Reports of Cases

JUDGMENT OF THE GENERAL COURT (Grand Chamber)

10 September 2025 * [i]

(Environment – Delegated Regulation (EU) 2022/1214 – Taxonomy – Economic activities in the fossil gas and nuclear energy sectors – Inclusion in sustainable economic activities – Investments – Contribution to the transition towards a carbon-neutral economy in accordance with the 1.5 °C objective fixed by the Paris Agreement – Objective of net zero emissions by 2050 – Substantial contribution to climate change mitigation and adaptation – Articles 10 and 11 of Regulation (EU) 2020/852 – Concept of 'low-carbon activity' – Significant harm to environmental objectives – Risks associated with serious reactor accidents – Risks associated with high-level radioactive waste – Risks associated with droughts and climate hazards – Precautionary principle – Technical screening criteria – Reduction of greenhouse gas emissions – Article 290 TFEU – Concept of 'essential elements' of a legislative act – Scientific evidence – Commission's margin of discretion – Manifest error of assessment)

In Case T-625/22,

Republic of Austria, represented by M. Klamert and F. Koppensteiner, acting as Agents, and by S. Lünenbürger, K. Reiter and M. Kottmann, lawyers,

applicant,

supported by

Grand Duchy of Luxembourg, represented by A. Germeaux and T. Schell, acting as Agents,

intervener,

v

European Commission, represented by C. Ladenburger, R. Tricot, G. von Rintelen, C. Auvret and B. De Meester, acting as Agents,

defendant,

supported by

Republic of Bulgaria, represented by T. Mitova and S. Ognianova Ruseva, acting as Agents,

by

* Language of the case: German.

Czech Republic, represented by J. Vláčil and L. Dvořáková, acting as Agents,

by

French Republic, represented by T. Stéhelin, B. Fodda and M. de Lisi, acting as Agents,

by

Hungary, represented by M. Fehér and K. Szíjjártó, acting as Agents,

by

Republic of Poland, represented by B. Majczyna, M. Rzotkiewicz and K. Rudzińska, acting as Agents,

by

Romania, represented by E. Gane, M. Chicu and O.-C. Ichim, acting as Agents,

by

Republic of Slovenia, represented by A. Grum and B. Jovin Hrastnik, acting as Agents,

by

Slovak Republic, represented by E. Larišová, acting as Agent,

and by

Republic of Finland, represented by H. Leppo, acting as Agent,

interveners,

THE GENERAL COURT (Grand Chamber),

composed of M. van der Woude, President, S. Papasavvas, A. Marcoulli, M.J. Costeira, O. Porchia, M. Kancheva, U. Öberg, G. De Baere, T. Pynnä, J. Laitenberger, G. Steinfatt, D. Petrlík, P. Zilgalvis (Rapporteur), E. Tichy-Fisslberger and L. Spangsberg Grønfeldt, Judges,

Registrar: S. Jund, Administrator,

having regard to the written part of the procedure,

having regard to the measure of organisation of procedure of 10 September 2024 and the response of the Commission lodged at the Registry of the General Court on 30 September 2024,

further to the hearing on 21 and 22 October 2024, during which observations were submitted by the Republic of Austria on that response,

gives the following

Judgment

1 By its action based on Article 263 TFEU, the Republic of Austria seeks the annulment of Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 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 (OJ 2022 L 188, p. 1; 'the contested regulation').

Background to the dispute

2 On 18 June 2020, the European Parliament and the Council of the European Union adopted Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020 L 198, p. 13; 'the Taxonomy Regulation').

3 According to the wording of Article 1(1) of the Taxonomy Regulation, that regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. Recital 3 thereof states that that regulation represents a key step towards the objective of achieving a climate-neutral European Union by 2050.

4 To that end, as is apparent from recitals 6 and 12 thereof, the Taxonomy Regulation establishes a unified classification system for sustainable activities which harmonises the criteria at EU level for determining whether an economic activity qualifies as environmentally sustainable, which gives investors and other economic operators a common understanding of environmentally sustainable economic activities.

5 On 4 June 2021, the European Commission adopted Commission Delegated Regulation (EU) 2021/2139 supplementing [the Taxonomy Regulation] 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 (OJ 2021 L 442, p. 1).

6 On 9 March 2022, the Commission adopted the contested regulation, which has as its purpose inter alia the establishment of technical screening criteria to include certain activities in the nuclear energy and fossil gas sectors in the category of activities deemed to contribute substantially to climate change mitigation on the basis of Article 10(3) of the Taxonomy Regulation, and in the category of activities deemed to contribute substantially to climate change adaptation on the basis of Article 11(3) of that regulation ('the technical screening criteria').

Forms of order sought

7 The Republic of Austria, supported by the Grand Duchy of Luxembourg, claims that the Court should:

– annul the contested regulation;

– order the Commission to pay the costs.

8 The Commission, supported by the Republic of Bulgaria, the Czech Republic, the French Republic, Hungary, the Republic of Poland, Romania, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, contends that the Court should:

– dismiss the action;

– order the Republic of Austria to pay the costs.

Law

9 In support of its action, the Republic of Austria puts forward 16 pleas in law.

10 The first eight pleas in law concern economic activities in the nuclear energy sector.

11 In particular, the first plea in law alleges breach of the procedural rules under the Taxonomy Regulation and of Article 6(4) of 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 2021, L 243, p. 1; 'the European Climate Law').

12 The second plea in law alleges infringement of Article 10(2) and Article 19(1)(f) and (g) of the Taxonomy Regulation and of the precautionary principle.

13 The third plea in law alleges infringement of Article 17 and Article 19(1)(f) and (g) of the Taxonomy Regulation and of the precautionary principle.

14 The fourth plea in law alleges infringement of Article 17 of the Taxonomy Regulation as regards the different technical screening criteria, of Article 19(1)(f) of that regulation and of the precautionary principle.

15 The fifth plea in law alleges infringement of Article 11 and Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle.

16 The sixth plea in law alleges infringement of Article 19(1)(k) of the Taxonomy Regulation.

17 The seventh plea in law alleges infringement of the purpose and practical effect of the Taxonomy Regulation due to the risk of fragmentation of the market.

18 The eighth plea in law alleges infringement of Article 290 TFEU.

19 The eight other pleas in law concern economic activities in the fossil gas sector.

20 In particular, the ninth plea in law alleges breach of the procedural rules under the Taxonomy Regulation and of Article 6(4) of the European Climate Law.

21 The tenth plea in law alleges infringement of Article 10(2) and Article 19(1)(f) and (g) of the Taxonomy Regulation and of the precautionary principle.

22 The eleventh plea in law alleges breach of the principle of technological neutrality laid down in Article 19(1)(a) and (j) of the Taxonomy Regulation and of the principle of non-discrimination.

23 The twelfth plea in law alleges infringement of Article 17 and Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle.

24 The thirteenth plea in law alleges infringement of Article 11 and Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle.

25 The fourteenth plea in law alleges infringement of Article 19(1)(i) of the Taxonomy Regulation inasmuch as the inclusion of activities relating to fossil gas in the taxonomy entails a risk of creating stranded assets.

26 The fifteenth plea in law alleges infringement of Article 19(1)(k) of the Taxonomy Regulation.

27 The sixteenth plea in law alleges infringement of the purpose and practical effect of the Taxonomy Regulation due to the risk of fragmentation of the market.

28 The Court considers it appropriate to begin by examining the first and ninth pleas together. As regards economic activities in the nuclear energy sector, the Court shall examine the eighth and second pleas, then the third and fourth pleas together and, lastly, the fifth, sixth and seventh pleas.

29 As regards economic activities in the fossil gas sector, the Court considers it appropriate to begin by examining the tenth plea, followed by the eleventh to sixteenth pleas.

Preliminary considerations and scope of judicial review

30 The Republic of Austria submits, in essence, that the pleas are vitiated by errors of law in the application and interpretation of the Taxonomy Regulation, with the result that the Court should conduct a full judicial review.

31 The Commission disputes that line of argument.

32 It should be borne in mind that, where an EU institution enjoys broad discretion, in particular when carrying out complex assessments, the judicial review which the Courts of the European Union must carry out of the merits of a decision taken in the exercise of that discretion must not lead it to substitute its own assessment for that of the institution in question, but must seek to ascertain that that decision is not based on materially incorrect facts and that it is not vitiated by a manifest error of assessment or misuse of powers (see, to that effect, judgment of 4 May 2023, *ECB* v *Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 55 and the case-law cited).

33 Moreover, in the context of a delegated power under Article 290 TFEU, the Commission enjoys, in the exercise of the powers conferred on it, broad discretion where it is called on, inter alia, to undertake complex assessments and evaluations (see, to that effect, judgment of 11 May 2017, *Dyson* v *Commission*, C-44/16 P, EU:C:2017:357, paragraph 53 and the case-law cited).

34 In that regard, it is settled case-law that the Courts of the European Union must, inter alia, establish not only whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the relevant information which must be taken into account

in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (see judgment of 4 May 2023, *ECB* v *Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 56 and the case-law cited).

35 Where an institution enjoys broad discretion, observance of procedural guarantees is of fundamental importance, including the obligation for that institution to examine carefully and impartially all the relevant aspects of the situation in question (see judgment of 4 May 2023, *ECB* v *Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 57 and the case-law cited).

36 However, as regards questions of law, the General Court carries out a comprehensive review, which includes the interpretation to be made of legal provisions on the basis of objective factors and verification of whether or not the conditions for the application of such a provision are satisfied (see judgment of 11 September 2024, *Sveza Verkhnyaya Sinyachikha and Others* v *Commission*, T-2/22, not published, EU:T:2024:615, paragraph 27 and the case-law cited).

37 Lastly, as regards the assessment by the Courts of the European Union as to whether an act of an institution is vitiated by a manifest error of assessment, it must be stated that, in order to establish that that institution committed a manifest error in assessing complex facts such as to justify the annulment of that act, the evidence adduced by the applicant must be sufficient to make the factual assessments used in the act implausible (see, by analogy, judgments of 14 June 2018, *Lubrizol France* v *Council*, C-223/17 P, not published, EU:C:2018:442, paragraph 39; of 7 May 2020, *BTB Holding Investments and Duferco Participations Holding* v *Commission*, C-148/19 P, EU:C:2020:354, paragraph 72; and of 17 May 2018, *Bayer CropScience and Others* v *Commission*, T-429/13 and T-451/13, EU:T:2018:280, paragraph 145).

38 It is in the light of those considerations that the pleas in law put forward by the Republic of Austria must be examined.

First and ninth pleas in law: breach of the procedural rules in the Taxonomy Regulation and of Article 6(4) of the European Climate Law

39 The Republic of Austria, supported by the Grand Duchy of Luxembourg, submits, in essence, that the contested regulation was adopted in a manner contrary to the procedural provisions laid down in the Taxonomy Regulation for the adoption of a delegated act, in particular those relating to the establishment of technical screening criteria, and in the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ 2016, L 123, p. 1; 'the Interinstitutional Agreement'), and in a manner contrary to the requirements of Article 6(4) of the European Climate Law.

40 The Commission, supported by the Republic of Bulgaria, the Czech Republic, the French Republic, Hungary, the Republic of Poland and Romania, disputes that line of argument.

41 It should be borne in mind that, under Article 23(4) of the Taxonomy Regulation, the Commission is to gather all necessary expertise, prior to the adoption and during the development of delegated acts, including through the consultation of the experts of the Member State Expert Group on Sustainable Finance ('the Member State Expert Group') referred to in Article 24 of the Taxonomy Regulation.

42 Moreover, under that provision, before adopting a delegated act, the Commission is to act in accordance with the principles and procedures laid down in the Interinstitutional Agreement.

43 It should also be noted that, under Article 10(4) and Article 11(4) of the Taxonomy Regulation, prior to adopting a delegated act, the Commission is to consult the Platform on Sustainable Finance ('the Platform') referred to in Article 20 of the Taxonomy Regulation regarding the technical screening criteria.

44 Moreover, under Article 24(1) of the Taxonomy Regulation, the Member State Expert Group is to advise the Commission on the appropriateness of the technical screening criteria and the approach taken by the Platform regarding the development of those criteria.

45 In the present case, it should be borne in mind that, for the adoption of Delegated Regulation 2021/2139, the Technical expert group on sustainable finance ('the TEG'), which was created by the Commission to assist in developing the taxonomy, drew up recommendations for the technical screening criteria relating to economic activities that contribute substantially to the two environmental objectives established by Article 9(a) and (b) of the Taxonomy Regulation. The TEG published two preliminary versions of its recommendations in its reports of December 2018 and June 2019. Each of those reports were the subject of public consultation. The Final Report of the TEG was published in March 2020, accompanied by a Technical Annex.

46 The Commission also made public an impact assessment for the adoption of Delegated Regulation 2021/2139 in March 2020, on which observations could be submitted until the end of April 2020. Moreover, the draft Delegated Regulation 2021/2139 was published on the Better Law-Making portal for a response period of four weeks (20 November to 18 December 2020) and was evaluated by the Platform in December 2020 and presented to Member States' experts at a number of meetings of the Member State Expert Group in the period from December 2020 to March 2021. On 4 June 2021, the Commission published the impact assessment for the adoption of Delegated Regulation 2021/2139 (SWD(2021) 152 final).

47 Moreover, for the adoption of the contested regulation, during the summer of 2020, the Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union (FISMA) requested the Joint Research Centre (JRC) to carry out more extensive technical work on the criterion referred to in Article 17 of the Taxonomy Regulation, under which, in order to be considered to be environmentally sustainable, the economic activity must not cause 'significant harm' to one of the environmental objectives laid down in Article 9 of that regulation ('the DNSH criterion') for nuclear energy, as recommended by the TEG. The JRC conducted a review to assess nuclear energy generation in the light of the DNSH criterion, taking account of the effects of the whole nuclear energy life-cycle in terms of existing and potential environmental impacts across all objectives. On 19 March 2021, it published a report on the results of the full review ('the JRC Report'), and the explanatory memorandum to the draft contested regulation summarises that report's findings.

48 Following the JRC Report, on 28 June 2021 the group of experts referred to in Article 31 of the Euratom Treaty adopted a favourable opinion on the JRC Report, as indicated in the explanatory memorandum to the draft contested regulation. On 29 June 2021, the Scientific Committee on Health, Environmental and Emerging Risks ('the SCHEER') also published an opinion on the findings and recommendations of the JRC Report.

49 In the first place, according to the Republic of Austria, contrary to the requirements of the Interinstitutional Agreement, inter alia in point 4 et seq. of the annex thereto, the draft contested regulation was sent out belatedly, in an inopportune manner (evening of 31 December 2021) and

set too short a period for responding (expiring initially on 12 January 2022 then, following a brief extension, on 21 January 2022). This did not allow the Member States a sufficient time period in which to prepare their observations.

50 In that regard, it should be noted that, under point 4 of the annex to the Interinstitutional Agreement, the Member States' experts are to be consulted in a timely manner on each draft delegated act prepared by the Commission services.

51 Moreover, on 31 December 2021, the Commission sent the draft delegated regulation to the Platform and to the Member State Expert Group.

52 The Platform published its final response on its website on 24 January 2022.

53 On 10 January 2022, a meeting of the Member State Expert Group was held, during which the Member States were able to present their observations on the draft contested regulation.

54 The Member State Expert Group was given until 26 January 2022 to put forward its observations on the Platform's response.

55 Given that activities in the nuclear energy sector and activities in the fossil gas sector had already been the subject of preliminary assessments for the adoption of Delegated Regulation 2021/2139, and that the issue of the environmental impact of those activities is the subject of numerous existing expert assessments, such as the JRC Report and the opinion of the group of experts dated 28 June 2021, referred to in Article 31 of the Euratom Treaty, is not entirely new, the Court finds that the 12-day time limit, extended to 21 days, which the Member State Expert Group and the Platform had in which to submit their opinion on the draft delegated act, was a sufficient period of time in which to put forward observations.

56 This holds all the more true when, first, the experts had prior knowledge of the matter, since they had already submitted observations at a meeting in May 2020 on the TEG's recommendations referred to in paragraph 45 above and, secondly, neither the Platform nor the Member State Expert Group considered the extended time limit to be insufficient.

57 In that context, the Commission cannot be criticised for having sent the draft contested regulation on 31 December 2021, especially since the time limit granted to the Member State Expert Group and the Platform to provide their opinion on the draft delegated act was extended to 21 January 2022.

58 Therefore, contrary to the Republic of Austria's contentions, the Court finds that the Member States were consulted in due time about the draft contested regulation, as required by point 4 of the annex to the Interinstitutional Agreement.

59 Nor can the Commission be criticised for having sent simultaneously the draft contested regulation to the Member State Expert Group and the Platform, since the Commission gave the Member State Expert Group the opportunity to comment on the Platform's response. In that regard, the Member State Expert Group was given until 26 January 2022 to put forward its observations on the Platform's response, which had been published on its website two days previously, on 24 January 2022.

60 In the second place, the Republic of Austria submits that there was no meeting with the Member State Expert Group, since the conditions for using a written opinion were not satisfied inasmuch as the contested regulation did not contain an amendment to Delegated Regulation 2021/2139, but rather an 'addition' relating to entirely new issues, including the definition of economic activities and the determination of entirely new criteria and thresholds, requiring the Member States to be consulted anew.

61 The Court finds, however, that a virtual meeting was held on 10 January 2022, with the result that there indeed was a meeting with the Member State Expert Group concerning the activities at which the contested regulation was directed. Moreover, the Interinstitutional Agreement does not preclude the experts from being consulted as part of a written procedure.

62 In the third place, the Republic of Austria in essence criticises the Commission for having defined the technical screening criteria without having ensured that there was a fresh public consultation or a fresh impact assessment after the additional assessments contained in the JRC Report.

63 In that regard, it should be borne in mind that, under point 13 of the Interinstitutional Agreement, the Commission is to carry out impact assessments of its delegated acts which are expected to have significant economic, environmental or social impacts, and is to consult as widely as possible.

64 It is nevertheless apparent from the case-law that no obligation to carry out an impact assessment of delegated regulations in all circumstances follows from the wording of points 12 to 15 of the Interinstitutional Agreement (see, to that effect and by analogy, judgments of 3 December 2019, *Czech Republic* v *Parliament and Council*, C-482/17, EU:C:2019:1035, paragraphs 82 to 85, and of 5 July 2023, *TIB Chemicals* v *Commission*, T-639/20, not published, EU:T:2023:374, paragraph 206).

65 Moreover, under point 28 of the Interinstitutional Agreement, the Commission is to commit to gathering, prior to the adoption of delegated acts, all necessary expertise, including through the consultation of Member States' experts and through public consultations.

