Perspective:
Gas and nuclear power in the EU Taxonomy

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The EU Commission proposes to include electricity generation from nuclear energy and from fossil gas as transitional activities in the canon of green economic activities. The draft delegated act[1] became public shortly after it was sent to member states, the European Parliament and technical experts and has since been widely circulated.

The public reactions are extensive and varied: not long ago it would have been unthinkable that the EU taxonomy would become the lead story of the main news in Germany. A deeper understanding of the details could, in my view, be helpful for the public discussion.

Let me therefore contextualise the draft from my perspective.

1. With regard to the purpose of the EU taxonomy

The EU Taxonomy is a list of economic activities that, if they meet certain criteria, make a substantial contribution to EU environmental objectives and do not run counter to other environmental objectives. It is intended to facilitate the assessment of environmental impact by the financial market and its stakeholders.

What is remarkable about the EU Commission's draft is that for the first time energy policy aspects play a dominant role within the EU taxonomy, for example with regard to the stability of the power generation system and the phase-out of coal-fired power generation. These are in competition with the EU environmental goals of the taxonomy regulation[2] and represent special treatment that also conflicts with the maxim of technology neutrality[3].

2. Fundamental contradictions with the Taxonomy Regulation

In several places, the draft stipulates that the substantial positive environmental impact must only occur in the further future, e.g. from the year 2026, 2030, 2036, 2045 or even later.

The EU Commission interprets Article 10(2) as well as Article 19(1) of the Taxonomy Regulation in the draft differently than in the Delegated Act on greenhouse gas mitigation and climate adaptation, which has already entered into force. In concrete terms, this means:

- A number of conditions for transitional activities defined in Article 10(2) are softened.
- In addition to the technology neutrality stipulated in Article 19(1) and already men-tioned above, the Taxonomy Regulation, unlike the EU Commission's draft, provides for the consideration of emissions over the full lifecycle[4], the equal treatment of economic activities within a sector[5] and the observance of the precautionary[6] principle.

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1 https://michaelbloss.eu/de/presse/themenhintergrund/kommissionschefin-zerstoert-glaubwuerdigkeit-der-gruenen-eu-taxonomie-mit-atom-gas

2 https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32020R0852

3 Cf.Art. 19 para. letter1 (a) of the Taxonomy Regulation. Technology neutrality means the fundamental equal treatment of different forms of generation.

4 Cf. Art. 19 para. letter1 (g) of the Taxonomy Regulation.

5 Cf. Art. 19 para. letter1 (j) of the Taxonomy Regulation.

6 Cf. Art. 19 para. letter1 (f) of the Taxonomy Regulation.

The EU Commission provides no justification for the deviation from the Taxonomy Regulation. There is also no impact assessment of the draft, neither with regard to the effect on emission reduction and thus consistency with the European climate targets for 2030[7] and 2050 nor the implications for the financial markets.

3. With regard to electricity generation from fossil, gaseous fuels

The draft assigns gas an important role in the restructuring of the power generation system, for example to cushion periods with little electricity from renewable sources and peak load while replacing coal-fired power plants. However, the relief of the European emissions budget through this fuel switch remains unclear in view of the envisaged criteria.

Unlike the 100gCO2e/kWh criterion, which had already been recommended by the Technical Expert Group in March 2020, neither the 270gCO2e/kWh2 criterion nor the 550kgCO2e/kW (annual average over 20 years)[8] make a substantial contribution. The addition of low carbon gas, which saves 70% of emissions, could even contribute to an increase in total emissions if blue hydrogen, i.e. hydrogen from steam-reformed fossil gas, were used for this purpose. In addition, the sometimes considerable methane emissions in the course of the extraction, transport and storage of fossil gas are not taken into account. This is in contradiction to the life cycle concept of the Taxonomy Regulation.

There is also great uncertainty regarding the availability of renewable or low carbon gas as envisaged by the draft (30% from 2026, 55% from 2030, 100% from 2035). A softening of these criteria would lead to a further deterioration of the emissions profile. It is also questionable how the emission reduction can be guaranteed.

Furthermore, in a scarcity situation, hydrogen should primarily be used in industrial production processes such as in the chemical industry and steel production, as there are hardly any alternatives there, in contrast to electricity generation.

4. With regard to electricity generation from nuclear energy

The green taxonomy is used to identify substantial contributions to the 2030 and 2050 climate targets. However, nuclear power plants that receive a permit until 2045 will not contribute to these targets due to their late commissioning.

The draft does not include any requirements to prevent damage in relation to the circular economy (reuse of nuclear waste), pollution prevention (nuclear waste disposal), protection of water and marine resources (in the event of uncontrolled leakage of radioactivity) and biodiversity. There is no requirement to have a nuclear waste repository in operation, nor is there a need to demonstrate its sustainability over a very long time horizon. While a plan for this is required, it does not specify what requirements the plan must meet.

5. Implications for the financial markets

As a result of the questionable credibility of the EU taxonomy with regard to positive environmental impact, financial institutions would be faced with the challenge of having to provide detailed information on the problematic areas in order to avoid greenwashing accusations. Nuclear energy and gas-fired power plants would have to be identified as a separate category both at the company level and at the financial product level.

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7 Für Details siehe https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_de

8 Vgl. Complementary Delegated Act: 4.29 Substantial contribution to climate change mitigation Ziffer 1 Buchstabe a und b.

The retrospective disqualification of an environmental impact classified as green should be avoided. Criteria based on future greening represent reputational risks for financial service providers. For this reason, only the share of turnover for financial products that actually achieves a positive environmental impact at the present time can seriously be considered for the green taxonomy. This could pose additional implementation and reporting challenges for financial service providers when applying the taxonomy criteria for nuclear energy and gas.

Investment plans can be included in accordance with the Delegated Act on Article 8 of the Taxonomy Regulation, provided that they lead to the achievement of a substantial positive environmental effect within a maximum of ten years. The draft contradicts this, e.g. in view of the years 2035 and 2045 for meeting targets.

There is also a lack of sufficient provisions for the actual achievement of an investment plan. Thus, it is not ensured that the advertised plans are actually implemented. Besides the risk of retrospective withdrawal of the green rating, this could lead to the financial market financing assets under the green label that deviate far from the required decar bonisation path of the energy system. The EU Commission's draft could thus unintentionally lead to the misallocation of a substantial amount of capital. In a worst-case scenario, this could result in stranded assets.

It cannot be ruled out that cross-border providers of sustainable mutual funds will have to offer separate products for EU markets with different national understandings of environ-mental performance or national regulation in this respect. In an era that strives to integrate European capital markets more strongly, this would be counterproductive.

6. Conclusions

The EU Commission's proposal is inconsistent with the requirements of the Taxonomy Regulation, as additional aspects are added to the environmental impacts. However, the green taxonomy is not the place to include economic activities that need to achieve transition, whose emissions are currently too high or that contribute to the system in a way that could counteract the environmental objectives.

The EU Commission's draft is also unsuitable for ensuring the sustainability of financial products because emission reductions might only be achieved in the future, whereas the corresponding economic activity already qualifies for the green taxonomy in the present.

Rather, it is a different class of economic activities that should consequently be dealt with in a separate legislative process from the green taxonomy, with appropriate impact assessment. The Platform on Sustainable Finance is already working on behalf of the EU Commis-sion on a corresponding proposal for an extended taxonomy, among other things with regard to an intermediate area between economic activities with a substantial environmental im-pact and activities that urgently need to transition.

State subsidies can be based on other criteria besides the environment, such as the stability of the energy system. Such reasons for financing and subsidies are independent of the environmental impact. Therefore, a separate regulation should be found for this outside the green taxonomy, including public consultation, also in order to maintain the important guiding function of the green taxonomy.

Response by the Platform on Sustainable Finance:

https://ec.europa.eu/info/files/220121-sustainable-finance-platform-response-taxonomy-complementary-delegated-act_en

Response by the German Federal Government

https://www.bundesfinanzministerium.de/Content/DE/Downloads/Europa/stellungnahme-zur-taxonomie.pdf?__blob=publicationFile&v=4)

Response by the German Environment Protection Agency

https://www.umweltbundesamt.de/sites/default/files/medien/479/dokumente/factsheet_no_greenwashing_of_the_eus_anti-greenwashing_taxonomy_0.pdf

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