Union Française de l'Électricité

UFE's reply to the European Commission's "EU classification system for green investments"

UFE thanks the Commission for the opportunity to provide feedbacks on the proposal regarding the "EU classification system for green investments".

As a general comment, UFE underlines that as mentioned in the "general background and objective" of the delegated act, the taxonomy will provide reference for the EU institutions, companies and investors to guide economic activities. Therefore, before providing comments on the content of the draft delegated act, UFE wants to express some general concerns.

We welcome that most of renewable energies and electricity grids, which allow the integration of a greater part of renewables in our power system, are included as sustainable activities. However, the current approach is likely to steer **financial markets and private funds only towards technologies which are already de-risked.** Technologies like nuclear, hydropower and bioenergy would hereby be hindered or disqualified by the delegated act, even though they are necessary to help achieve both the 2030 and 2050 decarbonisation targets. We therefore are in favour of their inclusion in the delegated act. Gas is excluded and, each Member State having a different starting point, it could be considered a transitional solution in countries with a high share of coal-fired generation.

1. Consistency is needed with the Renewable Energy Directive and the Taxonomy Regulation

UFE identifies a **lack of consistency** between the Renewable Energy Directive and the Taxonomy Regulation on one side, and the draft delegated act and its annexes on the other side.
Article 10.1(a) of the Taxonomy Regulation mentions that "*generating, transmitting, storing, distributing or using renewable energy in line with Directive (EU) 2018/2001"* (RED II) is considered as an activity contributing substantially to climate change mitigation.

However, all **energies defined as renewable in RED II are not treated equally in Annexes I and II**. This is especially true for **hydropower and the use of bioenergy in district heating and cooling**.

2. The treatment of hydropower in Annexes I and II is not satisfying

- **Hydropower must be exempted from proving its GHG emissions level**

UFE **welcomes the fact that hydropower is considered as a sustainable activity**, and that the TEG recommendation to avoid the construction of small plants under 10 MW was not retained in the draft delegated act.

However, UFE does not understand why **hydropower is not treated in the same way as other renewable** electricity generation technologies such as wind and solar. Based on IPCC findings from 2014, hydropower produces average life-cycle emissions of around 24gCO2e/kWh, compared to 12gCO2e/kWh for offshore wind and 48gCO2e/kWh for solar PV (utility scale).[1]

The draft delegated act and its annexes do not follow the **technology neutrality principles laid out in the mother regulation and the principles in the preface** of the draft delegated act.

On top of that, UFE stresses that the alternative criterion on **power density of 5W/m²** is both unclear and **irrelevant**. This criterion has **no proven effectiveness in terms of safety** with respect to the sustainable use and protection of aquatic and marine resources. However, it **could lead to the discriminatory exclusion of small power plants** or mills on existing diversion bays.

[1] IPCC (2014). *AR5 Climate Change 2014: Mitigation of Climate Change*. Chapter 7 Energy Systems.

Therefore, hydropower should be exempted from proving emissions are below 100gCOe/kWh and from complying with the power density requirement.

- **Excluding all pumped storage connected to river bodies from qualifying as enabling activities under section 4.10 is not justified**

Including **only closed-loop pumped storage** in the category of eligible storage is **extremely restrictive** given the fact that those pumped storage only represent a **very small minority of pumped storage throughout Europe.**

The operation of existing pumped storage connected to surrounding rivers has not shown any particular environmental impact. Moreover, creating a pumped storage from existing reservoirs would have a clear lower environmental impact than creating a closed-circuit pumped storage with the *ex-nihilo* creation of 1 or even 2 basins.

Therefore, pumped storage connected to river bodies should not be excluded from section 4.10.

- **Mixed-pump storage should be considered as a storage means under section 4.10**

Mixed-pump storage is currently considered under section 4.5 "Electricity generation from hydropower", and is therefore subject to a threshold of GHG emissions in gCO2 per kWh produced, just as pure electricity production activities. This reveals a **substantial inconsistency** and comes up against difficulties of practical implementation. Like any electricity storage means, pump-storage does not produce electricity but consumes it (the quantity of electricity consumed by pumping a given volume of water is greater than the quantity restored by its turbine). This is why storage means referred to under section 4.10 are not subject to a GHG emission criterion.

Therefore, all types of pumped storage including mixed-pump storage must be integrated under section 4.10 "Storage of electricity".

- **The DNSH principle requirements with regard to the 3rd environmental objective are too restrictive**

The European body of law relating to the use and protection of water resources applicable to hydroelectric activities is particularly elaborate and deals with all the environmental issues addressed in the draft delegated act. This corpus consists in particular of the **Water Framework Directive** (WFD - 2000/60/EC), which was recently considered as broadly **fit for purpose** by the European Commission.

