



Decision on how the European Commission prepared EU rules defining the 'taxonomy' classification for sustainable investments (1459/2022/VB)

Decision

Case 1459/2022/VB - Opened on 15/09/2022 - Decision on 15/09/2022

Dear Ms X,

You recently submitted a complaint to my Office also on behalf of Mr Y (MEP), concerning the procedure followed by the Commission to prepare a Complementary Delegated Regulation covering certain activities pertaining to nuclear energy and gas [1].

You consider that the Commission breached the Better Regulation Guidelines and the Interinstitutional Agreement on Better Law Making, as it neither conducted an impact assessment nor opened a four-week public consultation before adopting the Delegated Regulation. You also take issue with how the Commission consulted stakeholders arguing that it failed to do so in a timely manner.

I attach utmost importance to the Commission's compliance with its Guidelines and the Interinstitutional Agreement and my Office is examining whether this matter should be addressed from a systemic perspective in the near future. Citizens rightfully expect that those instruments are complied with. As the names of the instruments indicate, they have been established to enhance the quality of regulatory output and the procedures foreseen to that effect must obviously be followed. This is necessary to ensure consistency, transparency and to avoid any sense of arbitrariness in the way the Commission works.

However, while the Commission must respect the two instruments, it is equally clear that the Commission enjoys a margin of appreciation when evaluating what the instruments entail in an individual case.

In this particular case, the Commission set out, in the explanatory memorandum to the Complementary Delegated Act, why it considered that a separate impact assessment and a four-week feedback period in the preparation of the act were not necessary. Concretely, the Commission explained that the Taxonomy Climate Delegated Act [2], which is applicable as of 1 January 2022, had been subject to an impact assessment and that a draft thereof had been opened for a four-week feedback period. The Commission took the view that the Complementary Delegated Act " *will implement policy choices already made and will only complement the Taxonomy Climate Delegated Act*".



Indeed, the impact assessment that accompanied the Taxonomy Climate Delegated Act concluded that “[i]n the case of nuclear energy, the choice involves carrying out further technical work on do no significant harm aspects before considering its (possible) place in the Taxonomy Regulation”. [3] The impact assessment detailed the steps that should be concluded, namely to undertake more extensive work by the Joint Research Centre (as reviewed by the Group of Experts on radiation protection and waste management and the Scientific Committee on Health, Environmental and Emerging Risks on environmental impacts), before deciding whether this activity should be included in the EU Taxonomy by a complementary delegated act. In its explanatory memorandum to the Complementary Delegated Act, the Commission considers that these steps have now been concluded.

From the above, it is clear that the Commission considers that it received extensive information and feedback on the issues addressed in the Complementary Delegated Act. It is not for the Ombudsman to assess to what extent the criteria in the Complementary Delegated Act differ from the ones that were impact assessed previously and whether such differences would require a new impact assessment and public consultation. Such an assessment requires specialist knowledge of the topics addressed in the Delegated Regulation. The Ombudsman would question the Commission’s explanation only in case it is clearly wrong.

In light of the above, and given the above-mentioned margin of appreciation the Commission enjoys when evaluating what the Better Regulation Guidelines entail in an individual case, I consider that the Commission has not exceeded its margin of appreciation. Thus, there are insufficient grounds to open an inquiry into your complaint [4] .

However I will reflect, with my colleagues, whether a closer examination is needed on how the Commission is following its Better Regulation Guidelines and whether citizens are adequately consulted as far as possible.

Regarding the time offered to the European Parliament to comment on the draft Delegated Regulation, I consider that this is a matter directly concerning the relationship between the Parliament and the Commission. It is for the two institutions to agree on appropriate working methods without the involvement of the Ombudsman.

I have therefore closed the case. Given the importance of the matter, I will inform the Commission of this decision.

I appreciate this may not be your desired outcome but I hope you find these explanations useful. Thank you for having contacted the European Ombudsman.

Yours sincerely,

Emily O'Reilly European Ombudsman

Strasbourg, 15/09/2022



[1] Commission Delegated Regulation (EU) 2022/1214 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1214> .

[2] 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R2139> .

[3] <https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2021-2800-imp> p. 23/24.

[4] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707> .