66 Point 6 of the annex to the Interinstitutional Agreement, for its part, states that the preparation and drawing-up of delegated acts may also include consultations with stakeholders, with the result that the Commission is not obliged in any event to carry out public consultations.

67 In the present case, as is apparent from paragraphs 45 and 46 above, the Commission carried out an impact assessment for the adoption of Delegated Regulation 2021/2139 and the TEG adopted two reports on the technical screening criteria relating to economic activities that contribute substantially to the two environmental objectives established by Article 9(a) and (b) of the Taxonomy Regulation. That impact assessment and those reports were the subject of public consultation. Moreover, that impact assessment and those public consultations were carried out when it was already being envisaged to establish technical screening criteria for economic activities in the nuclear energy sector.

68 Furthermore, the impact assessment carried out for the adoption of Delegated Regulation 2021/2139 (SWD(2021) 152 final) stated, at page 23, that, as regards activities in the nuclear energy sector, the choice consisted in continuing technical work on the DNSH criterion.

69 As is apparent from recital 3 of the contested regulation, the establishment of technical screening criteria for those activities was then postponed pending an in-depth expert assessment.

70 The expert assessments and public consultations, carried out for the adoption of Delegated Regulation 2021/2139, already included activities in the nuclear energy sector, with the result that the contested regulation forms part of the continuity of that regulation. They also led the Commission to carry out supplementary assessments for the adoption of the contested regulation.

71 The activities in the nuclear energy sector had also been analysed in the Technical Annex to the TEG Final Report, which served as a basis for drawing up both Delegated Regulation 2021/2139 and the contested regulation.

72 Thus, given the points referred to in paragraphs 45 to 48 above, it follows from the various procedural steps that led to the adoption of Delegated Regulation 2021/2139, then to that of the contested regulation, that the latter forms part of the continuity of the former. In particular, in the procedure that led to the adoption of Delegated Regulation 2021/2139, the TEG had taken account of economic activities in the nuclear energy sector and had recommended that other studies be carried out, which were done in the procedure that led to the adoption of the contested regulation.

73 Consequently, the Commission could legitimately base itself on the expert assessments carried out for the adoption of Delegated Regulation 2021/2139 for the purposes of the adoption of the contested regulation, since not only do the two delegated regulations have as their purpose to complement the Taxonomy Regulation, but also the procedures that led to their adoption are mutually complementary as regards the examination of economic activities in the nuclear energy sector. Thus, in particular, contrary to the Republic of Austria's contentions, for the purpose of adopting the contested regulation, the Commission could rely on the impact assessment and public consultation carried out for the adoption of Delegated Regulation 2021/2139, without being required to carry out an additional, specific impact assessment and public consultation after the supplementary assessment contained in the JRC Report, since the activities in the nuclear energy sector had already been the subject of an impact assessment and public consultation.

74 As a result, the Commission did not err in finding that it was not necessary to carry out an additional, specific impact assessment and public consultation after the supplementary assessment of compliance of activities in the nuclear energy sector with the DNSH criterion contained in the JRC Report.

75 In the fourth place, as regards the argument put forward in paragraph 30 of the Grand Duchy of Luxembourg's statement in intervention, to the effect that a fresh public consultation would be contrary to Article 8 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (OJ 2005, L 124, p. 4), it should be recalled that, according to the fourth paragraph of Article 40 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court by virtue of Article 53 thereof, an application to intervene is limited to supporting the form of order sought by one of the principal parties to the dispute. In addition, under Article 142(3) of the Rules of Procedure of the General Court, the intervener must accept the case as he or she finds it at the time of the intervention.

76 While those provisions do not preclude the intervener from advancing arguments which are new or which differ from those of the party he or she supports, lest the intervention be limited to restating the arguments advanced in the application, it cannot be held that those provisions permit that intervener to alter or distort the context of the dispute defined in the application by

raising new pleas in law (judgments of 10 November 2021, *Google and Alphabet* v *Commission (Google Shopping)*, T-612/17, EU:T:2021:763, paragraph 192, and of 2 October 2024, *ACE* v *Council*, T-828/22, not published, under appeal, EU:T:2024:672, paragraph 44).

77 Since the Republic of Austria has not put forward any plea alleging infringement of Article 8 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, that argument is accordingly inadmissible.

78 In the fifth place, the Republic of Austria, supported by the Grand Duchy of Luxembourg, submits that the thresholds of 270 grams (g) of CO_2 equivalent (CO_2e) per kilowatt-hour (kWh) and of the annual average of 550 kilograms (kg) of CO_2e per kilowatt (kW) over 20 years fixed for the categorisation of fossil gas as a transitional activity for the purposes of Article 10(2) of the Taxonomy Regulation have not been the subject of any impact assessment or public consultation.

79 It should be recalled, however, that, as is apparent from paragraph 46 above, the Commission carried out an impact assessment for the adoption of Delegated Regulation 2021/2139 and the TEG adopted two reports. That impact assessment and those reports were the subject of public consultations and were carried out when it was already being envisaged to establish technical screening criteria for economic activities in the fossil gas sector.

80 However, the expert assessments and public consultations carried out for the adoption of Delegated Regulation 2021/2139 already included economic activities in the fossil gas sector. They also led the Commission to carry out supplementary assessments for the adoption of the contested regulation. Furthermore, the impact assessment carried out for the adoption of Delegated Regulation 2021/2139 (SWD(2021) 152 final) referred, at page 146, to the need for supplementary work on economic activities in the fossil gas sector.

81 Moreover, economic activities in the fossil gas sector had been assessed in the Technical Annex to the TEG Final Report.

82 Since the fossil gas sector had been the subject of the preparatory phase of Delegated Regulation 2021/2139 and, because of the continuity between that regulation and the contested regulation, referred to in paragraph 72 above, the Commission cannot be criticised for having failed to carry out a fresh impact assessment or fresh public consultation on that sector.

83 Therefore, the Commission did not err in finding that it was not necessary to carry out an additional, specific impact assessment and public consultation with respect to the thresholds of 270 g CO_2e/kWh and 550 kg CO_2e/kW.

84 In the sixth place, the Republic of Austria maintains that the contested regulation was adopted contrary to Article 6(4) of the European Climate Law, since the Commission failed to carry out, prior to its adoption, an assessment of its compatibility with the climate-neutrality objective referred to in Article 2(1) of that law and the European Union's 2030 and 2040 climate targets, or publish the results or highlight the grounds for such an assessment.

85 It should be borne in mind that, under Article 6(4) of the European Climate Law, the Commission is to assess the consistency of any draft measure or legislative proposal, including budgetary proposals, with the climate-neutrality objective set out in Article 2(1) of that law and the European Union's 2030 and 2040 climate targets before adoption, and include that assessment in any impact assessment accompanying these measures or proposals, and make the result of that

assessment publicly available at the time of their adoption. The Commission must also assess whether those draft measures or legislative proposals, including budgetary proposals, are consistent with ensuring progress on adaptation as referred to in Article 5 of that law.

86 Article 6(4) of the European Climate Law does not provide for any specific form to be observed for the assessment for which it provides. Thus, the essential objective of that provision is to make sure that the Commission takes an informed decision about the consistency of a draft measure with the targets of that law.

87 Observance of that essential objective may be ensured through verification, by the Commission, that the specific requirements of the Taxonomy Regulation, in particular as laid down in Article 10 thereof, which governs the issue of substantial contribution to climate change mitigation, have been taken into account.

88 Article 2(1) of the European Climate Law, which defines the climate-neutrality objective, is worded as follows:

'Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and the Union shall aim to achieve negative emissions thereafter.'

89 Recital 24 of the Taxonomy Regulation states, for its part, that an economic activity that pursues the environmental objective of climate change mitigation should contribute substantially to the stabilisation of greenhouse gas ('GHG') emissions by avoiding or reducing them or by enhancing GHG removals.

90 Article 10(2) of the Taxonomy Regulation further provides that an economic activity is to qualify as contributing substantially to climate change mitigation where it supports the transition to a climate-neutral economy, including by phasing out GHG emissions.

91 It follows that the climate-neutrality objective provided for in the European Climate Law is similar to the climate change mitigation objective implemented by the Taxonomy Regulation, inasmuch as both pieces of legislation are aimed at reducing or phasing out GHG emissions.

92 Moreover, the impact assessment of Delegated Regulation 2021/2139 and the scientific assessments of the contribution of economic activities in the nuclear energy and fossil gas sectors to climate change mitigation and adaptation, and also the scientific assessment of those activities' compliance with the DNSH criterion, carried out for the adoption of the contested regulation to measure the potential contribution of those activities to the objective of reducing or phasing out GHG, enabled the Commission, without any additional assessment being necessary, to assess the compatibility of the contested regulation with the European Union's 2030 and 2040 climate targets in accordance with Article 6(4) of the European Climate Law.

93 Consequently, the first and ninth pleas in law must be rejected.

The second to eighth pleas in law: economic activities in the nuclear energy sector

94 As a preliminary point, the Court notes that the contested regulation concerns three types of economic activities in the nuclear energy sector:

– pre-commercial stages of advanced technologies to produce energy from nuclear processes with minimal waste from the fuel cycle (new sections 4.26 of Annexes I and II to Delegated Regulation 2021/2139, inserted into those annexes by the contested regulation);

– construction and safe operation of new nuclear power plants, for the generation of electricity or heat, including for hydrogen production, using best-available technologies (new sections 4.27 of Annexes I and II to Delegated Regulation 2021/2139, inserted into those annexes by the contested regulation);

– electricity generation from nuclear energy in existing installations (new sections 4.28 of Annexes I and II to Delegated Regulation 2021/2139, inserted into those annexes by the contested regulation) (collectively, 'economic activities in the nuclear energy sector').

95 For each of those activities categorised as an activity coming within the definition of sustainable development, Annex I to the contested regulation establishes the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation and whether the economic activity causes significant harm to any of the other environmental objectives set out in Article 9 of the Taxonomy Regulation. Annex II to the contested regulation, for its part, establishes the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change adaptation and whether the economic activity causes significant harm to any of the other environmental objectives set out in Article 9 of the Taxonomy Regulation.

Eighth plea in law: infringement of Article 290 TFEU

96 The Republic of Austria submits, in essence, that the contested regulation infringes the condition requiring a delegation pertaining to 'essential elements' within the meaning of Article 290 TFEU, inasmuch as it interprets the Taxonomy Regulation as meaning that the EU legislature left open the categorisation of economic activities in the nuclear energy sector as sustainable activities and deferred in that regard to the Commission's discretion.

97 The Republic of Austria submits, in essence, that the object of the contested regulation comes within the essential elements of the Taxonomy Regulation due to the political and controversial nature of the inclusion of nuclear energy in the taxonomy, the wording of Article 10(1) of the Taxonomy Regulation, which excludes nuclear energy from economic activities liable to qualify as contributing substantially to climate change mitigation, the legal basis of the Taxonomy Regulation, which relates to the internal market and not the Euratom Treaty, the interference of the contested regulation with property rights, the freedom to choose an occupation and the freedom to conduct a business.

98 The Commission, supported by the Republic of Bulgaria, the Czech Republic, the French Republic, Hungary, Romania and the Republic of Finland, disputes that line of argument.

99 It should be noted at the outset that the Republic of Austria has not put forward a plea of illegality alleging infringement of Article 290 TFEU by the Taxonomy Regulation, as confirmed by it at the hearing. The legality of the delegation conferred on the Commission by, inter alia, Article 1(3) and Article 10(3) of that regulation is, therefore, not called into question by the Republic of Austria.

100 Next, it should be borne in mind that Article 290(1) TFEU provides that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

101 The possibility of delegating powers provided for in Article 290 TFEU aims to enable the EU legislature to concentrate on the essential elements of a piece of legislation and on the non-essential elements in respect of which it finds it appropriate to legislate, while entrusting the Commission with the task of 'supplementing' certain non-essential elements of the legislative act adopted or 'amending' such elements within the framework of the power delegated to it (see judgment of 11 May 2017, *Dyson* v *Commission*, C-44/16 P, EU:C:2017:357, paragraph 58 and the case-law cited).

102 It follows that the essential rules on the matter in question must be laid down in the basic legislation and cannot be delegated (see judgment of 11 May 2017, *Dyson* v *Commission*, C-44/16 P, EU:C:2017:357, paragraph 59 and the case-law cited).

103 In the present case, it must be determined whether, as contended by the Republic of Austria, the question whether economic activities in the nuclear energy sector satisfy the conditions of the Taxonomy Regulation and may therefore qualify as coming within Article 10(2) thereof is an essential element of that regulation that therefore could not be delegated.

104 The essential elements of a basic set of rules are those which, in order to be adopted, require political choices falling within the responsibilities of the EU legislature (see, to that effect, judgment of 5 September 2012, *Parliament* v *Council*, C-355/10, EU:C:2012:516, paragraph 65), in that it requires the conflicting interests at issue to be weighed up on the basis of a number of assessments, or if it means that the fundamental rights of the persons concerned may be interfered with to such an extent that the involvement of the EU legislature is required (see judgment of 26 July 2017, *Czech Republic* v *Commission*, C-696/15 P, EU:C:2017:595, paragraph 78 and the case-law cited).

105 Identifying the elements of a matter which must be categorised as essential must be based on objective factors amenable to judicial review, and requires account to be taken of the characteristics and particular features of the field concerned (see judgment of 22 June 2016, *DK Recycling und Roheisen* v *Commission*, C-540/14 P, EU:C:2016:469, paragraph 48 and the case-law cited).

106 In that regard, first, it is apparent from Article 1 of the Taxonomy Regulation that it has as its objective to establish the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of determining the degree to which an investment is environmentally sustainable.

107 Under Article 3 of the Taxonomy Regulation, an economic activity is to qualify as environmentally sustainable where it satisfies the 'criteria for environmental sustainability' laid down in points (a) to (d) thereof, that is to say, where it contributes substantially to one or more of the environmental objectives set out in Article 9 of that regulation, does not significantly harm any of those

objectives, is carried out in compliance with the minimum safeguards laid down in Article 18 thereof, and complies with the technical screening criteria established by the Commission in accordance with, inter alia, Article 10(3) and Article 11(3) of that regulation.

108 Secondly, it is clear from the wording of Article 10(3)(a) and Article 11(3)(a) of the Taxonomy Regulation that those provisions delegate to the Commission the task of supplementing paragraphs 1 and 2 of those articles, by establishing technical screening criteria for determining the conditions under which a given economic activity qualifies as contributing substantially to climate change mitigation and adaptation.

109 It is also clear from Article 10(3)(b) and Article 11(3)(b) of the Taxonomy Regulation that those provisions delegate to the Commission the task of supplementing Article 17 of that regulation by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which the aforementioned technical screening criteria have been established causes significant harm to one or more of those environmental objectives.

110 Moreover, Article 10(5) and Article 11(5) of the Taxonomy Regulation require the Commission, when it exercises that delegated power, to take account of the requirements laid down in Article 19 of that regulation.

111 Those requirements include that laid down in Article 19(1)(a) of the Taxonomy Regulation, which provides that the technical screening criteria are to identify the most relevant potential contributions to the given environmental objective while respecting the principle of technological neutrality, considering both the short- and long-term impact of a given economic activity.

112 Moreover, under Article 19(3) of the Taxonomy Regulation, the technical screening criteria referred to in paragraph 1 thereof are to ensure that power generation activities that use solid fossil fuels do not qualify as environmentally sustainable economic activities.

113 Moreover, in the case-law, the principle of technological neutrality means that the rules in question must specify the rights and obligations of persons in a generic manner, so as not to favour the use of one technology to the detriment of another (see, to that effect, judgment of 24 March 2022, *Austro-Mechana*, C-433/20, EU:C:2022:217, paragraph 27 and the case-law cited).

114 It follows from the foregoing that, in Article 3 of the Taxonomy Regulation, the EU legislature defined the environmental sustainability criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of determining the degree to which an investment is environmentally sustainable, without favouring the use of one technology to the detriment of another and excluding only power generation activities that use solid fossil fuels. The EU legislature thus left the Commission the possibility of supplementing the Taxonomy Regulation by putting in place technical screening criteria for adapting to future innovations by allowing the regulatory framework not to be fixed and able to take account of environmental and economic progress. It should also be noted that the Taxonomy Regulation focuses not on the type of activities, but on the environmental objectives and general criteria for determining whether a given economic activity is to qualify as sustainable, so that, apart from fossil fuels, which are expressly excluded, any activity may potentially be concerned by that regulation, under the principle of technological neutrality (Article 19(3) of the Taxonomy Regulation).

115 It is apparent therefrom that the environmental sustainability criteria of economic activities were defined by the EU legislature in Article 3 of the Taxonomy Regulation and that that legislature left open the possibility of defining all types of activity meeting those criteria as sustainable, apart from fossil fuels, which are expressly excluded.

116 In view of the objective and content of the Taxonomy Regulation, the essential elements thereof consist, inter alia, in the definition of environmental objectives, the environmental sustainability criteria provided for in Article 3 of the Taxonomy Regulation and the requirements applicable to the technical screening criteria. However, by the contested regulation, the Commission established technical screening criteria that do not fall within such elements of the Taxonomy Regulation.

117 Similarly, in leaving the Commission the possibility of determining the technical screening criteria for all types of activities meeting the sustainability criteria, apart from power generation activities that use solid fossil fuels, the EU legislature made political choices coming within its sphere of responsibility as regards the essential elements of the Taxonomy Regulation.

118 As a result, contrary to the contentions of the Republic of Austria, the determination of economic activities per se, and the establishment of technical screening criteria for each economic activity implementing the sustainability criteria, do not fall within the essential elements of the Taxonomy Regulation.

119 It follows that, inasmuch as, by the contested regulation, the Commission established the technical screening criteria, it did not encroach on the essential elements of the Taxonomy Regulation.

120 Furthermore, that approach chosen by the EU legislature also has the merit of allowing the Commission to adapt the technical screening criteria in step with technological developments. Nor can that legislature be required to list all existing or envisaged technologies, since that would not enable the legislation to withstand the test of time and would make it technologically obsolete, because it would be unable to take account of inevitable and desirable technological innovation.

121 That conclusion is not called into question by the Republic of Austria's reference to the fact that the inclusion of economic activities in the nuclear energy sector carries a political aspect and is controversial amongst the Member States, since the EU legislature did not opt to exclude that activity, unlike power generation activities that use solid fossil fuels. In any event, the political and controversial aspect of the inclusion of economic activities in the nuclear energy sector is not relevant in relation to Article 290 TFEU, under which the essential elements of an area, and not the political and controversial elements thereof, are to be reserved for legislative acts.

