

Mr Frans Timmermans, European Commission, Executive Vice-President

Rue de la Loi / Wetstraat 200, 1049 Brussels

Dear Commission Executive Vice-President Timmermans,

CC: Commissioner Dombrovskis, Commissioner Simson, Commissioner Sinkevičius,  
Commissioner McGuinness

## **Exclusion of natural gas activities from the EU Taxonomy Regulation**

We write to you with reference 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) 2019/2088 (the 'Taxonomy Regulation'). In particular, **we wish to share with you our strong concerns regarding the legality of a possible Commission proposal for a delegated act under the Taxonomy Regulation establishing criteria under which one or more uses of natural gas could be classified as contributing to climate change mitigation or otherwise as environmentally sustainable for the purposes of that Regulation.**

**For the reasons developed in the attached Annex, we urge the European Commission to refrain from proposing or adopting such a delegated act.**

If it were adopted, this is likely to increase investments in activities utilising natural gas and would be in total contradiction with the commitments undertaken by the European Commission both at international and EU level.

**Such a delegated act would conflict with various legal norms and commitments, and in particular:** the commitment to reduce greenhouse gas emissions ('GHGs') as necessary to meet the specific temperature limits under **the Paris Agreement**, the EU commitments under the **European Climate Law**<sup>1</sup> to a 'climate-neutral Union' by 2050 and to reduce its net greenhouse gas emissions by at least 55 % compared to 1990 levels by 2030, obligations under **Articles 11 and 191 of the Treaty on the Functioning of the European Union (the 'TFEU')** and **provisions of the EU Taxonomy Regulation.**

- a. It is clear from the work of the European Commission itself and, most recently, the International Energy Agency (IEA) that to meet the objectives of the Paris Agreement and other EU climate legislation and policies, the EU must take steps to ensure that there are significant and rapid reductions in the use of natural gas.
- b. A measure that would encourage the funding of natural gas activities would divert investments that could otherwise be applied to renewable activities. This entails a further breach of the

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<sup>1</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999

EU's duties under the Paris Agreement, which requires the parties to ensure that financial flows are consistent with low greenhouse gas emissions.

- c. For the same reasons, such a measure would also breach provisions of the TFEU requiring the EU to pursue a high degree of environmental protection and international cooperation to combat climate change.

A delegated act that would classify economic activities using natural gas as sustainable would not be compliant with the provisions of **the Taxonomy Regulation** itself either. According to the regulation, an economic activity may only be classified as contributing to 'climate change mitigation' if it meets certain criteria. These are not met here.

- a. A taxonomy measure allowing certain economic activities using natural gas to be classified as sustainable would not meet the definition of 'climate change mitigation'; i.e., it would not *"contribute substantially to the stabilisation of greenhouse gas emissions at a level that prevents dangerous anthropogenic climate change, in accordance with the Paris Agreement"* (Art. 10(1), Taxonomy Regulation). The increased use of natural gas plainly adds to the level of greenhouse gas emissions and therefore exacerbates climate change.<sup>2</sup>
- b. Allowing such an activity could also not be qualified under the regulation as a permissible 'transition' measure to climate neutral economy. As this exception is only available when there is no technologically and economically feasible low carbon alternative to the economic activity in question (Art.10(2), Taxonomy Regulation):
  - i. The only situation when a 'transition' measure to climate-neutral economy could be envisaged to be regulated under Art. 10(2) of the EU Taxonomy Regulation, is when no feasible low-carbon initiative exists. Given the mainstreaming of renewable alternatives, it is difficult to think of such an activity.
  - ii. The emissions from the use of new natural gas tend to exceed those of coal, when account is properly taken of emissions of methane in the extraction and transportation process ('fugitive emissions'). In the past, in a leaked draft Commission proposal for a taxonomy climate delegated act that has since been adopted<sup>3</sup>, no account was taken of these methane emissions. If account were properly taken of greenhouse gas emissions over the life-cycle of an economic activity as well as products and services provided by this activity (Art. 16, 17, 19 and recitals 42 and 47, Taxonomy Regulation), natural gas could not be regarded as a 'transition' measure.
  - iii. A 'transition' measure must not hamper the development of low carbon alternatives or lock in substantial investments in carbon-intensive assets. Investments in natural gas would breach both of these criteria. Moreover, they would support infrastructures that typically have a long life span.
  - iv. An activity which leads to 'significant' greenhouse gas emissions is regarded as doing 'significant harm' to the objective of climate change mitigation (Art. 17, Taxonomy

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<sup>2</sup> Methane, the second most prolific greenhouse gas, is around 86 times more climate damaging than CO<sub>2</sub> on a 20-year time-scale. Taking into account underreporting of methane leaks, a number of studies find that the greenhouse warming effect of natural gas-based generation is equivalent or worse than coal-based generation.

<sup>3</sup> See: <https://www.reuters.com/business/sustainable-business/eu-offer-gas-plants-green-finance-label-under-certain-conditions-draft-2021-03-22/>

Regulation). Such 'harm' would arise here, given that the use of natural gas involves the emission of substantial greenhouse gas emissions.

We would also like to remind you that the taxonomy criteria for environmentally sustainable activities, including criteria on climate change mitigation, should be based on scientific evidence (recital 38, Taxonomy Regulation).

For all these reasons and as developed more in details in Annex, ClientEarth urges the European Commission not to adopt a measure classifying economic activities involving natural gas as 'sustainable'. We are at the disposal of the Commission to further explain any of these points.

Yours sincerely,



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## ANNEX

1. This Annex first sets out the EU legal framework regarding climate change and greenhouse gas emissions, and considers the steps that are necessary in order to comply with that framework. It then addresses the compatibility of measures that would facilitate or encourage the use of natural gas with the legal framework.

### Legal Framework

2. The starting point for the legal framework is that the EU is committed to action to limit increases in global temperatures.

#### The Paris Agreement

3. The 2015 Paris Agreement provides for the parties to it (including the EU) to take steps to limit increases in global temperatures at specified levels. Article 2(1)(a) specifies the temperature target as follows:

*“This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:*

- (a) *Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;”*

4. Article 2(1)(c) then also creates specific obligations on the parties with respect to financial flows. It requires the parties to strengthen the global response to climate change by:

*“(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”*

#### EU legislation implementing the EU international climate commitments and setting the EU’s climate ambition

5. The EU<sup>4</sup> and the European Commission<sup>5</sup> have repeatedly committed to making emissions reductions as required by the Paris Agreement.

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<sup>4</sup> For example, Regulation (EU) 2018/842 of the European Parliament and of the Council expressly describes the emissions reductions measures it enacts as “contributing to climate action to meet commitments under the Paris Agreement.”

<sup>5</sup> The European Commission has also affirmed the duties of the EU to reduce greenhouse gas emissions in order to meet the temperature objectives defined by the Paris Agreement: “*The EU has been at the forefront of addressing the root causes of climate change and strengthening a concerted global response in the framework of the Paris Agreement. The Paris Agreement, ratified by 181 parties, requires strong and swift global action to reduce greenhouse gas emissions, with the objective to hold global temperature increase to well below 2°C and to pursue efforts to limit it to 1.5°C*”: see page 4 of Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, “A Clean Planet for all: A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy”, COM(2018) 773 final (28 November 2018).

6. In December 2019, the European Commission proposed a European Green Deal entailing a commitment to a 'climate-neutral Europe' by 2050 (see section 2.1.1 of Communication from the Commission, the European Green Deal COM(2019) 640 final (11 December 2019)).
7. Climate neutrality by 2050 has now also been adopted as a binding objective in pursuit of the long term temperature goals of the Paris Agreement, as enshrined in the European Climate Law, and in particular its Article 1:<sup>6</sup>

*“This Regulation sets out a binding objective of climate neutrality in the Union by 2050 in pursuit of the long-term temperature goal set out in point (a) of Article 2(1) of the Paris Agreement, and provides a framework for achieving progress in pursuit of the global adaptation goal established in Article 7 of the Paris Agreement. This Regulation also sets out a binding Union target of a net domestic reduction in greenhouse gas emissions for 2030.”*

8. In addition, the EU has committed to an intermediate binding 2030 climate target to reduce its net greenhouse gas emissions (emissions after deduction of removals) by at least 55 % compared to 1990 levels by 2030 (Article 4(1), European Climate Law, that confirms Art. 1 quoted above):

*‘In order to reach the climate-neutrality objective set out in Article 2(1), the binding Union 2030 climate target shall be a domestic reduction of net greenhouse gas emissions (emissions after deduction of removals) by at least 55 % compared to 1990 levels by 2030.*

*When implementing the target referred to in the first subparagraph, the relevant Union institutions and the Member States shall prioritise swift and predictable emission reductions and, at the same time, enhance removals by natural sinks. In order to ensure that sufficient mitigation efforts are deployed up to 2030, for the purpose of this Regulation and without prejudice to the review of Union legislation referred to in paragraph 2, the contribution of net removals to the Union 2030 climate target shall be limited to 225 million tonnes of CO<sub>2</sub> equivalent.*

*In order to enhance the Union’s carbon sink in line with the objective of achieving climate neutrality by 2050, the Union shall aim to achieve a higher volume of its net carbon sink in 2030.’*

9. The Taxonomy Regulation itself affirms all these requirements and explains the steps taken to give effect to them, including in particular the adoption of an objective of climate neutrality by 2050. Recitals 3-4 state:

*“Article 2(1)(c) of the Paris Agreement aims to strengthen the response to climate change by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, among other means. In that context, on 12 December 2019, the European Council adopted conclusions on climate change. In light thereof, this Regulation represents a key step towards the objective of achieving a climate-neutral Union by 2050.*

*Sustainability and the transition to a safe, climate-neutral, climate-resilient, more resource-efficient and circular economy are crucial to ensuring the long-term competitiveness of the Union economy.”*

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<sup>6</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, p. 1.

10. There is also an express acknowledgment that, for an economic activity to be regarded as pursuing the objective of climate change mitigation under that Regulation, that activity is to be “consistent with the long-term temperature goal” of the Paris Agreement. Recital 24 states:

*“An economic activity that pursues the environmental objective of climate change mitigation should contribute substantially to the stabilisation of greenhouse gas emissions by avoiding or reducing them or by enhancing greenhouse gas removals. The economic activity should be consistent with the long-term temperature goal of the Paris Agreement. That environmental objective should be interpreted in accordance with relevant Union law, including Directive 2009/31/EC of the European Parliament and of the Council.”*

## Provisions of the TFEU on the environment and climate change

11. The TFEU establishes in its Articles 11 and 191 that the EU must ensure high levels of environmental protection and that its policies and activities must include the promotion of international measures to combat climate change. Union policy on the environment must also be based on the precautionary principle. Pursuant to the TFEU, environmental protection requirements must also be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

## The Taxonomy Regulation

12. The Taxonomy Regulation is one of measures further implementing the EU climate goals and commitments. It establishes a system of classification for economic activities, so as to identify those which are ‘environmentally sustainable’ for the purposes of investment and finance. The purpose of establishing such a system is to encourage the flow of finance into such activities. Recital 12 to the Regulation explains:

*“The criteria for determining whether an economic activity qualifies as environmentally sustainable should be harmonised at Union level in order to remove barriers to the functioning of the internal market with regard to raising funds for sustainability projects, and to prevent the future emergence of barriers to such projects. With such harmonisation, economic operators would find it easier to raise funding across borders for their environmentally sustainable activities, as their economic activities could be compared against uniform criteria in order to be selected as underlying assets for environmentally sustainable investments. Such harmonisation would therefore facilitate cross-border sustainable investment in the Union.”*

13. To that end, Article 1 states that the Taxonomy Regulation establishes the criteria for determining whether an activity qualifies as ‘environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable’.
14. Article 3 provides that an economic activity is regarded as environmentally sustainable where it meets several criteria, namely that: (i) the activity “contributes substantially” to one or more specified “environmental objectives”; (ii) does not harm any environmental

objectives; (iii) complies with certain minimum safeguards; and (iv) complies with “technical screening criteria” established by the European Commission.

15. Article 9 in turn lists six environmental objectives. These include ‘climate change mitigation’ in Article 10. The Article specifies in detail several cumulative requirements for an activity to be regarded as meeting that objective:

- a. Paragraph 1 provides that an activity may only be considered to meet that objective where it contributes substantially to the stabilisation of greenhouse gas emissions at a level that prevents dangerous climate change, in accordance with the temperature goal of the Paris Agreement:

*“An economic activity shall qualify as contributing substantially to climate change mitigation where that activity contributes substantially to the stabilisation of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system consistent with the long-term temperature goal of the Paris Agreement through the avoidance or reduction of greenhouse gas emissions or the increase of greenhouse gas removals, including through process innovations or product innovations...”*

- b. Paragraph 2 then refers to a specific case of economic activities for which there is no technologically and economically feasible low-carbon alternative. It provides that certain activities may be regarded as contributing substantially to climate change mitigation where they ‘support the transition’ to a climate neutral economy, consistent with the path-way to limiting the temperature increase above pre-industrial levels to 1.5° C. It also indicates that this paragraph on “supporting the transition” may apply where solid fossil fuels are “phased out”, under certain conditions:

- i. The paragraph particularly requires that there is no “technologically and economically feasible low-carbon alternative” to the activity that is said to “support the transition”.
- ii. Further conditions are that the activity has greenhouse gas emissions levels at the level of best practice in that industry; where the activity does not hamper the development of low carbon alternatives; and where the activity does not lead to carbon-intensive assets being ‘locked in’.

- c. Paragraph 2 states:

*“For the purposes of paragraph 1, an economic activity for which there is no technologically and economically feasible low-carbon alternative shall qualify as contributing substantially to climate change mitigation where it supports the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1,5 0C above pre-industrial levels, including by phasing out greenhouse gas emissions, in particular emissions from solid fossil fuels, and where that activity:*

*(a) has greenhouse gas emission levels that correspond to the best performance in the sector or industry;*

*(b) does not hamper the development and deployment of low-carbon alternatives; and*

*(c) does not lead to a lock-in of carbon-intensive assets, considering the economic lifetime of those assets.”*

16. Article 10(3) then provides for the European Commission to adopt a delegated act to establish ‘screening criteria’ to determine whether a specific activity makes a substantial contribution to climate change mitigation, and complies with the requirement of doing ‘no significant harm’ to the environmental objectives of the Taxonomy Regulation.
17. As noted, Article 3 requires that for an activity to be considered environmentally sustainable, it must not significantly harm any environmental objectives as provided under Article 17(1). Article 17(1)(a) provides that an economic activity does cause ‘significant harm’ to the objective of climate change mitigation where it leads to significant greenhouse gas emissions over its lifecycle:

*“For the purposes of point (b) of Article 3, taking into account the life cycle of the products and services provided by an economic activity, including evidence from existing life-cycle assessments, that economic activity shall be considered to significantly harm:*

*(a) climate change mitigation, where that activity leads to significant greenhouse gas emissions;”*

## **Greenhouse Gas Emissions from Natural Gas and the Long-Term Temperature goal of the Paris Agreement**

18. In order for the EU to meet its commitments under the Paris Agreement and to achieve the ‘binding objective’ of climate neutrality by 2050, the share of energy generated by natural gas must fall very significantly from its present levels and must do so rapidly.
19. Both the International Energy Agency (the ‘IEA’) and the European Commission’s own modelling have accepted that natural gas usage must fall to a fraction of its current level by 2050.
20. The IEA’s report, “*Net Zero by 2050: A Roadmap for the Global Energy Sector*” clearly explains that for net zero emissions to be achieved at the global level, there must be deep cuts in the use of fossil fuels, including in electricity generation, and significant increases in investment in renewable energy sources.
21. The IEA has modelled the necessary reductions at the global level, which include a reduction in the share of electricity generated from fossil fuels from 61% in 2020 to 25% in 2030, and then a small fraction of the total by 2040: see figure 2.18 of the IEA Report.
22. The IEA addresses the particular position of developed economies (which includes the EU). It states that in developed economies, emissions from electricity generation must fall to zero by the 2030s (section 3.4.1):

*“The transformation of the electricity sector is central to achieving net-zero emissions in 2050. Electricity generation is the single largest source of energy-related CO<sub>2</sub> emissions today, accounting for 36% of total energy-related emissions. CO<sub>2</sub> emissions from electricity generation worldwide totalled 12.3 Gt in 2020, of which 9.1 Gt was from coal-fired generation, 2.7 Gt from*

gas-fired plants and 0.6 Gt from oil-fired plants. In the NZE, CO2 emissions from electricity generation fall to zero in aggregate in advanced economies in the 2030s.”

23. The IEA also estimates that by 2030, the amount of methane emitted from fossil fuel use would need to fall by 75% under the 2050 net zero pathway: see p.47. Given the very significant emissions of methane arising from the use of natural gas, this implies a steep reduction in the use of natural gas.
24. The European Commission has also modelled the use of natural gas in its November 2018 Communication: ‘A Clean Planet for all A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy’ (COM(2018( 773 final). In the energy sector, the Communication envisages net-zero emissions (Section 3, p.6):

*“The transition towards a net-zero greenhouse gas economy gives energy a central role as it is today responsible for more than 75% of the EU’s greenhouse gas emissions. In all options analysed, the energy system moves towards net-zero greenhouse gas emissions. It relies on a secure and sustainable energy supply underpinned by a market-based and pan-European approach.”*

25. As regards natural gas and energy, the key points arising from the analysis of future scenarios in 2030 and 2050 are set out in Figure 2 of the Communication:

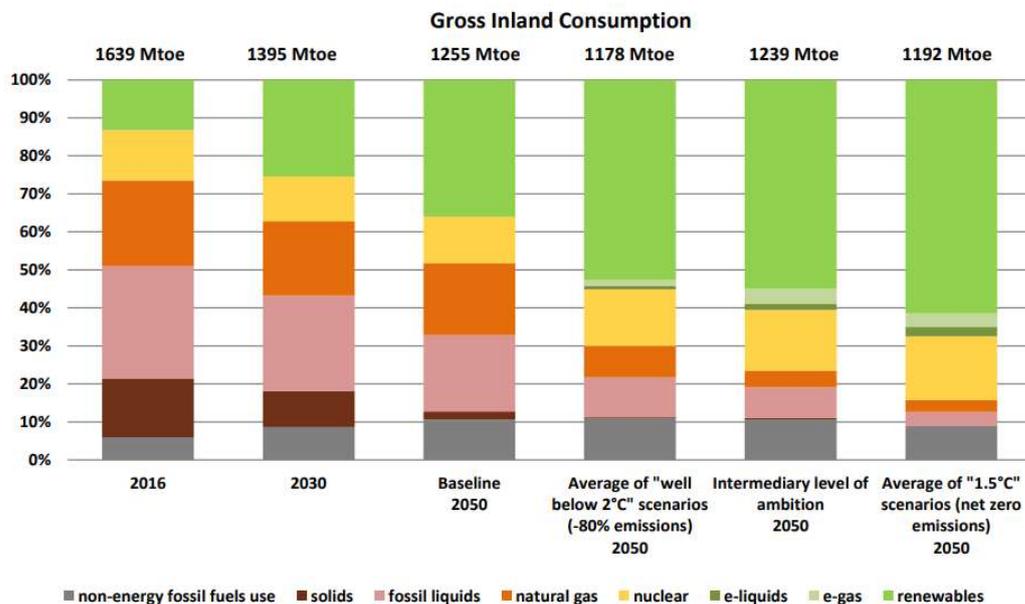


Figure 2. Fuel mix in Gross Inland Consumption

26. This graph shows the different mixes of fuel supporting inland energy consumption in a range of different scenarios analysed as means of complying with the Paris Agreement (see page 9):
  - a. As at 2016, energy from natural gas accounted for in excess of 20% of gross energy consumption;

- b. Projections showed this falling by 2030 to below 20%;<sup>7</sup>
  - c. As of 2050, natural gas consumption is projected under different scenarios:
    - i. Under the 'baseline' scenario (i.e., without the further climate action required by the Paris Agreement), natural gas consumption would continue to have a similar share as projected in 2030;
    - ii. Under the scenario of action to meet the 'well below 2C' scenario, involving overall emissions reductions in the order of 80%, the share of natural gas falls well below 10% of the total;
    - iii. At an 'intermediary level ambition', the share of natural gas is projected to be lower still, to around 4% of the total;
    - iv. Across an average of scenarios to meet the target for a 1.5C scenario, the share of natural gas is projected at around 3% of the total.
27. Importantly, there is also a range of compelling evidence that in addition to CO<sub>2</sub> emissions, between the extraction and the combustion of natural gas, there are substantial leakages of methane. These methane emissions through leaks are typically disregarded or under-estimated but they lead to material increases in overall greenhouse emissions, even compared with the coal-sourced energy systems they may replace; it is essential that any comparison made takes account of these leaks as comparing only the emissions entailed in the combustion of the fossil fuels provides an incomplete and inaccurate picture.
28. The significance of leaks of methane is well-documented:
- a. A detailed study for the European Commission in 2015 found (p.112):<sup>8</sup>

*“Another source of gas ‘consumption’ during transport is leakage. Methane, the principal ingredient of natural gas, is a powerful greenhouse gas; therefore leaks may have a significant environmental effect.*

*For international gas pipelines, the major environmental impact comes from the gas combustion to run the compressor stations. The impact is larger with increased distance. Some of the critical points in the transmission process for gas consumption are turbine compressors that burn natural gas at compressor stations along the way, electric motors and gas engines, power generation, and leaks of methane gas – fugitive emissions – during transmission. Fugitive emissions are a major component of greenhouse gas emissions from natural gas systems, however they are often difficult to accurately identify.”*
  - b. The study for the European Commission noted most supply chains would involve leaks of up to 1.5% of the total volume. Given that methane has a global warming

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<sup>7</sup> And even then, of a lower total volume of energy consumption: 1395 Mtoe, as opposed to 1639 Mtoe in 2016.

<sup>8</sup> Study for DG Energy, on Actual GHG Data for Diesel, Petrol, Kerosene and Natural Gas (July 2015). Work order: ENER/C2/2013-643.

potential (GWP) of 25, the report described the effect of these leaks as “quite significant”.<sup>9</sup>

- c. Further research complementing the European Commission’s findings has confirmed that the methane emissions in the supply of natural gas are significant and that the replacement of coal units with natural gas units most likely results in an overall aggregate increase in greenhouse gas emissions. These effects are often under-estimated.<sup>10</sup> As a report prepared by Traber and Fell concludes as regards electricity generation, on the basis of a review and synthesis of this research (pp.11-12):

*“Electricity Sector: Replacing Coal Power Plants with Natural Gas Power Plants*

*“Figure 3 below shows the substantial negative climate effect when replacing electricity generation in existing coal-fired power plants with electricity generation in new natural gas power plants. The estimated increase of GHG emissions of this switch is +41%. While this is partly a result of the fact that new natural gas applications are sourced from rather expensive and emission-intensive resources, it also becomes clear that with the hypothetical use of global average gas, no savings can be reached either.”*