This European legislation has been transposed by Member States in a way that suits national and local contexts, and the corresponding governance. Implementing the requirements for hydropower generation listed in the DNSH (3) section of Annexes I and II of the draft delegated act would result in:

i. Duplicating, with **inconsistencies** and in a disproportionate manner, requirements of existing regulations stemming from EU legislation;
ii. **Impacting in a negative way** the corresponding local governance;
iii. Making the DNSH principle requirements with regard to the 3rd environmental objective **incoherent, and yet prescriptive** in case of changes in European reference texts such as the Water Framework Directive;
iv. **Making the taxonomy inoperative** due to the practical difficulties of assessing hydropower projects' eligibility with regards to the DNSH (3) requirements.

Therefore, the DNSH (3) section of Annexes I and II for hydropower generation should only refer to the existing European legislative framework, in particular the Water Framework Directive. UFE urges the Commission to replace the current text under DNSH 3 by: "***The activity complies with the provisions of Directive 2000/60/EC and in the Directive 2008/56/EC***".

3. The absence of nuclear is damaging

UFE wishes to share its dissatisfaction with the absence of nuclear power in the document. The ongoing work on nuclear is mentioned in Recital (16) of the delegated act: "*Regulation (EU) 2020/852 recognises the importance of 'climate neutral energy' and requires the Commission to assess the potential contribution and feasibility of all relevant existing technologies. For nuclear energy, that assessment is ongoing and the Commission will report on its results in the context of the review of this Regulation*." If UFE welcomes the approach taken by the Commission to appoint the Joint Research Centre to assess nuclear, we nevertheless regret that the assessment cannot be included in the proposed delegated act for reasons of timing. This could create a real market distortion between the evaluated and unassessed technologies. **Considering nuclear power's contribution to GHG emissions reduction, it is important to include it in the same process for the selection of sustainable investments as other types of energy generation.**

4. The GHG emissions threshold for hydrogen generation does not allow for an uptake of hydrogen generation in the EU

The threshold of 2,256kgCO2e/kgH2 set under section 3.9 of Annex I is **too restrictive**.

In order to encourage the uptake of hydrogen generation in the EU, making Europe a worldwide leader, the European Commission must allow the development of hydrogen produced from low-carbon electricity. Under the proposed threshold of 2,256 kgCO2e/kgH2, only RES would qualify as a sustainable way of producing hydrogen, and **solar photovoltaic could even be excluded** under some assumptions.

UFE recommends establishing a CO2 emissions threshold that will enable the uptake of low-carbon hydrogen while ensuring technology neutrality.

Therefore, hydrogen production of which life cycle GHG emissions do not exceed 5,5kgCO2e/kgH2 should be considered as an activity contributing to climate change mitigation. This threshold would allow electricity emitting less than 100gCO2e/kWh to produce hydrogen. This criterion should be reduced according to technological progress on a regular basis.

5. Further clarification is needed in Annexes I and II on transmission and distribution of electricity

However, UFE identifies several issues related to transmission and distribution of electricity in the draft delegated act and its annexes.

First of all, UFE stresses that **the consideration of transmission and distribution activities as enabling activities can neither depend on the carbon content of the electricity that circulates in the grid, nor on the GHG emissions level of the power plants connected to the grid.** In this regard, technical screening criteria 2 and 3 of Annex I (p.117-118), also reported in Annex 2 (p.115-116), conflict with market participants' right to an objective, transparent and non-discriminatory access to the networks, according to Regulation (EU) 2019/943 currently in force. The very obligation and mission of TSOs and DSOs is therefore to ensure this right, established as a "principle regarding the operation of electricity markets". On top of that, UFE recalls that, according to article 290 of the TFEU, delegated acts can only be used to complete or modify **non-essential elements** of EU legislative acts. As the above-mentioned right to an objective, transparent and non-discriminatory access to the networks cannot be considered as a "non-essential element", **the delegated act cannot prevail over the existing Regulation** on that matter.

Secondly, UFE stresses the need to ensure the stability of the "**taxonomy compliant" labelling to secure long-term investments in networks infrastructures needed to reach the Green Deal objectives.**

On that matter, UFE would like to highlight the following:

- The **lack of consistency** between the "rolling five-year period" mentioned under point 6.(a) in both Annexes and the existing instruments at national and European level (respectively SDDR and TYNDP). UFE stresses the need to rely on existing instruments and methodologies to avoid creating an unnecessary administrative burden.