122 The same holds true for the argument to the effect that the EU legislature set out an exhaustive list in Article 10(1) of the Taxonomy Regulation, as it is based on an incorrect reading of that regulation. First, that provision does not set out an exhaustive list of the economic activities that may contribute substantially to climate change mitigation, but rather of the situations in which an economic activity 'contributes substantially to the stabilisation of [GHG] concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system' in order to be able to qualify as contributing substantially to climate change mitigation. Secondly, Article 10(2) thereof also envisages other situations in which an economic activity may qualify as contributing substantially to climate change mitigation.

123 As regards the argument to the effect that the legal basis for the Taxonomy Regulation ought to have been Article 203 of the Euratom Treaty if the EU legislature had decided that nuclear energy was to be included in the taxonomy, the Court notes that the Republic of Austria has not put forward a plea of illegality of that regulation based inter alia on an error as to legal basis. Moreover, the fact that the Taxonomy Regulation is not based on the Euratom Treaty can be explained by its object, which relates not only to nuclear energy but also to other economic activities. In any event, that argument is not such as to demonstrate that the determination of economic activities in the nuclear energy sector as contributing to climate change mitigation or climate change adaptation falls within the essential elements of the Taxonomy Regulation.

124 Lastly, as regards the argument to the effect that the contested regulation's inclusion of nuclear energy in the taxonomy constitutes interference with property rights (Article 17 of the Charter of Fundamental Rights of the European Union), the freedom to choose an occupation (Article 15 of the Charter of Fundamental Rights) and (financial) undertakings' freedom to conduct a business (Article 16 of the Charter of Fundamental Rights), with the result that it falls within the responsibilities of the EU legislature, it should be borne in mind that, according to the case-law, the involvement of the EU legislature is required when the adopted act allows for significant interference with fundamental rights (see, to that effect, judgment of 5 September 2012, *Parliament* v *Council*, C-355/10, EU:C:2012:516, paragraph 77).

125 It should be recalled, however, that the Republic of Austria has not put forward a plea of illegality of the Taxonomy Regulation based inter alia on the fact that economic activities in the nuclear energy sector are not excluded. Nor can it maintain that the definition of the technical screening criteria for economic activities in the nuclear energy sector suffices on its own to establish particularly significant interferences with the fundamental rights enshrined in Articles 15, 16 and 17 of the Charter of Fundamental Rights, as it merely alleges significant consequences of that definition for those fundamental rights, without adducing evidence to show that those rights have been so infringed.

126 In the light of the foregoing, the Court does not find that, inasmuch as they delegate to the Commission the power to adopt a delegated regulation in order to supplement Article 10(1) and (2) and Article 17 of the Taxonomy Regulation, Article 10(3) and Article 11(3) of that regulation were adopted contrary to Article 290 TFEU.

127 As a result, the eighth plea in law is rejected.

Second plea in law: infringement of Article 10(2) and Article 19(1)(f) and (g) of the Taxonomy Regulation and of the precautionary principle

128 By its second plea in law, the Republic of Austria submits that the contested regulation was adopted contrary to Article 10(2) of the Taxonomy Regulation, since that provision is not applicable to economic activities in the nuclear energy sector and, in the alternative, the conditions of application of that provision are not satisfied.

129 The second plea is divided into three parts: (i) inapplicability of Article 10(2) of the Taxonomy Regulation to economic activities in the nuclear energy sector; (ii) non-compliance with the conditions laid down in Article 10(2) of that regulation; and (iii) infringement of Article 19(1)(f) of that regulation and of the precautionary principle.

– First part of the second plea in law: inapplicability of Article 10(2) of the Taxonomy Regulation to economic activities in the nuclear energy sector

130 The Republic of Austria, supported by the Grand Duchy of Luxembourg, submits, in essence, that Article 10(2) of the Taxonomy Regulation is not applicable to low-carbon economic activities, such as economic activities in the nuclear energy sector, as it concerns only 'transitional' carbon-intensive economic activities.

131 The Commission, supported by the Republic of Bulgaria, the Czech Republic, the French Republic, Hungary, Romania, the Republic of Slovenia and the Republic of Finland, disputes that line of argument.

132 It should be borne in mind that, in the contested regulation, the Commission found that certain economic activities in the nuclear energy sector contributed substantially to climate change mitigation and could accordingly qualify as 'transitional' activities under Article 10(2) of the Taxonomy Regulation.

133 It should also be borne in mind that, under Article 10(2) of the Taxonomy Regulation:

'For the purposes of paragraph 1 [of that article], 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] °C above pre-industrial levels, including by phasing out [GHG] emissions, in particular emissions from solid fossil fuels, and where that activity:

(a) has [GHG] 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.

For the purpose of this paragraph and the establishment of technical screening criteria pursuant to Article 19, the Commission shall assess the potential contribution and feasibility of all relevant existing technologies.'

134 Recital 24 of the Taxonomy Regulation states, for its part, that an economic activity that pursues the environmental objective of climate change mitigation should contribute substantially to the stabilisation of GHG emissions by avoiding or reducing them or by enhancing GHG removals.

135 Recital 41 of the Taxonomy Regulation further states the following:

'In establishing and updating the technical screening criteria for the environmental objective of climate change mitigation, the Commission should take into account and provide incentives for the ongoing and necessary transition towards a climate-neutral economy in accordance with Article 10(2) of this Regulation. In addition to the use of climate-neutral energy and more investments in already low-carbon economic activities and sectors, the transition requires substantial reductions in [GHG] emissions in other economic activities and sectors for which there are no technologically and economically feasible low-carbon alternatives. Those

transitional economic activities should qualify as contributing substantially to climate change mitigation if their [GHG] emissions are substantially lower than the sector or industry average, they do not hamper the development and deployment of low-carbon alternatives and they do not lead to a lock-in of assets incompatible with the objective of climate-neutrality, considering the economic lifetime of those assets. The technical screening criteria for such transitional economic activities should ensure that those transitional activities have a credible path towards climate-neutrality, and should be adjusted accordingly at regular intervals.'

136 By its line of argument, the Republic of Austria claims that Article 10(2) of the Taxonomy Regulation is applicable only to carbon-intensive activities and not to activities which are already low-carbon, such as economic activities in the nuclear energy sector. Such a line of argument calls for an interpretation of the provision in question.

137 In accordance with settled case-law, the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of its context, and the objectives and purpose pursued by the act of which it forms part. The legislative history of a provision of EU law may also reveal elements that are relevant to its interpretation (see judgment of 3 September 2024, *Illumina and Grail* v *Commission*, C-611/22 P and C-625/22 P, EU:C:2024:677, paragraph 116 and the case-law cited).

138 In the first place, the Republic of Austria relies on a literal interpretation of Article 10(2) of the Taxonomy Regulation. It claims, first, that that provision covers only economic activities for which 'there is no technologically and economically feasible low-carbon alternative' and which '[support] the transition to a climate-neutral economy'. It infers therefrom that that provision refers only to those activities which are not themselves low-carbon but to which recourse may nevertheless be had for a limited transitional period, where there are no other viable low-carbon alternatives.

139 In that regard, the Court finds that the reference in Article 10(2) of the Taxonomy Regulation to an economic activity for which there is no technologically and economically feasible low-carbon alternative may be interpreted as covering activities which are not low-carbon.

140 However, Article 10(2) of the Taxonomy Regulation does not refer to 'activities which are not low-carbon', as the Republic of Austria seems to claim, but rather to '[activities] for which there [are] no technologically and economically feasible low-carbon [alternatives]', with the result that it may also be interpreted as covering low-carbon activities. Hence the literal interpretation advocated by the Republic of Austria is not supported by the wording of that provision.

141 Secondly, according to the Republic of Austria, Article 10(2)(a) to (c) of the Taxonomy Regulation confirms its interpretation inasmuch as it provides that, in order to come within Article 10(2) of that regulation, an economic activity must have GHG emission levels that correspond to the best performance in the sector or industry. Thus, that provision applies the 'head of the class' criterion in that it enables categorisation as contributing substantially to climate change mitigation for economic activities which, at the current state of technology, are carbon-intensive, but nevertheless correspond to the best performance in the sector or industry, where there are no viable low-carbon technical and economic alternatives.

142 It should be borne in mind that Article 10(2)(a) of the Taxonomy Regulation refers to an economic activity that 'has [GHG] emission levels that correspond to the best performance in the sector or industry'.

143 However, the requirement provided for by Article 10(2)(a) of the Taxonomy Regulation does not presuppose that the economic activity in question is carbon-intensive and cannot be performed through low-carbon activities.

144 By definition, a low-carbon economic activity in a given sector or industry may have GHG emission levels that correspond to the best performance in that sector or industry.

145 The same holds true for the requirement under which the economic activity in question must 'not hamper the development and deployment of low-carbon alternatives', provided for in Article 10(2)(b) of the Taxonomy Regulation, and the requirement that the activity in question must 'not lead to a lock-in of carbon-intensive assets', considering the economic lifetime of those assets, as provided for in Article 10(2)(c) of that regulation.

146 The investment in a low-carbon economic activity does not hamper the development and deployment of low-carbon alternatives but, on the contrary, may favour the development and deployment thereof. Nor does the investment in such an activity lead to a lock-in of carbon-intensive assets, since it concerns low-carbon assets.

147 Those two requirements must therefore also be satisfied by both carbon-intensive economic activities and by low-carbon activities.

148 Thus, it cannot be inferred from the conditions laid down in Article 10(2)(a) to (c) of the Taxonomy Regulation that that provision is not applicable to low-carbon activities and refers only to carbon-intensive activities.

149 In the second place, the Republic of Austria relies on a systematic interpretation of the Taxonomy Regulation. It submits that, since economic activities in the nuclear energy sector are not included in the list in Article 10(1) of that regulation, they cannot be considered to be low-carbon activities having to be included in the taxonomy. Moreover, Article 10(2) of that regulation should be regarded as a derogation from the list set out in Article 10(1) of that regulation, to be interpreted restrictively and as referring only to carbon-intensive activities.

150 It should be noted, however, that, for a given activity, a failure to satisfy the conditions laid down in Article 10(1) of the Taxonomy Regulation cannot prevent that activity from satisfying the conditions of Article 10(2) of that regulation. On the contrary, as suggested by the wording 'for the purposes of paragraph 1' at the start of paragraph 2, the latter provides expressly for alternative conditions to those laid down in paragraph 1 for the activities not fulfilling the conditions of that paragraph.

151 The Republic of Austria further considers that recital 41 of the Taxonomy Regulation confirms its interpretation by stating, in essence, that the technical screening criteria applicable to transitional economic activities should ensure that they 'have a credible path towards climate-neutrality'. It submits that such a development is possible only for those activities which are not already low-carbon.

152 However, the requirement that the technical screening criteria applicable to transitional economic activities should ensure that they have a credible path towards climate neutrality may also relate to low-carbon activities by requiring that the activities in question lead towards a reduction in GHG emissions.

153 It follows that the systematic interpretation advocated by the Republic of Austria does not prevent nuclear energy from qualifying as a low-carbon activity coming within the scope of Article 10(2) of the Taxonomy Regulation. Moreover, that provision has precisely as its objective to take account of economic activities that support the transition to a climate-neutral economy, even if they do not satisfy all of the conditions laid down in Article 10(1) of that regulation, provided that the specific conditions laid down in Article 10(2) of that regulation are satisfied.

154 Moreover, it is apparent from recital 41 of the Taxonomy Regulation that the purpose of Article 10(2) of that regulation is to facilitate the transition to a climate-neutral economy whilst making use of climate-neutral energy sources and other transitional economic activities. Thus, the Court does not find that climate-neutral energy sources, which are supposed to facilitate the transition to a climate-neutral economy, comprise only those referred to in Article 10(1) of that regulation.

155 In the third place, the Republic of Austria states, in essence, that it is apparent from the *travaux préparatoires* for the Taxonomy Regulation that the EU legislature decided, in removing the reference to climate-neutral energy from Article 10(1)(a) of that regulation in order to limit that provision to renewable energy, that nuclear energy would not be included in the taxonomy among the energy generation methods contributing substantially to climate change mitigation.

156 In that regard, it must nevertheless be noted that the lack of reference to climate-neutral energy in Article 10(1) of the Taxonomy Regulation does not prove that the intention of the EU legislature was to exclude climate-neutral energy sources from the Taxonomy Regulation, but only to exclude that type of activity from the scope of that provision, so that it does not preclude such activities from coming within the scope of Article 10(2).

157 Moreover, as observed by the Commission, economic activities for which the latter provision cannot establish technical screening criteria are expressly referred to in Article 19(3) of the Taxonomy Regulation. Had the EU legislature wished to exclude economic activities in the nuclear energy sector from the scope of Article 10(2) of the Taxonomy Regulation, it would have referred to those activities in Article 19(3) of that regulation. Conversely, the lack of reference to economic activities in the nuclear energy sector in that provision tends to suggest that the intention of the EU legislature was not to exclude those activities from the category of environmentally sustainable activities.

158 In the fourth place, the Republic of Austria relies on a teleological interpretation of Article 10(1) and (2) of the Taxonomy Regulation. It submits that Article 10(2) of that regulation is aimed at redirecting finance flows towards economic activities which are as low-carbon as possible, where there are no technologically and economically feasible carbon-neutral or low-carbon alternatives, thereby promoting 'head of the class' carbon-intensive technologies. Since nuclear energy, which is low-carbon, is not such an activity, qualifying it as a transitional activity for the purpose of Article 10(2) of the Taxonomy Regulation would deprive the provisions of that regulation intended to promote carbon-intensive technologies of their practical effect.

159 However, contrary to the contentions of the Republic of Austria, it follows from a teleological and systematic interpretation of Article 10(2) of the Taxonomy Regulation, read in conjunction with Article 10(1) and recitals 24 and 41 of that regulation, that 'transitional' activities within the meaning of Article 19(1)(h)(ii) of that regulation refer to activities which, although they do not meet the criteria of Article 10(1) of that regulation, nevertheless avoid or reduce GHG emissions and therefore pursue the transitional objective of climate change mitigation. Thus, in view of that

objective, transitional activities may include activities which are not low-carbon and for which there are no technologically and economically feasible low-carbon alternatives, but also, a fortiori, low-carbon activities which do not satisfy the conditions of application of Article 10(1) of the Taxonomy Regulation. An interpretation of Article 10(2) of that regulation to the effect that it covers only carbon-intensive activities would be contrary to the objective of that regulation.

160 It follows that the teleological interpretation of Article 10(2) of the Taxonomy Regulation confirms that that provision may be applied to low-carbon activities, such as economic activities in the nuclear energy sector.

161 In the fifth place, according to the Republic of Austria, in retaining in the contested regulation the lack of availability 'at a sufficient scale' of low-carbon alternatives to nuclear energy in order 'to cover the energy demand in a continuous and reliable manner', the Commission expanded the scope of Article 10(2) of the Taxonomy Regulation, as that regulation does not have as its objective security of energy supply, but rather the categorisation of environmentally sustainable economic activities for determining the degree of environmental sustainability of an investment.

162 It should be noted in that regard that it is apparent from recital 6 of the contested regulation that activities in the nuclear energy sector are low-carbon activities but are not energy from renewable sources as defined in Article 10(1)(a) of the Taxonomy Regulation and do not fall under the other categories of economic activities referred to in Article 10(1)(b) to (i) of that regulation either.

163 The Commission also considered, in recital 6 of the contested regulation, that, since nuclear energy generation has near to zero GHG emissions and there are no technologically and economically feasible low-carbon alternatives at a sufficient scale to cover the energy demand in a continuous and reliable manner, activities in the nuclear energy sector contribute to climate change mitigation objectives and should qualify as 'transitional' activities as referred to in Article 10(2) of the Taxonomy Regulation.

164 It should be borne in mind, first, that Article 194(1) TFEU provides that, in the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, EU policy on energy is to aim, in a spirit of solidarity between Member States, to ensure the functioning of the energy market, ensure security of energy supply in the European Union, promote energy efficiency and energy saving and the development of new and renewable forms of energy and promote the interconnection of energy networks.

165 Moreover, the Court has held that the EU institutions and the Member States must take into account the principle of energy solidarity, referred to in Article 194 TFEU, in the context of the establishment and functioning of the internal market and, in particular, by ensuring security of energy supply in the European Union, which means not only dealing with emergencies when they arise, but also adopting measures to prevent crisis situations (see, to that effect, judgment of 15 July 2021, *Germany* v *Poland*, C-848/19 P, EU:C:2021:598, paragraph 69).

166 Thus, when the Commission adopts measures intended to establish or ensure the functioning of the internal market, such as the contested regulation, which implements the taxonomy, the legal basis of which is Article 114 TFEU, it must ensure security of energy supply in the European Union.

167 Secondly, the objective of the Taxonomy Regulation is to support the transition to a safe, climate-neutral, climate-resilient, more resource-efficient and circular economy, as is apparent in particular from recital 4 of that regulation.

168 Yet that objective would be compromised if the use of energy sources qualifying as contributing substantially to climate change mitigation did not allow for securing energy supply at a sufficient scale to cover the energy demand.

169 Thirdly, it should be borne in mind that Article 10(2) of the Taxonomy Regulation refers to a situation where there is no 'technologically and economically feasible' low-carbon alternative. By requiring the alternatives to be technologically and economically feasible, the EU legislature emphasised the practicability and availability of those alternatives, which underlies the imperative of security of supply and meeting EU energy needs. That provision must accordingly be interpreted as referring to transitional activities for which there are no realistic and practicable alternatives enabling the European Union to continue to cover its energy needs.

170 In the light of the foregoing, the Republic of Austria's arguments do not demonstrate that, in applying that provision to economic activities in the nuclear energy sector, the Commission infringed Article 10(2) of the Taxonomy Regulation.

171 The first part of the second plea in law is therefore unfounded.

– Second part of the second plea in law: in the alternative, non-compliance with the conditions laid down in Article 10(2) of the Taxonomy Regulation

172 The Republic of Austria, supported by the Grand Duchy of Luxembourg, submits, in essence, that the contested regulation was adopted contrary to Article 10(2) of the Taxonomy Regulation, inasmuch as economic activities in the nuclear energy sector do not satisfy the conditions laid down in that provision.

173 The Commission, supported by the Republic of Bulgaria, the Czech Republic, the French Republic, Hungary, Romania, the Slovak Republic and the Republic of Finland, disputes that line of argument.

174 In the first place, the Republic of Austria claims that the inclusion of nuclear energy in the taxonomy is contrary to the condition that there be no technologically and economically feasible low-carbon alternatives, since there are already such alternatives to nuclear energy in the form of renewable energy, which is preferable to nuclear energy.

175 The Republic of Austria further submits that the Commission infringed Article 10(2) of the Taxonomy Regulation in finding that the low-carbon alternatives to nuclear energy are not yet sufficiently available, since that provision is not limited to sufficiently available alternatives.

176 In support of that assertion, the Republic of Austria relies on the Platform's response, in which it refers to the 'evident existence' of other feasible and available alternative modes of energy production, and also the fact that the non-use of nuclear energy by the majority of Member States shows that there are low-carbon alternatives, as found by the Bundesamt für die Sicherheit der nuklearen Entsorgung (Federal Office for the Safety of Nuclear Waste Management, Germany; 'BASE') in its technical opinion, in which it took the view that renewable energy is technologically available and economically more advantageous.

177 In that regard, it should be borne in mind that, as is apparent from paragraphs 164 to 169 above, the condition requiring that there be no technologically and economically feasible low-carbon alternatives must be assessed taking into account the imperative of security of supply.

178 Moreover, the general statements from the Platform and BASE referred to by the Republic of Austria do not suffice to make implausible the Commission's finding that, during a transitional period, economic activities in the nuclear energy sector should be taken into account where there are no technologically and economically feasible low-carbon alternatives at a sufficient scale to cover the energy demand in a continuous and reliable manner (see recital 6 of the contested regulation). The Republic of Austria has not demonstrated that the renewable energy-based alternatives are technologically and economically feasible and, in particular, that it is possible to cover the energy demand solely through renewable energy sources.

179 Thus, that argument put forward by the Republic of Austria does not demonstrate that the Commission made a manifest error of assessment in making that finding.

180 In the second place, the Republic of Austria takes the view that the contested regulation does not satisfy the conditions of Article 10(2) of the Taxonomy Regulation, as that provision presupposes that an economic activity can qualify as contributing substantially to climate change mitigation only if it supports the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1.5 °C above pre-industrial levels, in accordance with the objectives of the Paris Agreement (OJ 2016, L 282, p. 4).

181 According to the Republic of Austria, the contested regulation disregards the climate objectives of the Paris Agreement, as the technical screening criteria qualify economic activities in the nuclear energy sector as contributing substantially to climate change mitigation, although they can lead to a reduction in GHG emissions only in the distant future and will not contribute to the climate-neutrality objective between now and 2030 or 2050. In particular, those criteria allow new power plants for which a construction permit is issued between now and 2045 and existing power plants that have been modified up to 2040 to be aligned on the taxonomy, although it will be too late to contribute to the climate-neutrality objective.

182 It should be borne in mind, first of all, that, under Article 10(2) of the Taxonomy Regulation, 'an economic activity … 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] °C above pre-industrial levels …'.

183 Article 2(5) of the Taxonomy Regulation defines 'climate change mitigation' as 'the process of holding the increase in the global average temperature to well below 2 °C and pursuing efforts to limit it to [1.5] °C above pre-industrial levels, as laid down in the Paris Agreement'.

184 Recital 3 of the Taxonomy Regulation, which also refers to the Paris Agreement, states that that regulation 'represents a key step towards the objective of achieving a climate-neutral Union by 2050'.

185 Thus, as is apparent from recital 3 and Article 10(2) thereof, the Taxonomy Regulation has precisely as its object to ensure the attainment of the objectives of the Paris Agreement which are incorporated into its provisions.

186 Moreover, the second paragraph of Article 1 of the European Climate Law 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', referred to in recital 6 of the contested regulation.

187 The Paris Agreement, furthermore, binds the European Union, as it was approved, on behalf of the European Union, by Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ 2016, L 282, p. 1). Therefore, that agreement takes precedence over secondary EU legal legislation and the latter must be interpreted, in so far as possible, in a manner consistent with its provisions. It follows that the Taxonomy Regulation must be interpreted, in so far as possible, in a manner consistent with the Paris Agreement (see, by analogy, judgments of 27 February 2024, *EUIPO* v *The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2024:172, paragraph 70 and the case-law cited, and of 17 October 2024, *PT Pelita Agung Agrindustri and PT Permata Hijau Palm Oleo* v *Commission*, C-112/23 P, EU:C:2024:899, paragraph 38).

188 In that regard, it must be borne in mind that, under Article 31(3)(a) and (b) of the Vienna Convention on the Law of Treaties of 23 May 1969, for the purpose of interpreting a treaty, there must be taken into account, together with the context, any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions, and any subsequent practice in the application of that treaty which establishes the agreement of the parties regarding its interpretation. In that regard, the Court has previously had occasion to note that it was neither illegitimate nor unusual, under international law, for provision to be made that the Parties to an international agreement may clarify, as their joint wishes concerning the effect of that agreement develop, the interpretation of that agreement. Such clarification may be introduced by the Parties themselves or by a body set up by the Parties on which they confer a power to adopt decisions that will be binding on them. Such interpretative acts have, in that case, the legal effects stemming from Article 31(3)(a) of the Vienna Convention on the Law of Treaties (judgment of 21 December 2023, *Scuola europea di Varese*, C-431/22, EU:C:2023:1021, paragraph 76; see also, to that effect, Opinion 1/17 *(EU-Canada CET Agreement)* of 30 April 2019, EU:C:2019:341, paragraphs 233 and 234).

189 As regards the Paris Agreement, at the time of the 28th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 28), in Part II, point 28(e) of their Decision 1/CMA.5, 'Outcome of the first global stocktake', the Parties to the Paris Agreement emphasised 'the need for deep, rapid and sustained reductions in GHG emissions in line with 1.5 °C pathways' and undertook 'to contribute to … global efforts', such as 'accelerating zero- and low-emission technologies, including … nuclear …'.

190 Therefore, an interpretation of Article 10(2) of the Taxonomy Regulation consistent with the Paris Agreement, as interpreted itself by the Parties to that agreement at the time of COP 28 in accordance with Article 31(3)(a) and (b) of the Vienna Convention on the Law of Treaties, tends to confirm that economic activities in the nuclear energy sector may constitute activities contributing substantially to climate change mitigation by supporting the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1.5 °C above pre-industrial levels.

191 The Court notes that, at the hearing, in response to questions put by the Court, the parties had the opportunity to express their views on the lessons that could be drawn from such an interpretation consistent with the Paris Agreement.

192 It should also be noted that it follows from Article 10(2) of the Taxonomy Regulation, the lawfulness of which is not disputed, that those climate objectives are met when the economic activity in question supports the transition to a climate-neutral economy through inter alia phasing out of GHG emissions. It should also be borne in mind that, in recital 6 of the contested regulation, the Commission stated, on the basis of opinions gathered in the procedure for adopting that regulation, that economic activities in the nuclear energy sector are low-carbon activities, that nuclear energy generation has near to zero GHG emissions and that evidence on the potential substantial contribution of nuclear energy to climate change mitigation objectives was extensive and clear.

193 Lastly, the Republic of Austria has not adduced any evidence in support of its assertions that the construction and operation of new power plants on the basis of permits issued between 2023 and 2045 are not capable of contributing to the 2050 carbon-neutrality objective, but only in the distant future. It merely cites the Platform's statement to the effect that new nuclear power plants issued with a construction permit between now and 2045 will be able to be aligned on the taxonomy, although they will come on stream too late to contribute to climate change mitigation.

194 However, nuclear energy shows very low GHG emission values, so that it can contribute substantially to climate change mitigation by limiting the use of carbon-intensive energy sources.

195 Moreover, the assertion that those activities could lead to reductions in GHG emissions only in the distant future and not by 2050, even if it were established, does not demonstrate that the contested regulation is vitiated by a manifest error of assessment, since the alleged inefficacy of a legal instrument cannot lead to its being unlawful (see, to that effect and by analogy, judgment of 12 July 2001, *Jippes and Others*, C-189/01, EU:C:2001:420, paragraph 84 and the case-law cited).

196 The Republic of Austria adds that the contested regulation infringes Article 1(2) and is contrary to recital 16 of Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030 (OJ 2022 L 114, p. 22), under which the European Union is to endeavour to achieve a green transition and base its economy on renewable energy, since long-term promotion of nuclear energy installations, resulting from the contested regulation, is diametrically opposed to that objective.

197 Suffice it to note in that regard that nuclear energy is a transitional activity within the meaning of Article 10(2) of the Taxonomy Regulation.

198 Hence, the technical screening criteria established in accordance with Article 10(2) of the Taxonomy Regulation complement the EU actions aimed at promoting renewable energy.

199 The Court accordingly does not find that the contested regulation is contrary to Decision 2022/591, without its being necessary to consider the scope of the provisions of that decision.

200 The Republic of Austria's arguments alleging a lack of support for a transition to a climate-neutral economy consistent with the 1.5 °C objective must therefore be rejected.

201 In the third place, the Republic of Austria submits, in essence, that the inclusion of economic activities in the nuclear energy sector in the taxonomy is contrary to Article 10(2)(a) of the Taxonomy Regulation, inasmuch as nuclear energy does not show GHG emission levels that correspond to the best performance in the sector or industry within the meaning of that provision, that is to say, the energy generation sector, in particular in comparison with hydropower and wind power.

202 In that regard, the Republic of Austria misinterprets the Taxonomy Regulation, as the condition that an activity must show GHG emission levels that correspond to the best performance in the sector or industry must not be interpreted as meaning that it must be the lowest-carbon activity in the sector or industry concerned.

203 It is apparent from recital 41 of the Taxonomy Regulation that transitional economic activities should qualify as contributing substantially to climate change mitigation inter alia if their GHG emissions are substantially lower than the sector or industry average.

