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

of 27.6.2023

amending Delegated Regulation (EU) 2021/2139 establishing additional technical screening criteria for determining the conditions under which certain economic activities qualify as contributing substantially to climate change mitigation or climate change adaptation and for determining whether those activities cause no significant harm to any of the other environmental objectives

(Text with EEA relevance)

{SWD(2023) 239 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. General background and objective

The European Green Deal¹ and the transition to a climate-neutral and sustainable economy by 2050 present opportunities but also challenges for the EU. Investment in the green transition will help make Europe the first climate neutral continent, will help protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. Investments in clean energy and energy efficiency will strengthen the Union's open strategic autonomy and reduce our reliance on third country fossil fuel imports, helping to moderate energy prices in the future. Investments in our capacity to develop and manufacture clean technologies will also reinforce the EU's competitiveness. To achieve this, the Union will need to invest an additional EUR 700 billion annually to meet the objectives of the Green Deal². By far the greater part of these investments will have to come from private funding. This is also in line with the Commission priority of building a future-ready economy that works for people and delivers stability, jobs, growth and investment.

Regulation (EU) 2020/852 of the European Parliament and of the Council³ (the 'Taxonomy Regulation') aims to help channel capital towards activities that substantially contribute to reaching the objectives of the European Green Deal, such as climate neutrality and resilience, zero pollution, preservation of biodiversity and ecosystems, the transition to a circular economy and sustainable use of water and marine resources. By providing companies, investors and policymakers with definitions of economic activities that can be considered to be environmentally sustainable, the Taxonomy Regulation is expected to help direct investments in economic sectors where they are most needed for a fair green transition.

This framework helps to increase transparency, mitigate the risk of 'greenwashing' and avoid the market fragmentation that can be caused by a lack of common understanding on what constitutes environmentally sustainable economic activities. However, the Taxonomy Regulation does not impose any obligation on investors to invest only in those economic activities that meet specific criteria laid down in that Regulation.

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

¹ 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).

² Commission Staff Working Document on Investment needs assessment and funding availabilities to strengthen EU's Net-Zero technology manufacturing capacity, SWD(2023) 68 final.

Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of Regions: The EU economy after COVID-19: implications for economic governance, COM (2021) 662 final.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Environmental Implementation Review 2022, Turning the tide through environmental compliance, COM(2022) 438 final.

³ 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).

- (i) contribute substantially to one or more of the six environmental objectives⁴ in accordance with Articles 10 to 16 of that Regulation;
- (ii) do no significant harm to any of the other environmental objectives in accordance with Article 17 of that Regulation;
- (iii) be carried out in compliance with the minimum (social) safeguards set out in Article 18 of the Taxonomy Regulation;
- (iv) comply with the technical screening criteria set out by the Commission through delegated acts in accordance with Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) of the Taxonomy Regulation. The technical screening criteria operationalise conditions (i) and (ii) by specifying the performance requirements for any economic activity that determine under what conditions that activity: (i) makes a substantial contribution to a given environmental objective; and (ii) does not significantly harm the other environmental objectives.

The Commission adopted on 4 June 2021 Commission Delegated Regulation (EU) 2021/2139⁵ establishing technical screening criteria under which certain economic activities qualify as contributing substantially to climate change mitigation or climate change adaptation and not causing significant harm to any of the other relevant environmental objectives (the ‘Taxonomy Climate Delegated Act’). On 6 July 2021 the Commission adopted Commission Delegated Regulation (EU) 2021/2178⁶ specifying the content, methodology, and presentation of the information to be disclosed by both non-financial and financial undertakings that are required to report about the eligibility and alignment of their activities with the EU Taxonomy (the ‘Taxonomy Disclosures Delegated Act’). On 9 March 2022, the Commission adopted Commission Delegated Regulation (EU) 2022/1214⁷ amending the Taxonomy Climate Delegated Act and the Taxonomy Disclosures Delegated Act. These amendments included certain activities in the EU Taxonomy on energy generation from nuclear energy and from natural gas and set out specific disclosure requirements for those activities.

This Delegated Act amends the Taxonomy Climate Delegated Act mainly by establishing the technical screening criteria for climate change mitigation and climate change adaptation for economic activities not yet included in that Delegated Act. This notably concerns some manufacturing activities in relation to key components for low carbon transport and electrical equipment, which can help achieve greenhouse gas emissions savings in other target activities. It also concerns some transitional activities in the transport sector (waterborne

⁴ The six environmental objectives as defined in the Taxonomy Regulation are as follows: (a) climate change mitigation; (b) climate change adaptation; (c) sustainable use and protection of water and marine resources; (d) transition to a circular economy; (e) pollution prevention and control; and (f) protection and restoration of biodiversity and ecosystem.

⁵ Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 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 (OJ L 442, 9.12.2021, p. 1).

⁶ Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (OJ L 443, 10.12.2021, p. 9).

⁷ Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ L 188, 15.7.2022, p. 1).

transport and aviation) where zero-carbon solutions are not yet sufficiently advanced, and where their inclusion represents an effective way to help incentivise improvements beyond the status quo. Where this Delegated Act establishes technical screening criteria for transitional activities as referred to in Article 10(2) of the Taxonomy Regulation, those criteria are set out for economic activities for which at present there is no technologically and economically feasible low-carbon alternative and which would be necessary in the transition towards climate neutrality. Such criteria are not limited to technical screening criteria that ensure only the most substantial contribution to the climate change mitigation objective and do no harm, or the least harm to the other environmental objectives.

Climate change is likely to affect all sectors of the economy, which is why all sectors will need to be adapted to the adverse impact of the current climate and the expected future climate. The Taxonomy Climate Delegated Act therefore mainly established technical screening criteria for climate change adaptation for those sectors and economic activities that are covered by the technical screening criteria for climate change mitigation. Future revisions of the Taxonomy Climate Delegated Act will consider appropriate technical screening criteria for climate change adaptation also for those economic activities added by this Delegated Regulation and the parallel Delegated Regulation on the environmental objectives of the Taxonomy. However, there are some activities that urgently need to be adapted to the impacts of climate change as they can offer adaptation solutions that ensure the resilience of the society and environment, such as emergency services, flood risk prevention and protection infrastructure or desalination. Adding these activities to the EU Taxonomy can help channelling investments into making the Union climate resilient by 2050, in line with the EU Strategy on Adaptation to Climate Change⁸.

This Delegated Act also introduces limited amendments of a technical nature to some of the technical screening criteria for activities which were already included in the Taxonomy Climate Delegated Act to improve the usability, coherence and implementation of that Delegated Act.

This Delegated Act is part of a regulatory package that includes the Delegated Act specifying the technical screening criteria for economic activities contributing to the other four environmental objectives ('the Taxonomy Environmental Delegated Act'). This package also makes targeted amendments to the Taxonomy Disclosures Delegated Act to ensure, in particular, that those activities are appropriately reported by the relevant non-financial and financial undertakings.

1.2. Legal background

This Delegated Act is based on the empowerments set out in 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-Making⁹, this Delegated Act combines two interrelated empowerments of the Taxonomy Regulation in a single act, namely those laid down in Articles 10(3) and 11(3) related to the technical screening criteria for climate change mitigation and climate change adaptation.

⁸ 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).

⁹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

This Delegated Act builds on the recommendations of the Platform on Sustainable Finance (PSF), a Commission expert group set up in 2020 composed of diverse private and public sector stakeholders. The PSF is mandated under Article 20 of the Taxonomy Regulation to advise the Commission on the technical screening criteria for the six environmental objectives of the EU Taxonomy.

The draft technical screening criteria proposed by the Platform were published for stakeholder feedback from August to September 2021. The feedback provided by stakeholders was considered by the Platform before the publication of its final recommendations in March and November 2022¹⁰. The final recommendations of the Platform were also discussed with the Member States Expert Group (MSEG) of the Commission on several occasions in particular on 6 April, 8 July, 4 October and 15 December 2022 and on 24 January 2023.

The Commission considered the recommended technical screening criteria developed by the Platform and conducted further work to ensure that the criteria meet the requirements set out in Article 19 of the Taxonomy Regulation. The draft amendments to the delegated act were shared with the MSEG and the Platform on 5 April 2023 and published together with the proposed Environmental Delegated Act and the amendments to the Disclosures Delegated Act, for four weeks to gather stakeholder feedback from 5 April to 3 May 2023. In total, 636 respondents provided feedback¹¹.

The draft amendments to the Climate Delegated Act were also discussed with the Platform on 19 April and 24 May 2023. They were also presented to and discussed with the Member States' experts and observers from the European Parliament, at meetings of the MSEG on 20 April 2023 and 25 May 2023. An ad hoc discussion with the Members of European Parliament also took place on 25 May 2023.

Overall, the Platform, MSEG and stakeholders' feedback was mostly positive. They welcomed the addition of new sectors and activities to the Taxonomy Climate Delegated Act. Regarding some sectors, comments were to an extent polarised between those proposing more or less stringent criteria.

Based on a careful examination of the feedback received, some targeted calibrations of certain criteria as well as other technical modifications were made for the finalisation of the Delegated Regulation. These concern, in particular, technical clarifications, alignments to ensure greater consistency with existing sectoral legislation, the inclusion of references to upcoming reviews, as well as alignments to improve the coherence of the 'do no significant harm' (DNSH) criteria for several activities.

A summary of the feedback received during the public feedback period is set out in Annex 7.2 of the Staff Working Document accompanying this Delegated Regulation. The main changes introduced to the criteria after the feedback period are outlined in chapter 4 of the Staff Working Document (classified by objective and sector of activity).

Activities making substantial contribution to climate change mitigation – Annex I

Regarding the new activities of manufacturing automotive components, rail constituents and electrical equipment, given the broadly positive feedback from Member States, the Platform

¹⁰ All Platform publications are available at: https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance-old/platform-sustainable-finance_en#activities

¹¹ All comments received are available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13237-Sustainable-investment-EU-environmental-taxonomy_en.

and other stakeholders, the changes mostly constitute technical clarifications. While some respondents suggested a broader scope in particular for eligible automotive components, most seemed to agree with restricting the scope to components produced only for zero-emissions vehicles. Regarding the adjustments to the waterborne transport activities, the main change concerns specific additions concerning maritime activities, to control against methane leakage, in response to some feedback from the Platform and other respondents that the draft version of criteria does not address appropriately this potential issue. Regarding the inclusion of aviation activities, reflecting the overall positive feedback from the aviation industry and Member States, and recognising that some NGOs were more critical, some adjustments of a technical nature were made to improve usability.

Activities making substantial contribution to climate change adaptation – Annex II

Three main changes were made to the activities making a substantial contribution to climate change adaptation covered in Annex II to the Delegated Act. First, the descriptions of the activities were changed to (i) extend the scope (desalination) and (ii) add limitations to the newly covered activities addressing potential overlaps between these activities and other closely related activities already covered in the Taxonomy Climate Delegated Act or the Taxonomy Environmental Delegated Act (software, consultancy, emergency services and flood risk prevention and protection infrastructure). Second, changes to the DNSH criteria were introduced to ensure coherence between activities across the delegated acts, and to better reflect the scope of different activities. For instance, the DNSH criteria for the transition to a circular economy and pollution prevention and control of the software activity were changed to ‘not applicable’ as they focused on the hardware used to make the software, which falls outside of the scope of the activity. Third, following the feedback received from the Platform, the activity ‘Civil engineering’ was removed from the Delegated Act due to its overlaps with other activities already included in the Taxonomy Climate Delegated Act.

3. ASSESSMENT OF IMPACTS

The Commission carried out an assessment of impacts of the Delegated Act. The assessment of impacts did not take the form of a formal impact assessment. This is because the Delegated Act follows the policy choices already made in the Taxonomy Regulation and, to a large extent in the Taxonomy Climate Delegated Act. The Taxonomy Regulation was subject to an impact assessment¹² that provided an assessment of the economic, social and environmental impacts of reporting under the EU Taxonomy. The Taxonomy Climate Delegated Act was accompanied by a proportionate impact assessment¹³ that outlined in detail the general approaches taken to specifying technical screening criteria. That assessment remains relevant for the technical screening criteria for the environmental objectives.

¹² Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment and Proposal for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341 and Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1011 on low carbon benchmarks and positive carbon impact benchmarks, SWD/2018/264 final.

¹³ Commission Staff Working Document Impact Assessment Report Accompanying the document Commission Delegated Regulation (EU) .../... 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, SWD/2021/0152 final.

This Delegated Act is supported by an analytical Staff Working Document¹⁴ that: (i) describes the context and purpose of the initiative; (ii) explains the approach taken for the definition of the specific technical screening criteria, including how those criteria are expected to work in practice; (iii) explains any divergences or additions made to the Platform’s recommendations; (iv) summarises the expected benefits and costs of this initiative, including in particular administrative costs, and (v) describes how this initiative will be monitored and evaluated.

The Commission assessed, the consistency of this Delegated Act with the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119 of the European Parliament and the Council¹⁵ and with ensuring progress on adaptation as referred to in Article 5 of that Regulation.

The criteria for substantial contribution to climate change mitigation and climate change adaptation and the respective ‘do no significant harm’ (DNSH) criteria ensure that this Delegated Regulation is consistent with Regulation (EU) 2021/1119. In accordance with requirements of Article 17 of the Taxonomy Regulation, the calibration of the DNSH criteria takes into account the environmental risks inherent in specific activities. Wherever possible and appropriate, these DNSH criteria refer to compliance with requirements set out in Union law.

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 lays down the amendments to:

Annex I to the Taxonomy Climate Delegated Act by adding or complementing technical screening criteria for climate change mitigation for certain economic activities in the transport and manufacturing sectors. Annex I also includes targeted amendments of existing provisions that address certain technical and legal inconsistencies identified since the application of the Taxonomy Climate Delegated Act;

Annex II to the Taxonomy Climate Delegated Act by adding the technical screening criteria for climate change adaptation for certain economic activities that are adapted to climate change or enable the adaptation of other economic activities from the water, construction, disaster risk management, information and communication, and professional services sectors. Annex II also includes targeted amendments of existing provisions that address certain technical and legal inconsistencies identified since the application of the Taxonomy Climate Delegated Act.

Article 2 lays down the rules on the entry into force and the date of application of this Regulation.

¹⁴ [Placeholder for a reference to the Staff Working Document number]

¹⁵ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’) (OJ L 243, 9.7.2021, p. 1).

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(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) 2019/2088¹⁶, 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 Council¹⁷ 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) Commission Delegated Regulation (EU) 2021/2139¹⁸ establishes 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. The technical screening criteria cover economic activities from

¹⁶ OJ L 198, 22.6.2020, p. 13.

¹⁷ 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).

¹⁸ Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 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 (OJ L 442, 9.12.2021, p. 1).

nine economic sectors because of their significant share in overall greenhouse gas emissions, and their proven potential for avoiding the production of greenhouse gas emissions, reducing such emissions, or removing such emissions. In addition, those economic activities have a proven potential to enable such avoidance, reduction and removal for other economic sectors and activities, or to ensure long-term storage of such emissions for other sectors and activities.

