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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 decoupled from resource use. 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 on 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 limit the risk of greenwashing and market fragmentation in the classification of green activities and investment projects. However, the Taxonomy Regulation does not mandate any investments into economic activities meeting this set of criteria.

The current COVID-19 pandemic has strengthened the need to redirect capital flows towards sustainable projects in order to make our economies, businesses and societies, in particular health systems, more resilient against climate and environmental shocks and risks, with clear co-benefits for health. In light of the ongoing post-crisis fiscal stimulus and the EU's estimated financing needs after the crisis, the European Green Deal will provide a launching pad for the European recovery strategy. In this context, EU taxonomy can also serve as an additional and robust instrument to help 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:

- (i) it contributes 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) it does 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) it is 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) it complies 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) the activity 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 specific 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.

1.2. Legal background

This Delegated Regulation 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-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 empowerments to adopt delegated acts conferred by the Council and the Parliament in the Taxonomy Regulation have different timelines and will be acted upon at a later stage. Further empowerments 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.

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 XXX and XXX 2020. In total, XXX stakeholders provided feedback. The draft delegated act was also discussed with the Platform on Sustainable Finance on XXX. Furthermore, at the meeting of the Member States Expert Group in XXX 2020, the draft delegated acts were presented to Member States' expert and discussed, with observers from the European Parliament.

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.

Furthermore, the 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.

² The report is available at https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2003_09-sustainable-finance-teg-final-report-taxonomy_en.pdf.

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 benefits and costs of EU taxonomy hinge 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. Calibration of the technical screening criteria can influence the levels of uptake only up to a point, however, robust technical screening criteria would bring more decision-useful information to the market. Potential economic benefits from the improved transparency provided by putting in place 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 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. However costs are likely to arise from the broader 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 on their activities. This would imply both one-off and ongoing costs for entities within the scope of these provisions.

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.

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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) 2019/2088³, 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).

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

- (3) According 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, as process or practice-based requirements, or as a precise description of the nature of the economic activity itself.
- (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) In order to ensure a level playing field, the same 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.
- (6) 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 or removal in other activities.
- (7) The agricultural sector emits high levels of greenhouse gases and is also particularly vulnerable to climate change impacts, including changes in temperature and precipitations as well as extreme events. The sector can therefore play a central role in climate change mitigation, while also delivering benefits for adaptation, reversing

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).

biodiversity loss, ensuring food security and fostering other sustainable development goals. In the Union, 10 % of greenhouse gas emissions are attributed to the agricultural sector, including non-CO2 greenhouse gas emissions, mainly from manure management and enteric fermentation in case of livestock and from agricultural soils. In addition to the potential to reduce its greenhouse gas emissions, the agricultural sector also influences the capacity of lands to act as a carbon sink. The technical screening criteria for the agricultural sector should therefore reflect this dual role of that sector, taking into account the long timeframes required for climate benefits to materialise, in particular for maximising and maintaining the carbon sink potential of land, and the fact that the most effective measures can be best determined in the specific context. The impact of the criterion requiring a minimum of 10 % of agricultural area to be covered with high-diversity landscape features on farm incomes and rural areas will be assessed and monitored.

- (8) 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, improved 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.
- (9) In the follow-up of 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, the new Forests and Adaptation

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).

Strategies planned in 2021, technical screening criteria for forest activities should be complemented, reviewed and where necessary revised by end of 2021.

- (10) 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.
- (11) The manufacturing sector is the third largest contributor to greenhouse gas 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.
- (12) 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.
- (13) 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.
- (14) The energy sector accounts for approximately 75 % of greenhouse gas emissions in the Union and 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.
- (15) The technical screening criteria for determining whether electricity or heat generation activities, including cogeneration activities, contribute substantially to climate change

mitigation should ensure that greenhouse gas emissions are reduced or avoided. Technical screening criteria based on greenhouse gas emissions should signal the decarbonisation pathway for those activities. However, they do not fully capture the benefits of combined heat and power generation for primary energy savings and the related resource efficiency. It may therefore be necessary to further assess and review those technical screening criteria. 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.

- (16) Regulation (EU) 2020/852 recognises the importance of ‘climate-neutral energy’ and Article 10(2) of that Regulation requires the Commission, within the context of economic activities that support the transition to a climate-neutral economy, 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.
- (17) 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 emissions⁹. 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 the Methane Strategy.
- (18) 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 Council¹⁰, setting requirements for sustainable harvesting, carbon accounting and greenhouse gas emission savings.
- (19) In the follow-up of to the European Green Deal, the EU Climate Law, 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.
- (20) 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 implement certain best practices for that sector. Those

⁹ 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).

¹⁰ 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).

technical screening criteria should also ensure that waste treatment options are in line with higher levels of the waste hierarchy. The technical screening criteria for economic activities concerning water collection, treatment and supply as well as centralised wastewater treatment systems should aim at improving the efficiency of such systems. Those technical screening criteria should therefore 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.

- (21) Transport operations consume one third of all energy in the Union and account for more than one quarter of the total 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.
- (22) 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. Separate studies are being conducted on sustainable financing criteria for those sectors and it may therefore be necessary to assess those transport modes rapidly and establish relevant technical screening criteria, where appropriate.
- (23) The building sector is among the largest energy-consuming sectors in the Union, responsible for 40 % of energy consumption and 36 % of carbon emissions. The buildings sector 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.
- (24) 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 to enable that economic activity to be carried out. It is therefore appropriate to include the construction of such assets or facilities directly in the descriptions 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.
- (25) 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.

- (26) 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. 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.
- (27) 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 impact of climate change. It needs to be ensured, however, that an economic activity that contributes substantially to climate change adaptation 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 ‘do no significant harm’ criteria to the environmental objectives.
- (28) 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.
- (29) The technical screening criteria for determining whether an economic activity contributes substantially to climate change adaptation should be laid down for engineering, research, development, innovation and financial and insurance activities, that have the potential to facilitate climate change adaptation in other sectors. 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.

- (30) The technical screening criteria for determining whether an economic activity contributes substantially to climate change adaptation 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.
- (31) 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.
- (32) 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.
- (33) 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 economic activities. Those criteria should ensure that existing and future risks that are material to the activity are identified and that plans to implement adaptation solutions are designed to minimise or avoid possible losses or impacts on business continuity.
- (34) 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.
- (35) 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.

- (36) 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 Council¹¹.
- (37) 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.
- (38) The technical screening criteria laid down in this Regulation should be without prejudice to the application of requirements related to the health, safety and social sustainability set out in Union law, and to the adoption of appropriate mitigation measures in that regard where applicable.
- (39) 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.
- (40) 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.
- (41) 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

¹¹ 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 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 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