in accordance with Article 11(1), point (b) of Regulation (EU) 2020/852 should be established for engineering activities and related technical consultancy dedicated to adaptation to climate change, research, development and innovation, non-life insurance consisting in underwriting of climate-related perils, and reinsurance. These activities have the potential to provide adaptation solutions that contribute substantially to preventing or reducing the risk of the adverse impact of the current climate and the expected future climate on people, nature, or assets, without increasing the risk of an adverse impact.
- (41) The technical screening criteria should recognise that certain economic activities may contribute substantially to climate change adaptation by providing adaptation solutions in accordance with Article 11(1), point (b) of Regulation (EU) 2020/852, or by including adaptation solutions in accordance with the Article 11(1), point (a), of that Regulation. The technical screening criteria for the forestry activities, restoration of wetlands, programming and broadcasting, as well as for the creative, arts and entertainment activities should recognise that possibility. Those activities, while they should be adapted to the adverse impact of the current climate and the expected future climate, also have the potential to provide adaptation solutions that contribute substantially to preventing or reducing the risk of that adverse impact on people, nature, or assets.
- (42) The technical screening criteria for determining whether the economic activities that contribute substantially to climate change mitigation or climate change adaptation cause no significant harm to any of the other environmental objectives should aim at ensuring that contribution to one of the environmental objectives is not made at the expense of other environmental objectives. The ‘do no significant harm’ criteria play therefore an essential role in ensuring the environmental integrity of the classification

of environmentally sustainable activities. The ‘do no significant harm’ criteria for a given environmental objective should be specified for those activities that present a risk of causing significant harm to that objective. The ‘do no significant harm’ criteria should take into account the relevant requirements of existing Union law.

- (43) The technical screening criteria for ensuring that activities that contribute substantially to climate change adaptation do not cause significant harm to climate change mitigation should be laid down for those activities that present a risk of producing significant greenhouse gas emissions while they have the potential to contribute substantially to climate change adaptation.
- (44) For carbon intensive economic activities in the energy sector that are being made climate resilient, the threshold for causing significant harm climate change mitigation objective should be set at the current average emissions level in the EU. It should therefore be required that those assets that are adapted to climate change do not emit more than 270 grams of CO₂ per kWh of electricity generated. In order to remain aligned with the transition pathway towards the 2050 climate goals, it is necessary to update this threshold regularly. For infrastructure, the technical screening criteria should be reviewed and, where appropriate, revised to take account of future technical guidance on the climate proofing of infrastructure in the period 2021-2027.
- (45) All sectors and activities are likely to be affected by climate change. The technical screening criteria for ensuring that economic activities that contribute substantially to climate change mitigation do not cause significant harm to climate change adaptation should therefore apply to all of those economic activities. Those criteria should ensure that existing and future risks that are material to the activity are identified and adaptation solutions are implemented to minimise or avoid possible losses or impacts on business continuity.
- (46) The technical screening criteria for ‘do no significant harm’ to sustainable use and protection of water and marine resources should be specified for all activities that can pose a risk to such sustainable use and protection. Those criteria should aim at avoiding that activities are detrimental to the good status or the good ecological potential of bodies of water, including surface water and groundwater, or to the good environmental status of marine waters, by requiring that environmental degradation risks are identified and addressed, in accordance with a water use and protection management plan.
- (47) The technical screening criteria for ‘do no significant harm’ to transition to a circular economy should be tailored to the specific sectors in order to ensure that economic activities do not lead to inefficiencies in the use of resources or lock-in linear production models, that waste is avoided and reduced and, where unavoidable, managed in accordance with the waste hierarchy. Those criteria should also ensure that economic activities do not undermine the objective of transitioning to a circular economy.
- (48) The technical screening criteria for ‘do no significant harm’ to pollution prevention and control should reflect sector specificities to address the relevant sources and types of pollution into air, water or land, referring, where relevant, to best available

techniques conclusions established under Directive 2010/75/EU of the European Parliament and of the Council¹³.

- (49) The criteria for ‘do no significant harm’ to protection and restoration of biodiversity and ecosystems should be specified for all activities that can pose risks to the status or condition of habitats, species or ecosystems and should require that, where relevant, environmental impact assessments or appropriate assessments are undertaken and the conclusions from such assessments are implemented. Those criteria should ensure that even in the absence of a requirement to perform an environmental impact assessment or other appropriate assessment, activities do not lead to the disturbance, capture or killing of legally protected species or the deterioration of legally protected habitats.
- (50) The technical screening criteria should be without prejudice to the requirement to comply with provisions related to the environment, health, safety and social sustainability laid down in Union and national law, and to the adoption of appropriate mitigation measures in that regard where applicable.
- (51) The provisions in this Regulation are closely linked, since they deal with criteria for determining whether an economic activity contributes substantially to climate change mitigation or climate change adaptation, and whether such economic activity causes no significant harm to one or more of the other environmental objectives laid down in Article 9 of Regulation (EU) 2020/852. In order to ensure coherence between those provisions, which should enter into force at the same time, to facilitate a comprehensive view of the legal framework for stakeholders and to facilitate the application of Regulation (EU) 2020/852, it is necessary to include those provisions in a single Delegated Regulation.
- (52) To ensure that the application of Regulation (EU) 2020/852 evolves with technological, market and policy developments, this Regulation should be regularly reviewed and, where appropriate, amended as regards the activities considered to be contributing substantially to climate change mitigation or climate change adaptation and the corresponding technical screening criteria.
- (53) In order to comply with Articles 10(6) and 11(6) of Regulation (EU) 2020/852, this Regulation should apply from 1 January 2022,

HAS ADOPTED THIS REGULATION:

Article 1

The technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives laid down in Article 9 of Regulation (EU) 2020/852 are set out in Annex I to this Regulation.

Article 2

The technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other

¹³ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control (OJ L 334, 17.12.2010, p. 17).

environmental objectives laid down in Article 9 of Regulation (EU) 2020/852 are set out in Annex II to this Regulation.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN