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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

Subject: REGULATORY SCRUTINY BOARD OPINION 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

Delegations will find attached document SEC(2021) 166.

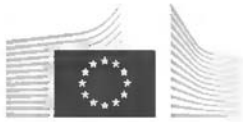
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EUROPEAN COMMISSION

2.10.2020

SEC(2021) 166

REGULATORY SCRUTINY BOARD OPINION

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

{C(2021) 2800}
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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Delegated act on a climate change mitigation and adaptation taxonomy

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Achieving EU sustainability targets will require more designated investment. Private investors seeking to invest in sustainability need to be able to identify, which investments are considered “green”. To this end, the EU adopted a Taxonomy Regulation in June 2020. This foresees one delegated act that sets out criteria for climate change mitigation and adaptation activities. This report presents a first step towards a classification system for economic activities that count as sustainable. The system should help guide financial markets and investors. At this stage, the proposal covers only criteria for climate change mitigation and adaptation. It concerns only the classification system, not its use. Further initiatives will follow. The Taxonomy Regulation had an impact assessment. Given the technical nature and specific scope of this delegated act, this report has a different structure from standard impact assessments.

(B) Summary of findings

The Board notes the further clarifications given regarding outstanding policy choices and deviations from TEG’s advice and acknowledges the additional material included, notably on specific screening criteria.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report does not sufficiently explain the rationale for excluding some potentially relevant sectors in this first act, the impact this might have on these sectors and how any potential negative effects would be mitigated.**
- (2) The report does not include the screening criteria for substantial contribution to climate adaptation and for enabling activities, which are an important outcome of the process.**
- (3) It is not clear how the framework will respond to potential risks and distortions in a timely manner.**

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should further explain the evolving nature of the taxonomy. It should better justify why there is a need to come forward with a first act that does not cover some key activities for climate mitigation and particularly for climate adaptation. It should show that this is in line with the equal treatment requirement and the Taxonomy Regulation's provision that technical screening criteria relating to climate mitigation and adaptation be established in one delegated act. The report should better justify the selection of included sectors for climate mitigation and adaptation and provide an overview of what is envisaged to be included at a later stage.

(2) The report should elaborate on the likely impacts on sectors that are excluded at this stage. This could include not being counted as green investment in EU or national programmes, or not qualifying to use the taxonomy on a voluntary basis, which the report expects to have the largest potential impact. The report should explain how potential negative effects will be mitigated.

(3) The report now includes the (preliminary) screening criteria for climate mitigation in annex. The screening criteria for substantial contribution to climate adaptation are not included. It lacks a description of the risk factors that will be elements of these screening criteria. Nor are the screening criteria for enabling activities for climate adaptation included. These important outcomes of the report should be included.

(4) The report should show whether there is a difference between the level of ambition of the criterion for do no significant harm to climate adaptation and the (not presented) criterion for substantial contribution to adaptation. For that, the report needs to include both criteria.

(5) The report should clarify how the framework will identify and respond in a timely manner to emerging risks and distortions between economic activities.

(6) The monitoring and evaluation framework needs to better, and more explicitly, account for issues such as:

- a) A proper and justified sectoral scope,
- b) A level playing field, assessed both within and between economic activities,
- c) The extent and nature of market impacts, including on stranded assets,
- d) Reporting burdens at the level of specific economic activities.

The Board notes that due to the specific nature of this impact assessment, there is no overall estimate of costs and benefits.

(D) Conclusion

The lead DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

Full title	Impact assessment accompanying supplementing regulation (EU) 2020/852 of the European Parliament and of the Council as regards the technical screening criteria for determining under which conditions an economic activity qualifies as environmentally sustainable
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Reference number	PLAN/2020/6950
Submitted to RSB on	9 September 2020
Date of RSB meeting	Written procedure



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment // Delegated act on a climate change mitigation and adaptation taxonomy

Overall opinion: NEGATIVE

(A) Policy context

Achieving EU sustainability targets will require more designated investment. Private investors seeking to invest in sustainability need to be able to identify which investments are considered “green”. To this end, the EU adopted a Taxonomy Regulation in June 2020. This foresees a delegated act that sets out criteria for climate change mitigation and adaptation activities.

This report presents a first step towards a classification system for economic activities that count as sustainable. The system should help guide financial markets and investors. At this stage, the proposal covers only criteria for climate change mitigation and adaptation. It concerns only the classification system, not its use. Further initiatives will follow.

The Taxonomy Regulation had an impact assessment. Given the technical nature and specific scope of this delegated act, this report has a different structure from standard impact assessments.

(B) Summary of findings

The Board notes the specificity of this impact assessment, which justifies a proportionate approach. The Board also notes the additional useful information provided in advance of the meeting.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

- (1) The report does not sufficiently justify the selection of activities to cover in this delegated act, especially for climate change adaptation.**
- (2) The report does not sufficiently present the proposed screening criteria. It does not sufficiently outline the trade-offs and discuss the political choices, including when the criteria deviate from the advice from the Technical Expert Group (TEG).**

(3) The report does not address the administrative burdens companies will face, if choosing to apply the taxonomy.

(C) What to improve

(1) The report should clearly justify which activities this delegated act will cover and why other activities will be treated at a later stage. It should better explain and justify why it does not include certain key activities for climate adaptation. It should justify why CO₂ mitigating activities in fossil fuel activities (such as oil refineries) are not covered. It should more generally describe how the taxonomy will evolve and how this is linked to its planned use.

(2) The report is too vague on the screening criteria. It argues the choices on the basis of general 'approaches' without establishing a clear check on the compliance of the screening criteria with the Taxonomy Regulation. In their current form, they do not rule out arbitrary choices.

To address these issues, the main report should better bring out the areas where key political choices have to be made and present the pros and cons of the resulting screening criteria. It should clearly explain where it deviates from the recommendations of the TEG, why this is the case and the related effect. It should also be clearer on the reasoning why some criteria should go beyond existing EU law in ambition and how they would be coherent with an evolving policy framework.

To enhance clarity and accessibility, the analytical annex could be restructured to follow the TEG report, presenting sectoral fiches for the criteria. The fiches could summarise what alternatives were considered, how the choices were made and estimate the likely costs of reporting obligations for companies. As the cost assessment is part of the identification of the screening criteria, at least a qualitative assessment has to be part of this report.

(3) The report should demonstrate more clearly that the selection criteria for substantial contribution to adaptation are more ambitious than those for do no significant harm to adaptation. It should also discuss how the criteria for do no significant harm to adaptation take into account their potential market impact and the risk of certain assets becoming stranded, in line with Article 19(1i) of the Taxonomy Regulation.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Impact assessment on delegated act on a climate change mitigation and adaptation taxonomy
Reference number	PLAN/2020/6950
Submitted to RSB on	23 June 2020

Date of RSB meeting	22 July 2020
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