- (3) Delegated Regulation (EU) 2021/2139 does not cover all economic activities that may contribute substantially to climate change mitigation or climate change adaptation. To further facilitate environmentally sustainable investments, it is necessary to lay down additional technical screening criteria for those economic activities that may contribute substantially to climate change mitigation or climate change adaptation without significantly harming the other environmental objectives, but which are currently not covered by Delegated Regulation (EU) 2021/2139. The additional economic activities that contribute substantially to climate change mitigation cover largely the transport sector and its value chain. The additional economic activities that contribute substantially to climate change adaptation cover largely activities enabling adaptation to the unavoidable effects of climate change, including desalination and services for preventing and responding to climate-related disasters and emergencies.
- (4) The technical screening criteria for those additional economic activities should, 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 Council¹⁹. To facilitate the identification by undertakings and financial market participants of economic activities for which technical screening criteria should be established, the specific description of an economic activity should also contain the references to NACE codes that can be associated with that activity. Those references should be understood as indicative and should not prevail over the specific definition of the economic activity provided in its description.
- (5) The technical screening criteria for economic activities that contribute substantially to climate change mitigation or climate change adaptation should ensure that the economic activity concerned has a positive impact on climate change mitigation or climate change adaptation or reduces negative impacts on such mitigation or adaptation. Those technical screening criteria should therefore refer to thresholds or performance levels that the economic activity should achieve to qualify as contributing substantially to climate change mitigation or climate change adaptation. The technical screening criteria for ‘do no significant harm’ (DNSH) should ensure that the economic activity has no significant negative environmental impacts, including climate-related impacts. Consequently, those technical screening criteria should specify the minimum requirements that the economic activity should meet to qualify as environmentally sustainable.
- (6) The technical screening criteria for determining whether an economic activity contributes substantially to climate change mitigation or climate change adaptation laid down in Article 9 of Regulation (EU) 2020/852 and does no significant harm to

¹⁹ 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).

any of the other environmental objectives should, where relevant, build on existing Union law, best practices, standards and methodologies, and well-established standards, practices and methodologies developed by internationally reputed public entities. Where those standards, practices and methodologies are not available for a specific policy area, the technical screening criteria should build on well-established standards developed by internationally reputed private bodies.

- (7) 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 an enabling activity as referred to in Article 16 of that Regulation or a transitional activity as referred to in Article 10(2) of that Regulation. For the technical screening criteria to meet the requirement 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, a relative improvement, a set of qualitative performance requirements, process or practice-based requirements, or a precise description of the nature of the economic activity itself where that activity by its nature can contribute substantially to climate change mitigation or climate change adaptation. Technical screening criteria for enabling activities should further ensure that the activities directly enabling other activities to improve their environmental performance, have a substantial positive environmental impact and do not lead to a lock-in of environmentally harmful assets. To ensure that transitional activities remain on a credible pathway consistent with a climate-neutral economy, the technical screening criteria for transitional activities should be reviewed every three years as set out Article 19(5) of Regulation (EU) 2020/852, taking due account of changes in Union law.
- (8) The manufacturing of electrical equipment has an important role in contributing substantially to climate change mitigation by, in particular, furthering the uptake of renewable sources of energy in the Union electric grids and developing recharging installations for zero emissions vehicles and smart energy usage tools for households. To further unlock the potential of electrification in the Union and to further accelerate investments into the manufacturing of electrical equipment, it is necessary to lay down technical screening criteria for the manufacturing of electrical equipment.
- (9) The manufacturing of low carbon vehicles, personal mobility devices and rail rolling stock and infrastructure depends on components that play a key role in reducing greenhouse gas (GHG) emissions, or, in the case of rail, that are essential to the environmental performance, operation and functioning over the lifetime of Taxonomy-aligned trains and rail infrastructure, but are often manufactured by undertakings that do not assemble those vehicles or other means of transportation. To ensure that the role of those undertakings and of the components they manufacture in climate change mitigation is duly recognised, the manufacturing of the components that are essential for delivering and improving the environmental performance of the low carbon vehicle or other means of transportation should be included as a distinct economic activity in Delegated Regulation (EU) 2021/2139. Technical screening criteria for components which are decisive for environmental performance should be included. For vehicles, that includes, in particular, controllers, transformers, electric motors, charge ports and chargers, DC/DC converters, power inverters, alternators, controller units, regenerative braking systems, brakes with drag reduction technologies, thermal management systems, transmission system, hydrogen storing and fueling systems, electronics when necessary for the operations of the powertrains, drivetrains, “best-in-class” suspension systems leading to energy efficiency improvements, any auxiliaries when these are

necessary for low-carbon vehicles and when these are substantially more energy efficient than alternatives, active aero features on low-carbon vehicles reducing air drag, and trailers that incorporate energy savings technologies such as a combination of regenerative braking or aerodynamic improvements. For rail, that includes, in particular, rail constituents as set out in Annex I to Directive (EU) 2016/797 of the European Parliament and of the Council²⁰.

- (10) Tyres represent 20% of a vehicle energy consumption and as such, tyre manufacturing has the possibility to reduce greenhouse gas emissions targeted by the entire transport sector, relying on innovation. Tyres can also contribute to a more circular economy. Accordingly, while tyre manufacturing is not included in the scope of the activity for manufacturing of components that are essential for delivering and improving the environmental performance of low carbon vehicles, it will be necessary to further assess the manufacturing of tyres in order to establish specific technical screening criteria for that activity, taking due account of legal requirements under the most recent proposals of Union legislation and best practices, particularly regarding microplastic release, air pollution, noise, direct greenhouse gas emissions, end of life. In the meantime, tyre manufacturing continues to be an eligible activity under Section 3.6 of Annex I to Delegated Regulation (EU) 2021/2139 on other low carbon technologies. In particular for road vehicles of categories M and N, tyres should comply with external rolling noise requirements in the highest populated class and with Rolling Resistance Coefficient (influencing the vehicle energy efficiency) in the highest two populated classes as set out in Regulation (EU) 2020/740 of the European Parliament and of the Council²¹ and as can be verified from the European Product Registry for Energy Labelling (EPREL). Furthermore, tyres should fulfil the Euro 7 proposal for tyre abrasion requirements.
- (11) In its Communication of 9 December 2020, ‘Sustainable and Smart Mobility Strategy – putting European transport on track for the future’²², the Commission pointed out that all modes of transport are indispensable for the transport system, and that aviation plays a crucial role in fostering cohesion, connectivity, and access to the internal market for all regions. Aviation has an important potential to reduce its greenhouse gas emissions, to contribute to the decarbonisation of transport, and thus has the potential to contribute substantially to climate change mitigation. It is therefore necessary to lay down technical screening criteria for the manufacturing of aircraft, leasing, passenger and freight air transport and air transport ground handling operations. Zero-emission commercial air transport operated with zero direct CO₂ emissions or entirely on sustainable aviation fuels is not yet technologically available. Until such zero-emission commercial air transport is technologically available, air transport should be considered as a transitional activity, with the technical screening criteria based on best available technologies for airframe and engine fuel efficiency, and based on the potential to reduce substantially greenhouse gas emissions over the life cycle of aircraft through the progressive uptake of sustainable aviation fuels. To facilitate

²⁰ Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (recast) (OJ L 138, 26.5.2016, p. 44).

²¹ Regulation (EU) 2020/740 of the European Parliament and of the Council of 25 May 2020 on the labelling of tyres with respect to fuel efficiency and other parameters, amending Regulation (EU) 2017/1369 and repealing Regulation (EC) No 1222/2009 (OJ L 177, 5.6.2020, p. 1).

²² Communication from the Commission of 9 December 2020 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).

financing of more efficient and environmentally friendly best-in-class aircrafts, while avoiding lock-in effects of more carbon intensive assets and not hampering the development of zero-emission commercial air transport, the replacement ratio, that captures the proportion of aircraft permanently withdrawn from use to aircraft delivered at the global level, should only apply to the revenues generated by activities that comply with the technical screening criteria. The Commission, with support of the European Union Aviation Safety Agency established by Regulation (EU) 2018/1139 of the European Parliament and of the Council²³, may publish the replacement ratio to support the economic operators in their disclosures. In line with the transitional nature of the activities and to take account of the market evolution of aircraft technologies, the technical screening criteria for aircraft manufacturing should be applicable until 2032, and by that date those technical screening criteria should be reviewed to ensure compliance with Article 10(2) of Regulation (EU) 2020/852 in line with technological developments. Furthermore, the level of the use or blending of sustainable aviation fuels represented in the technical screening criteria should be reviewed every three years to take account of the emerging sustainable aviation fuels technologies and the current and expected future availability of sustainable aviation fuels in the market. However, in the area of climate change adaptation, certain disaster risk management related activities can only be supported by specifically designed and equipped aircrafts. It might therefore be necessary to establish separate technical screening criteria in a subsequent step for the manufacture of those aircraft.

- (12) Delegated Regulation (EU) 2021/2139 lays down technical screening criteria for key waterborne activities. The technical screening criteria applicable after 2025 for inland waterway vessels reflect a gradual reduction of emissions towards 2050, based on the assessment of the greenhouse gas intensity of the energy used by inland waterway transport vessels, on a well-to-wake emissions basis. To ensure usability of the applicable technical screening criteria for maritime freight and passenger transport, and to align those technical screening criteria with recently adopted international and Union reference values, the technical screening criteria should be updated. Those reference values include the Phase 3 of the International Maritime Organisation Energy Efficiency Design Index²⁴ applicable from 1 January 2025, the Energy Efficiency Index of Existing Ships²⁵ that entered into force on 1 January 2023, and greenhouse gas intensity limits for the energy used onboard as established by a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC²⁶, applicable from 1 January 2025. To ensure a level playing field with rail transport, the technical screening criteria for inland waterway transport infrastructure should be revised and should include the inland waterway transport infrastructure modernisation as that infrastructure is essential to ensure the navigation of zero emissions vessels on

²³ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

²⁴ IMO Energy Efficiency Design Index (version of [adoption date]: <https://www.imo.org/fr/ourwork/environment/pages/technical-and-operational-measures.aspx>).

²⁵ IMO Energy Efficiency Existing Ship Index (version of [adoption date]: <https://www.imo.org/en/MediaCentre/HotTopics/Pages/EEEXI-CII-FAQ.aspx>).

²⁶ [OP: Please add legal reference when adopted].

waterways. To ensure a level playing field with rail, road, and water transport infrastructures, the technical screening criteria for low carbon airport infrastructure should be revised to include transshipment between modes of transport.

- (13) The Commission Communication of 24 February 2021 setting out the EU Adaptation Strategy²⁷ points out that the frequency and severity of climate and weather extremes is increasing which in turn has caused a surge in the number of, and damages from, climate change related disasters over the last two decades.
- (14) Emergency services save lives, protect property and the environment, assist communities impacted by disasters, and aid recovery during emergencies. The increased frequency of natural disasters caused by climate change thus render emergency services even more important. Emergency services are however not necessarily equipped to deal with the scale, nature, and frequency of emergencies in the changed climatic conditions. Emergency service activities therefore need to include adaptation solutions to adapt themselves to the impacts of climate change and, once adapted, provide adaptation solutions to improve the overall resilience of an area and society. To further accelerate investments into those emergency services that boost overall resilience, it is necessary to lay down technical screening criteria for such economic activities.
- (15) Global warming is projected to lead to a higher intensity of precipitation and longer dry periods in Europe²⁸. Heavy rainfalls are periodically leading to floods across the Union. To incentivise further investments in adaptation solutions against floods, it is necessary to lay down technical screening criteria for preventing the risk of floods and protecting communities from their consequences.
- (16) The effects of climate change, including increased evapotranspiration and more frequent droughts, can amplify the scarcity of water, which can jeopardise the water supply, which in its turn can lead to overexploitation of groundwater and surface water resources and increased competition for those resources. In line with the mitigation measures in accordance with the water hierarchy, consideration of feasible water efficiency measures and subsequently feasible water reuse measures are to precede measures on water desalination. At the same time, it is necessary to incentivise investments in desalination of sea or brackish water that can reduce the overexploitation of existing water resources and can also provide a stabilising buffer for the shortage of freshwater supply. It is therefore necessary to lay down technical screening criteria for desalination of sea or brackish water.
- (17) Consultancy and software enabling climate risk management have the potential to provide adaptation solutions that support businesses in their forecasting, projection, managing and monitoring of current or expected future climate risks. It is therefore necessary to set out, for those activities, the technical screening criteria to determine 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.

²⁷ 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).

²⁸ IPCC, Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation. Special Report of the Intergovernmental Panel on Climate Change.

- (18) Appendix C to Annexes I and II to Delegated Regulation (EU) 2021/2139 ('Appendix C') lays down generic technical screening criteria for 'do no significant harm' to pollution prevention and control applicable to different activities. That Appendix specifies criteria for the use and presence of chemicals. So far, it has provided for exemptions in certain cases, where the use of those chemicals has been proven to be essential to the society. That exemption poses certain concerns in terms of legal certainty and verification for undertakings and financial market participants, linked to the absence of clear definition of the concept of 'essential use'. Therefore, pending further guidance clarifying how operators should assess and document that they comply with the upcoming Commission's horizontal principles on essential use of chemicals, targeted changes should be made to that Appendix and the concept of 'use essential for the society' should be replaced by criteria that offer more legal certainty and for which compliance can be verified more easily. Pending that further guidance, the concept of 'use essential for the society' should thus be replaced by the requirement that no other suitable alternative substances or technologies are available on the market, and that the substances are used under controlled conditions.
- (19) To further improve the usability of Appendix C, additional targeted amendments should be made to point (f) of that Appendix to specify a minimum concentration limit for substances of very high concern in a product and a reference date for the assessment of compliance with the requirement specified in that point. In addition, point (g) of Appendix C should be deleted and replaced by a new paragraph which specifies a minimum concentration limit and the scope of application of the requirement specified in that paragraph.
- (20) As climate change is likely to affect all sectors of the economy, all sectors of the economy will need to be adapted to the adverse impact of the current climate and the expected future climate. Technical screening criteria for substantial contribution to climate change adaptation are therefore to be established in the future for all sectors and economic activities that are covered by the technical screening criteria for substantial contribution to climate change mitigation set out in this Regulation.
- (21) To address certain technical and legal inconsistencies identified since the application of Delegated Regulation (EU) 2021/2139, targeted amendments should be introduced to that Regulation.
- (22) Delegated Regulation (EU) 2021/2139 should therefore be amended accordingly.
- (23) This Regulation is consistent with the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119 of the European Parliament and the Council²⁹ and ensures progress on adaptation as referred to in Article 5 of that Regulation.
- (24) To synchronise the application of this Regulation with the reporting under Delegated Regulation (EU) 2021/2178³⁰, this Regulation should apply from 1 January 2024, with the exception of the amendment to point (g) of Appendix C. In order to provide for

²⁹ Regulation (EU) 2021/1119 of the European Parliament and the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

³⁰ Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (OJ L 443, 10.12.2021, p. 9).

sufficient time for undertakings to comply with that amendment it should apply from 1 January 2025,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2021/2139

Delegated Regulation (EU) 2021/2139 is amended as follows:

- (1) Annex I is amended in accordance with Annex I to this Regulation;
- (2) Annex II is amended in accordance with Annex II to this Regulation.

Article 2

Entry into force and application

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 2024.

However, point (28) of Annex I and point (26) of Annex II shall apply from 1 January 2025.

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

Done at Brussels, 27.6.2023

*For the Commission
On behalf of the President,
Mairead McGUINNESS
Member of the Commission*