Backgrounder: NGO Challenge to Biomass and Forestry Provisions in the Taxonomy Climate Delegated Regulation

February 4, 2022

Policy Background: In June 2020, the Sustainable Finance Taxonomy Regulation ("the Taxonomy") was adopted by the European Parliament, establishing a classification system that purports to identify "environmentally sustainable economic activities" for companies, investors, and policymakers. The Taxonomy will have a profound impact on investment and the flow of trillions of dollars in capital internationally, not just in the EU. Under the Taxonomy, the European Commission (EC) will adopt a number of Delegated Regulations, the first of which relates to climate change mitigation and adaptation and was formally adopted in December 2021 ("the Delegated Regulation"). However, despite numerous legal, scientific and procedural issues with the Delegated Regulation, the EC has pushed forward with a system that greenwashes carbon pollution and damage to ecosystems, drawing a challenge from NGOs.

Opponents: The challenge is brought by NGOs Save Estonia's Forests, ROBIN WOOD (Germany), Clean Air Committee (Netherlands), Workshop for All Beings (Poland), ZERO (Portugal), 2Celsius (Romania), and Protect the Forest (Sweden). Two legal teams, Clementine Baldon of Baldon Advocats and Peter Lockley and Ben Mitchell of 11KBW spearheaded the case, with legal and scientific support by the Lifescape Project and the Partnership for Policy Integrity. An additional group of NGOs signed an open letter to the EC declaring their support for the review and challenge. The NGOs are filing a Request for Internal Review, which places the EC on a timeline to either review the Delegated Regulation or reject the request. If the EC refuses to revisit the criteria, this will trigger subsequent legal action. This challenge, and a parallel challenge by ClientEarth regarding the unlawful labelling of bioenergy, bio-based plastics and chemicals used to classify plastics as sustainable in the EU Taxonomy, are among the first NGO complaints brought under the amended Aarhus Regulation, which now gives NGOs standing before the General Court should the EC fail to undertake the requested review.

The Criteria: Logging and burning forests for biomass energy, and forestry activities generally, are major sources of the CO_2 that is warming the planet. Such activities are also responsible for increasing destruction of forest ecosystems. To designate forestry activities as "sustainable" and contributing to climate mitigation, the Taxonomy criteria for forestry projects require only marginal reductions in carbon losses compared to hypothetical "business as usual" baseline scenarios. For biomass energy, the Taxonomy criteria are nearly identical to the highly controversial criteria for forest biomass in the EU's 2018 recast Renewable Energy Directive (RED II) – criteria so weak and unprotective, the EC itself proposed to revise them in July 2021.

Criteria in the Taxonomy are Unscientific–and the European Commission Knows: As the EC's own scientists themselves have pointed out, numerous studies confirm that burning forest biomass emits more CO_2 per unit energy than burning coal, and offsetting these emissions, if it occurs at all, requires decades to centuries of forest regrowth. Despite this, the RED II bioenergy criteria, and by extension those of the Taxonomy, treat burning forest wood as a climate mitigation strategy. The Joint Research Centre (JRC), a scientific service for the EC, has warned about risks related to the use of woody biomass. In its 2021 report "*The use of woody biomass for energy production in the EU*", the JRC warned that increased demand for forest biomass "could alter the balance between the numerous ecosystem services that forests are expected to deliver." With regard to the RED II biomass methodology adopted by the Taxonomy, the report

states that "it does not include any accounting of biogenic-C cycle, nor of counterfactual uses for land, nor market-mediated impacts, **and it is thus not designed to represent the actual climate impact of bioenergy pathways**". [1]

Rather than listen to science, the EC has suppressed critique of the Taxonomy criteria. Following objections by members of an advisory group on biomass and forestry criteria, two Commissioners wrote that the technical criteria set out in the Delegated Regulation must be "politically acceptable."[2] But by adopting weak criteria that appease powerful interests, the Commission has endorsed greenwashing of activities that increase CO_2 emissions and harm forests – the very sort of thing the Regulation is supposed to counter.

The Challenge: The Taxonomy Regulation states that to qualify under the Taxonomy, an activity must contribute substantially to one or more of six environmental objectives and do no significant harm to the others. So far, only the criteria for substantial contribution to climate mitigation and climate adaptation have been published. The NGOs' opposition focuses on forestry and bioenergy criteria in the Delegated Regulation that conflict with the Taxonomy Regulation, including:

- Violating Article 10, which states activities "*qualify as contributing substantially to climate change mitigation"* where they *"contribute substantially*" to stabilizing greenhouse gas (GHG) levels consistent with the temperature goal of the Paris Agreement by avoiding or reducing GHG emissions or through increasing removal of GHGs from the atmosphere.
- Violating Article 19, which requires the criteria to be based on science and employ the precautionary principle.
- Numerous additional issues including the failure to provide quantitative criteria to limit carbon losses, air pollution, and ecosystem damage from forestry and bioenergy activities.

The Stakes are High: Avoiding climate catastrophe will require both sharply decreasing emissions and increasing CO_2 uptake from the atmosphere, with forests playing the biggest role. Burning biomass increases emissions compared to burning fossil fuels, and harvesting forests is degrading forest ecosystems and carbon storage worldwide, contributing to both the climate and biodiversity crises. Unless the Taxonomy forestry and bioenergy criteria are sharply reformed to include actual protections for forests and the climate, the Taxonomy will spur accelerating "green" investment into the very activities responsible for accelerating forest degradation and carbon loss.

The arguments presented to the EU are available here.[3]

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[1] JRC, The use of woody biomass for energy purposes in the EU, EUR 30548 EN (Publications Office of the European Union, Luxembourg, 2021), Section 5.2.1, p. 83-84 https://publications.jrc.ec.europa.eu/repository/handle/JRC122719

[2] Communication of Vice President Valdis Dombrovskis and Commissioner Malreid McGuinness, EUCommission, 26 May 2021: https://bit.ly/commissionlettter.

[3] At https://www.pfpi.net/wp-content/uploads/2022/02/2022-02-02_Request_for_Internal_Review_Regulation_2021_2139.pdf.