

Legal arguments against including fossil gas in the taxonomy

Legal opinion commissioned by DUH

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About us



Environmental Action Germany (Deutsche Umwelthilfe e.V.) has been campaigning to preserve the natural foundations of life for more than 40 years. In doing so, it brings together protecting the environment with consumer protection like no other organisation in Germany. Environmental Action Germany supports all sustainable ways of life and economic systems that respect ecological boundaries. At the same time, the organisation fights for the preservation of biological diversity and the protection of natural assets as well as for climate protection.

Legal opinion

on the inclusion of nuclear energy and natural gas in the EU taxonomy for sustainable activities



[German original](#)

English summary available on request

- Commissioned by DUH in January 2022
- Argues that...
 - the authorization to propose the DA on the technical screening criteria has elapsed,
 - **fossil gas cannot be classified as a sustainable activity under the taxonomy regulation,**
 - the German government has a duty to prevent the inclusion of fossil gas under Art. 20a Basic Law.
- New developments since publication:
 - Official DA published on 9.3.2022
 - Ukraine War has changed the context

An activity can be classified as sustainable, if it:

1

Contributes substantially to one or more of the six environmental objectives

(Articles 9-16 Taxonomy Regulation)

2

Does not significantly harm any of the six environmental objectives

(Article 17 Taxonomy Regulation)

3

Complies with minimum safeguards

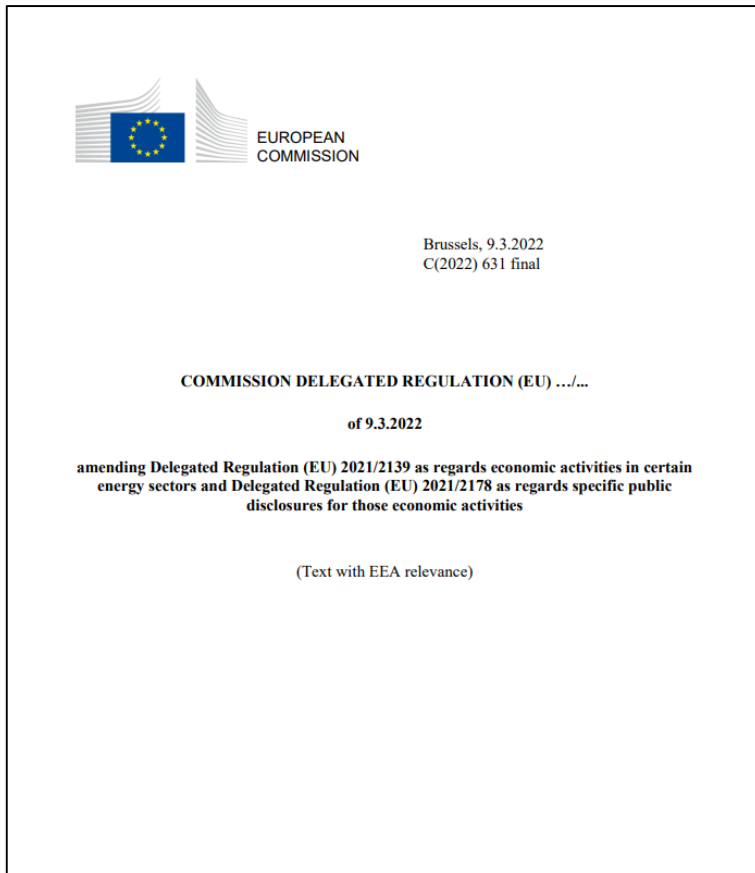
(Article 18 Taxonomy Regulation)

4

Complies with the technical screening criteria defined by delegated act

(Article 19 Taxonomy Regulation)

DA Proposal (Annex I 4.29)



New fossil gas power plants can be classified as sustainable as long as they:

- meet a threshold of 270gCO₂e/kWh or **550 kg CO₂e/KW average annual emissions over 20 years**
- can be converted to „renewable or **low-carbon gases**“ after 2035
- replace an existing plant of similar size (max. 15% larger capacity)
- produce 55% lower GHG emissions than the replaced plant **over the lifetime**
- are located in a country that has committed to a coal phase-out

[Annex I](#) to Delegated Regulation (EU) 2021/2139

Substantial contribution (Taxonomy Regulation)

Article 10

Substantial contribution to climate change mitigation

2. [...] an economic activity for which there is no technologically and economically feasible low-carbon alternative shall qualify [...] where it supports the transition to a climate-neutral economy consistent with a **pathway to limit the temperature increase to 1,5°C** above preindustrial levels, including by phasing out greenhouse gas emissions, in particular emissions from solid fossil fuels, and where that activity:

- (a) has greenhouse gas emission levels that correspond to the best performance in the sector or industry;
- (b) does not **hamper the development and deployment of low-carbon alternatives**; and
- (c) does not lead to a **lock-in of carbon-intensive assets**, considering the economic lifetime of those assets.

Article 16

Enabling activities

An economic activity shall qualify as contributing substantially to one or more of the environmental objectives [...] by directly enabling other activities to make a substantial contribution to one or more of those objectives, provided that such economic activity:

- (a) **does not lead to a lock-in of assets** that undermine long-term environmental goals, considering the economic lifetime of those assets; and
- (b) has a **substantial positive environmental impact**, on the basis of **life-cycle considerations**.

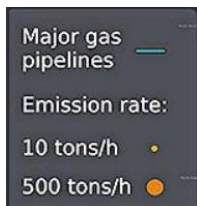
[REGULATION \(EU\) 2020/852](#) („Taxonomy Regulation“)

Material arguments (1)

- According to the [PAC-Scenarios for Energy Infrastructure](#), all fossil gas needs to be phased out by 2035 to stay within a 1.5°C-budget
- Methane emissions along the fossil gas supply chain are not properly reflected in official figures
- Zero emissions are not guaranteed after switch to “low-carbon gases” ([studies](#) show blue hydrogen can have a worse climate impact than fossil gas)
- It is doubtful that permitting new fossil gas plants beyond 2030 can be **1.5°C-compatible**
- New fossil gas plants promote substantial **carbon lock-in**, potentially even beyond 2035
- This constitutes **significant harm** to climate change mitigation

Methane leakage must be taken into account

- According to the [IEA](#), energy sector methane emissions are 70% higher than official figures
- Major EU gas suppliers such as USA, Russia and Algeria are among the top 5 global sources of methane ultra-emitters according to [recent satellite measurements](#)



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Material arguments (2)

- Investments in fossil gas power and heating plants compete with sustainable alternatives for limited funds
- Fossil gas generation directly competes with renewable alternatives if full load hours are not limited to providing a back-up function
- Using renewable or low-carbon gases (i.e. hydrogen) for power/heating competes with more efficient uses (e.g. in industry, transport)
- New fossil gas power and heating plants **hamper the development of low-carbon alternatives**

Impact of the Ukraine War

- Gas demand declining more quickly:
 - Fit for 55 is already set to reduce annual fossil gas consumption by 100bcm until 2030
 - The REPowerEU Communication outlines plans to reduce it by an additional 55bcm until 2030
- The decision to include fossil gas in the Taxonomy locks in future demand and is completely at odds with other developments:
 - Undermines climate protection efforts and sustainable alternatives
 - Creates additional future fossil gas demand to potentially benefit Russia
- The DA proposal needs to be **withdrawn and fundamentally reevaluated** given the changed context
- New **impact assessment** and **consultation** are made necessary

Summary

- The DA including fossil gas in the taxonomy does not comply with the taxonomy regulation
 - No substantial contribution to climate change mitigation (not 1.5°C-compatible, carbon lock-in, hampers low-carbon alternatives)
 - Causes significant harm to climate change mitigation
- The DA needs to be fundamentally reevaluated in the context of Russia's invasion of Ukraine

Thank you for your attention

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