  6.(a): "*the rolling five-year (average) period used in determining compliance with the thresholds is based on historic data, and includes the year for which the most recent data are available.*"

- Regarding point 6.(e), in case of changes in criteria to be "taxonomy compliant", the **new criteria should not apply retroactively as this would endanger previous investment decisions yet compliant with the former criteria**. Therefore, UFE proposes the following addition:
  6. (e): "*it is possible for a system to become ineligible after having previously been eligible. In systems that become ineligible, no new transmission and distribution activities are eligible from that moment onward, until the system complies again with the threshold (except for those activities which are always eligible, see above). Activities in subordinated systems may still be eligible, where those subordinated systems meet the criteria of this Section*. ***Updated criteria cannot apply retroactively to investment decisions***."

About Annex 1 (mitigation)

- **Transmission and distribution activities should be considered as "contributing activities"**

UFE stresses that the delegated act conflicts with the wording of article 10 of the Taxonomy Regulation (Regulation (EU) 2020/852). The delegated act qualifies transmission and distribution of electricity as "enabling activities", whereas the above-mentioned **article 10 expressly recognises that transmitting and distributing renewable energy contribute substantially to climate change mitigation** (1.(a)).

UFE sees a **need for clarification regarding the implication for an activity to be labelled as "contributing" or "enabling"** in terms of investments. On that matter, UFE recalls that the TEG report from March 2020 recognised both the "contributing" and "enabling" roles of transmission and distribution of electricity.

Therefore, transmission and distribution should be considered as "contributing activities".

- **Regarding technical screening criteria (TSC)**

UFE welcomes the non-cumulative list of TSC, and takes note that the first criterion automatically qualifies as taxonomy compliant any transmission or distribution line or equipment interconnected in the EU : "*The transmission and distribution infrastructure or equipment in the system is the interconnected European system, i.e. the interconnected electricity system covering the interconnected control areas of Member States, Norway, Switzerland and the United Kingdom, and its subordinated systems*" (Annex I, p.117). In that case, the European Commission should clarify the scope of application of criteria 2 to 4. UFE also asks for a clarification on the notion of "subordinated systems" in the above criterion.

UFE identifies a **need for clarification** on the wording and scope of **criterion 4.(f)**, which reads as follow: "*installation of equipment to carry information to users for remotely acting on consumption, including customer data hubs*". In case smart meters are targeted, the current wording suggests that operators could remotely manage users' consumption. A **more neutral wording expressly mentioning smart meters** should thus be preferred.

UFE welcomes the introduction of interconnections in TSOs' eligible activities under point 4.(h) of Annex I, as recommended by the Join Research Centre in 2019.

- **Regarding DNSH**

DNSH (3) p.119: there is no requirement regarding the compatibility of transmission and distribution activities with the 3rd environmental objective.

Therefore, UFE calls on the Commission to follow the TEG report's recommendation on underground power lines to "*avoid routings with heavy impact on marine and terrestrial ecosystems (proven by an ESIA) and follow the principles of IFC General EHS Guidelines for construction site activities follow*" (technical annex, p.241).

DNSH (4) p.119: the DNSH principle requirements with regard to the 4th environmental objective should insist on the objective, which is to **perform the least invasive intervention possible**. **Re-use and recycling are not always the best options.** For example, offshore platform foundations and offshore cables may remain on the seabed, if this is more environmentally friendly than dismantling, which is often more likely to cause damage.

Therefore UFE suggests the following additions to the current text p.119: *"A waste management plan is in place and ensures maximal reuse* ***remanufacture and as a last resort*** *recycling,* ***presuming recycling is the least harmful intervention, through the*** *life* ***of materials*** *in accordance with the waste hierarchy, including through contractual agreements with waste management partners, reflection in financial projections or official project documentation."*

About Annex 2 (adaptation)

- **Clarity and coherence are required**

UFE does not support the use of the mitigation technical screening criteria (TSC) in the section "description of the activity" (p.115-116) to qualify the activity for the adaptation objective, **and calls for their removal, for two main reasons:**

(i) **There are strong incoherencies in this section.** The TSC mentioned could be understood as being **cumulative**, creating stricter criteria to qualify for the adaptation objective than for the mitigation objective. In addition, the criteria set in the "description of the activity" section **conflict with the DNSH (1)**: criterion 3 mentions a threshold of 100gCO2e/kWh, whereas the DNSH criteria regarding the mitigation objective mentions a threshold of 270gCO2e/kWh.

(ii) **Moreover, this approach is not legitimate:** TSC from Annex I are not mentioned in the "description of the activity" section for any other activity in the "Energy" section of Annex 2.

This will bring clarity and coherence between the two Annexes and allow an adequate assessment of the objectives.