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

Overview of the Taxonomy: 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. While a voluntary standard, 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”).

This legal action is challenging the inclusion of forest bioenergy and forest management activities as sustainable economic activities within the Taxonomy, due to numerous legal, scientific and procedural issues. Logging and burning forests for biomass energy, and forestry activities generally, are major sources of the CO₂ 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.

NGOs taking legal action: The NGOs filed [a Request for Internal Review in February 2022](#), arguing that the Delegated Regulation was unlawful because it included forest bioenergy and forest management activities that would significantly worsen climate change mitigation and cause significant harm to biodiversity and air pollution.

The EC refused to undertake the requested review, thus the NGOs are pressing forward with an annulment action which involves filing a claim at the General Court of the Court of Justice of the European Union. 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 gives NGOs standing before the General Court should the EC fail to undertake the requested review.

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

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challenge.

Criteria in the Taxonomy are Unscientific, as the EC knows: As the EC’s own scientists themselves have pointed out, numerous studies confirm that burning forest biomass emits more CO₂ 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 European Commission’s own impact assessment on biomass, published in 2016, warned that burning forest wood for energy can increase greenhouse gas emissions for decades to centuries, compared to fossil fuels. 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 JRC 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 to appease powerful interests, the Commission is greenwashing activities that increase CO₂ emissions and harm forests – the very sort of thing the Taxonomy is supposed to counter.

The Challenge: The Taxonomy states that for an activity to qualify as sustainable, it 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 CO₂ uptake from the atmosphere, with forests playing the biggest role.

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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.

Next steps: The NGOs are filing their case on 15 September 2022. They expect to receive the Commission’s defense within 2-3 months and then there may be an oral hearing of the case. Judgment is usually received within 1.5 to 2 years from filing.

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, EU Commission, 26 May 2021: <https://bit.ly/commissionletter>.

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