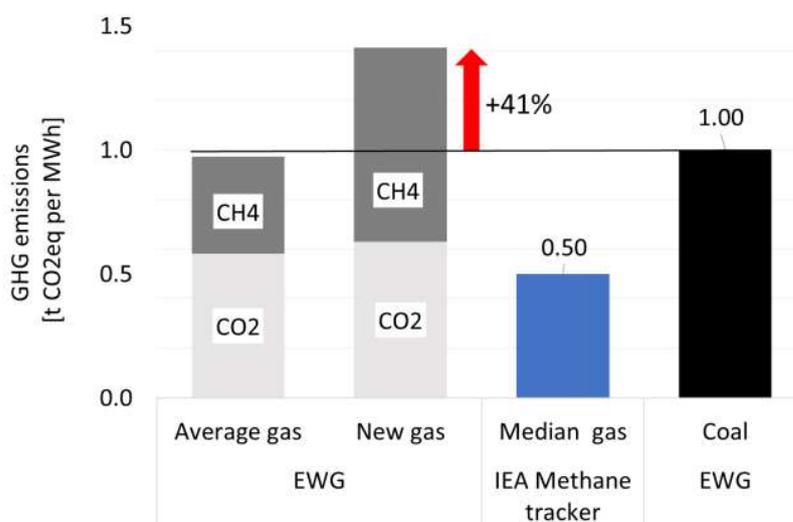


Figure 3: Greenhouse gas emissions from fossil sources and additional emissions from the switch from coal to new natural gas for electricity generation: Additional methane emissions more than offset any CO<sub>2</sub> savings. Source: Own calculation, IEA Methane tracker.

- 29. It is particularly important that methane emissions are not overlooked, given their significant size and powerful contribution to dangerous climate change, which may (when new natural gas is used) exceed the effect of the greenhouse gas emissions emitted from the combustion of coal.

<sup>9</sup> See section 4.3.4 of the Study.

<sup>10</sup> See Traber and Fell, “Natural Gas Makes No Contribution to Climate Protection”, Energy Watch Group (September 2019). [http://energywatchgroup.org/wp-content/uploads/EWG\\_Natural\\_Gas\\_Study\\_September\\_2019.pdf](http://energywatchgroup.org/wp-content/uploads/EWG_Natural_Gas_Study_September_2019.pdf)

The paper summarises research set out in Howarth, ‘Is Shale Gas a Major Driver of Recent Increase in Global Atmospheric Methane?’ Biogeosciences Discussions, April, 1–23, 2019. <https://doi.org/10.5194/bg-2019-131>

30. In summary:
- a. fulfilment of the commitments given in the Paris Agreement and realisation of the broader policy objectives of the EU will clearly necessitate very significant reductions in the use of natural gas in the near future – even under the minimum standard set by the Paris Agreement of limiting any temperature increase to “well below” 2C.
  - b. natural gas involves significant emissions of methane. As a result, the use of such natural gas may ultimately result in similar or (particularly in the case of new natural gas) higher greenhouse gas emissions than coal.

## **Compatibility of encouraging the use of natural gas with EU law**

31. Measures adopted by the EU that would facilitate investment in the use of natural gas and encourage its use (including as a ‘replacement’ for coal) would conflict with several norms of EU law. First, they would be incompatible with the EU’s international commitments (in particular the Paris Agreement) and the implementing EU climate objectives in EU legislation (including the European Climate Law). Second, they would not be consistent with the requirements of the TFEU. Third, a taxonomy delegated act setting criteria that would consider sustainable certain economic activities using natural gas would not comply with the Taxonomy Regulation itself.

### Paris Agreement

32. As set out above, the Paris Agreement establishes a long term temperature limit. In furtherance of its obligations under the Paris Agreement, the EU has also established an objective of climate neutrality by 2050.
33. The European Commission and the IEA have calculated that for these objectives to be met, the use of natural gas must decrease. Moreover, the fall in natural gas must begin now. It is therefore plainly incompatible with the commitments under the Paris Agreement and the objective of climate neutrality for the EU to adopt acts (under the Taxonomy Regulation or otherwise) that would encourage the use of natural gas, including by facilitating the flow of finance to such activities.
34. This conclusion is fortified by two further points.
35. **First**, while the EU accepts that greenhouse gas emissions must fall to net zero by 2050, it is clear that more urgent action is required well before that time and that the maintenance or expansion of natural gas-related activities is inconsistent with this requirement. The EU is in reality obliged to reach net zero emissions earlier than 2050. The Paris Agreement requires contracting parties to implement it (Article 2(2), *“to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”*)

36. Given the EU's relatively high share of the historical emissions budget, and its high degree of economic and technical capability today, the EU bears an additional duty to reach zero emissions ahead of other parties.
37. **Second**, a critical part of the Paris Agreement is the obligation on the parties to direct finance towards renewable energy sources, as reflected in Article 2(1)(c). The European Commission has itself recognised that very significant resources (estimated at €350 billion) will be required for emissions reductions measures in the energy sector alone, in the coming decade. The European Commission has noted that: "*the scale of investment required is beyond the capacity of the public sector*", such that the "*main objective of the sustainable finance framework is to channel private financial flows into relevant economic activities*": see Communication from the Commission, "Strategy for Financing the Transition to a Sustainable Economy" (COM(2021) 390 final, 6 July 2021), pp.1-2.
38. The funds available to invest in renewable activities are necessarily limited but the need, as the European Commission accepts, is very significant. Therefore, to the extent that investment into natural gas is actually encouraged, such investments involve funds that could otherwise have been invested in clean energy activities. This is clearly contrary to the framework of the Paris Agreement.
39. Further, the suggestion that gas-based activities can provide a 'transition' is at odds with the requirements of the commitments that the EU has made, and with EU legislation. As set out above, the modelling of the IEA and the European Commission make clear that greenhouse gas emissions from the energy sector must fall very sharply in the near future, including<sup>11</sup> a reduction in methane emissions of 75% by 2030 (on a global scale; in developed economies such as the EU, the reduction would be greater and swifter).

## TFEU, Articles 11 and 191

40. Articles 11 and 191, TFEU, require the EU to pursue a high level of environmental protection, and international measures to combat climate change. The policy of the EU in these fields has been crystallised in its commitments under the Paris Agreement. The EU and its institutions are obliged by these TFEU provisions faithfully to pursue the implementation of these commitments.
41. Taking into account greenhouse gas emissions from natural gas, measures allowing natural gas to be classified as sustainable – thereby attracting further investment to these activities – would breach the above mentioned provisions of the TFEU.

## Taxonomy Regulation

42. As set out above, the Taxonomy Regulation establishes several criteria that must be satisfied in order for an activity to be classified as 'environmentally sustainable', on the basis that it contributes to climate change mitigation. These criteria cannot be met here. The use of natural gas would not make a substantial contribution to any of the objectives

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<sup>11</sup> in the IEA's detailed study

under the Taxonomy Regulation, and would, moreover, cause significant harm to the objective of climate change mitigation, since it would lead to significant greenhouse gas emissions. These criteria are addressed in turn.

*Article 10(1): ‘Contributes substantially to the stabilisation of greenhouse gas emissions at a level that prevents dangerous climate change’*

43. For the reasons set out in detail above (particularly at paragraphs 18-30) the encouragement of the use of natural gas would mean that additional greenhouse gas emissions would be emitted. Thus, the encouragement of the use of natural gas would not contribute to the ‘stabilisation’ of greenhouse gas emissions; it would increase greenhouse gas emissions in the atmosphere.
44. In spite of this harmful impact of natural gas activities, in its recent Communication “Strategy for Financing the Transition to a Sustainable Economy” (COM (2021) 390 final), p. 6, the European Commission expressed its intention to adopt a complementary EU taxonomy climate delegated act that would regulate, i.a. natural gas activities:

*“Including additional sustainable activities in the EU Taxonomy*

*As announced in the Commission’s Communication published in April 2021, the Commission will adopt a complementary EU Taxonomy Climate Delegated Act covering activities not yet covered in the first EU Taxonomy Climate Delegated Act, such as agriculture and certain energy sectors, in line with the requirements of the Taxonomy Regulation. (...) This complementary Delegated Act will also cover natural gas and related technologies as transitional activity in as far as they fall within the limits of Article 10(2) of the EU Taxonomy Regulation. (...)”*

45. It seems, in particular, that the European Commission may be considering specifying that the use of natural gas to replace coal in facilities producing power, and facilities producing heating/cooling, contributes to ‘climate change mitigation’.
46. A leaked (in March this year) and widely available draft version of an Annex to the already adopted EU taxonomy climate delegated act (the ‘March leaked draft’)<sup>12</sup> was proposing to consider certain natural gas related activities as environmentally sustainable. Although, in the end, these activities have not been listed in the final version of the delegated act, it is expected that they may be proposed again as part of a complementary delegated act.
47. Sections 4.26 and 4.27 of the March leaked draft specified the following activities as making such a contribution to climate change mitigation:

- a. Section 4.26:

*“Replacement of existing combined heat/cool and power facilities using solid or liquid fossil fuels or replacement of existing separate heat facilities using solid or liquid fossil fuels or replacement of existing separate power facilities using solid or liquid fossil fuels with high-efficiency combined heat/cool and power facilities using gaseous and liquid fuels”*

- b. Section 4.27:

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<sup>12</sup> For detail see the article from Reuters summarising the content of the document at: <https://www.reuters.com/business/sustainable-business/eu-offer-gas-plants-green-finance-label-under-certain-conditions-draft-2021-03-22/>

*“Replacement of heating/cooling facilities using solid or liquid fossil fuels by heating/cooling facilities using gaseous and liquid fuels in efficient district heating and cooling”*

48. Such a proposal, encouraging the use of natural gas for heating/cooling and power activities, would fail to meet the criteria in Article 10(1) (and also Article 10(2), as developed below).
49. It would be misguided to proceed on the basis that natural gas can provide a short-term ‘bridge’ to reducing greenhouse gas emissions over the longer term. Any funding directed to natural gas is also funding that is unavailable for renewable energy projects producing no or much lower emissions, and the assumption that natural gas actually does in aggregate produce lower emissions than other fossil fuels, and especially, coal, is highly questionable. Given the need to proceed in accordance with the precautionary principle as expressed in Article 191(2) TFEU, further investment in natural gas-related activities cannot be characterised as sustainable.
50. Moreover, the specific proposals of the March leaked draft did not require any account to be taken of the leakage of methane. The proposed wording referred only to the ‘direct GHG emissions’ of the ‘facility’, while no reference was made to the likely (and potentially very significant) leakage of methane in the transportation or storage of natural gas. The March leaked draft therefore overlooked a highly significant and damaging source of greenhouse gas emissions. If similar provisions were included in a complementary EU taxonomy climate delegated act, they would likely lead to natural gas activities being regarded as contributing to climate change mitigation even where they actually result in an increase in total greenhouse gas emissions.

*Article 10(2): measures ‘supporting the transition’ to a ‘climate neutral’ economy*

51. For the same and additional reasons, the proposals in the March leaked draft would not meet the requirements of Article 10(2). The omission of reference to the emissions of methane is a critical flaw and is flatly inconsistent with the requirement that an activity support a ‘transition’ away from coal. This would also be in breach of Art. 16, 17, 19 and recitals 42, 47 of the Taxonomy Regulation according to which the life-cycle, including evidence from existing life-cycle assessments, of an economic activity as well as products and services provided by this activity shall be taken into account when assessing substantial contribution to environmental objectives and a significant harm.
52. Moreover, the criteria established under Article 10(2) include that the activity does not hamper the development of low carbon alternatives; that the activity does not lead to carbon-intensive assets being ‘locked in’. Neither of these criteria would be satisfied in case a complementary EU taxonomy climate delegated act includes the natural gas activities considered in the past under Sections 4.26 and 4.27 of the March leaked draft:
  - a. **Low carbon alternatives:** There was no reference in the March leaked draft to any criteria under which the hampering of the development of low carbon alternatives would be assessed. In any event, the diversion of investment to natural gas from a limited pool of funds is likely to deprive low carbon alternatives of much needed funds, thereby hampering their development.

- b. **Carbon-intensive assets being locked in:** There was similarly no reference to any requirement that carbon intensive assets not become 'locked in'. This aspect of the legal test was therefore simply ignored. It is obvious that without such controls, investments in natural gas are likely to lead to assets being locked in; the infrastructure in question tends to have a long working life.
53. Article 10(2) also requires that a 'transition' measure is used only where no technologically and economically feasible low carbon alternative is available. It is difficult to conceive of any (or any material) instances in which such an alternative to the use of natural gas would in fact be unavailable. Moreover, in relation to replacement of heating/cooling and power facilities (sections 4.26-27 of the March leaked draft), a condition that there are no technological and economical low-carbon alternatives for the facility cannot be considered an adequate equivalent to the condition under the primary legislation, that no alternative exists for an economic activity (as provided in Art. 10(2) of the Taxonomy Regulation). It is critical to ensure that this requirement of Article 10(2) is properly applied in accordance with the requirements of the Taxonomy Regulation.

### *Article 3: do no significant harm to any environmental objective*

54. Article 3 establishes that an *economic activity shall be considered to significantly harm: the objective of 'climate change mitigation', where that activity leads to significant greenhouse gas emissions*. A measure encouraging the use of natural gas – which entails the emission of significant greenhouse gas emissions – clearly conflicts with this requirement, as set out above.

### Conclusion

55. For the reasons set out above, a delegated act classifying the use of natural gas as sustainable as a form of 'climate change mitigation' would conflict with various binding legal norms, namely: the EU's international obligations under the Paris Agreement; the clearly stated climate policy of the EU confirmed in its legislation including the European Climate Law; provisions of the TFEU on the protection of the environment, and the express criteria of the Taxonomy Regulation.

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