204 Consequently, the Republic of Austria's arguments do not demonstrate that the Commission made a manifest error of assessment in finding that economic activities in the nuclear energy sector could, under certain conditions, qualify as corresponding to the best performance in the sector or industry within the meaning of Article 10(2)(a) of the Taxonomy Regulation.

205 In the fourth place, the Republic of Austria submits, in essence, that the contested regulation is incompatible with Article 10(2)(b) of the Taxonomy Regulation, as the investments in nuclear energy impede the development of low-carbon alternatives.

206 The Republic of Austria submits, in essence, that numerous studies show that nuclear energy and renewable energy sources are not complementary, but rather are mutually at cross-purposes, and that the contested regulation thus misdirects financial resources away from the short-term installation of renewable energy.

207 In that regard, it must be borne in mind that, in recital 6 of the contested regulation, the Commission considered that, by providing a stable baseload of energy supply, nuclear energy facilitated the deployment of intermittent renewable sources and does not hamper their development.

208 It should also be noted that Delegated Regulation 2021/2139 establishes technical screening criteria covering a number of sectors and economic activities capable of contributing to climate change mitigation and adaptation objectives, including activities in the renewable energy sector.

209 Consequently, the Court does not find that the contested regulation, which cannot be considered independently of the other delegated regulations adopted on the basis of the Taxonomy Regulation, establishes priority for investments in economic activities in the nuclear energy sector over investments in the renewable energy sector.

210 That interpretation is consistent with the second subparagraph of Article 194(2) TFEU, under which each Member State has a right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply (see, to that effect, judgment of 22 September 2020, *Austria* v *Commission*, C-594/18 P, EU:C:2020:742, paragraphs 48 and 80).

211 Moreover, by its line of argument, the Republic of Austria claims, in essence, that nuclear energy lacks flexibility, with the result that an increase in the share of renewable energy would negatively impact the economic model of nuclear energy plants by shortening their period of use. It is, furthermore, clear that that is a general statement the relevance of which is liable to vary depending on, first, the choices made by each Member State, referred to in paragraph 210 above, and, secondly, the possibility nuclear plants have to adjust their operations to respond to developments in supply and demand, as argued by the Commission and the French Republic.

212 In any event, the Commission also produced a study which casts doubt on the finding made in the studies provided by the Republic of Austria. Furthermore, according to settled case-law, the Commission must be allowed a broad discretion as regards the assessment of scientific studies, as well as the choice of studies that must prevail over others, irrespective of their chronology (judgments of 24 October 2018, *Deza* v *Commission*, T-400/17, not published, EU:T:2018:712, paragraph 95, and of 5 July 2023, *TIB Chemicals* v *Commission*, T-639/20, not published, EU:T:2023:374, paragraph 34).

213 Accordingly, the evidence adduced by the Republic of Austria is insufficient to render implausible the Commission's finding that economic activities in the nuclear energy sector facilitate the deployment of intermittent renewable sources and do not hamper their development.

214 Therefore, that evidence does not demonstrate that the Commission made a manifest error of assessment in finding that economic activities in the nuclear energy sector facilitate the deployment of intermittent renewable sources and do not hamper their development.

215 The Republic of Austria also criticises the Commission for having failed to carry out an examination in that regard, with the result that the contested regulation is vitiated by an insufficient statement of reasons.

216 In that regard, according to the Court of Justice's settled case-law, the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measures in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraphs 85 and 87 and the case-law cited).

217 As is apparent from recital 6 of the contested regulation, the Commission provided a statement of reasons to the requisite legal standard for its finding that economic activities in the nuclear energy sector facilitate the deployment of intermittent renewable sources and do not hamper their development. It is apparent from that recital that, by providing a stable baseload of energy supply, nuclear energy facilitates the deployment of intermittent renewable sources and therefore does not hamper their development.

218 Nor can the Commission be criticised for having failed to carry out an examination in that regard, since the assessment referred to in recital 6 of the contested regulation shows that it did examine that question.

219 In the fifth place, the Republic of Austria submits that the inclusion of nuclear energy in the taxonomy disregards the prohibition of lock-in effects laid down in Article 10(2)(c) of the Taxonomy Regulation. Since nuclear energy does entail considerable lock-in effects, in view of the substantial investment costs, lengthy construction timelines and the operational lifetime of the plants, nuclear energy hampers the development of more advantageous renewable energy sources and increases the probability that carbon-intensive technologies will be used until new nuclear energy plants come on stream.

220 In support of that assertion, the Republic of Austria relies on the Platform's response, in which it states, first, that the lock-in of carbon-intensive assets may occur if hoped-for GHG reductions are too slow or too late and, secondly, that there is a risk of lock-in as a result of the timing required to build nuclear plants and how long they remain operational.

221 It should be recalled that Article 10(2)(c) of the Taxonomy Regulation requires that the economic activity must not lead to a lock-in of carbon-intensive assets, in view of the economic lifetime of those assets.

222 It follows that Article 10(2)(c) of the Taxonomy Regulation is aimed at avoiding a lock-in, that is to say, a ring-fencing, of carbon-intensive assets and, per the wording of recital 41 of that regulation, ensuring that the economic activities do not lead to a lock-in of assets incompatible with the objective of climate neutrality.

223 However, the Republic of Austria does not explain how the assets of economic activities in the nuclear energy sector have high GHG emissions, with the result that its argument is not substantiated.

224 Moreover, the statements contained in the Platform's response highlighted by the Republic of Austria are worded in conditional terms or are not substantiated, with the result that they are not sufficient to render the Commission's findings implausible.

225 Consequently, the Republic of Austria's arguments do not demonstrate that the Commission made a manifest error of assessment in finding that economic activities in the nuclear energy sector fulfilled the condition laid down in Article 10(2)(c) of the Taxonomy Regulation.

226 The Republic of Austria also criticises the Commission, in essence, for having failed to conduct an examination of the lock-in effects of economic activities in the nuclear energy sector, which are substantial and hamper the development of renewable energy whilst making necessary the generation of energy from coal and gas, with the result that the contested regulation is vitiated by an insufficient statement of reasons.

227 However, as there is no risk of lock-in effects of carbon-intensive assets for economic activities in the nuclear energy sector, which do not involve carbon-intensive assets, the Commission cannot be criticised for having failed to conduct an examination of the lock-in effects of those assets or for having failed to comply with its obligation to provide a statement of reasons in that regard.

228 In the sixth place, the Republic of Austria submits that the infringements of Article 10(2) of the Taxonomy Regulation also entail infringement of Article 19(1)(g) of that regulation, which provides for the obligation to take into account the life cycle, including evidence from existing

life-cycle assessments. The Commission failed to take into account lengthy periods for planning, authorisation and operation of nuclear plants and, consequently, the entire life-cycle, in view, in particular, of the hampering of low-carbon alternatives and the lock-in effects.

229 The Court finds, however, that, in the present plea, the Republic of Austria merely referred to arguments alleging infringement of Article 10(2) of the Taxonomy Regulation. In those circumstances, and since those latter arguments have been rejected, the argument to the effect that infringements of that provision also entail infringement of Article 19(1)(g) of that regulation must also be rejected.

230 In the light of the foregoing, the Republic of Austria has failed to demonstrate that the Commission made a manifest error of assessment in finding that economic activities in the nuclear energy sector fulfilled the conditions laid down in Article 10(2) of the Taxonomy Regulation.

231 Consequently, the second part of the second plea in law is unfounded.

– Third part of the second plea in law: in the alternative, infringement of Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle

232 The Republic of Austria submits, in essence, that the technical screening criteria provided for by the contested regulation are vitiated by an infringement of Article 19(1)(f) of the Taxonomy Regulation, as they are not based on conclusive scientific evidence or on the precautionary principle, and do not enable a determination to be made of whether economic activities in the nuclear sector comply with the conditions laid down in Article 10(2) of the Taxonomy Regulation.

233 The Commission, supported by the Republic of Bulgaria, the Czech Republic, Hungary, Romania and the Republic of Finland, disputes that line of argument.

234 It should be borne in mind that, under Article 19(1)(f) of the Taxonomy Regulation, the technical screening criteria established pursuant to Article 10(3) of that regulation are to be based on conclusive scientific evidence and the precautionary principle, enshrined in Article 191 TFEU.

235 In the present case, first, it is apparent from recital 6 of the contested regulation that the Commission based itself on the TEG's scientific assessment and on the scientific assessment contained in the JRC's Report. Moreover, as observed in paragraph 48 above, it also based itself on the opinions of the group of experts referred to in Article 31 of the Euratom Treaty and of the SCHEER. Moreover, in the Technical Annex to its Final Report of 9 March 2020, the TEG found that 'evidence on the potential substantial contribution of nuclear energy to climate mitigation objectives was extensive and clear', referring to a number of scientific studies.

236 In support of its line of argument, the Republic of Austria merely cites three studies in relation to the fact that nuclear energy and renewable energy sources are at cross-purposes and not complementary, without explaining how the technical screening criteria defined for activities in the nuclear energy sector lead to a lock-in of carbon-intensive assets.

237 In those circumstances, and in view of the broad discretion conferred on the Commission in the choice and evaluation of scientific studies, referred to in paragraph 212 above, the Republic of Austria has failed to establish to the requisite legal standard that the Commission did not comply with its obligation to base itself on conclusive scientific evidence.

238 In any event, given that broad discretion, the mere fact that a Commission analysis may be challenged in the scientific literature does not suffice to call that analysis into question.

239 Secondly, contrary to the Republic of Austria's contentions, nor does the Court find that the contested regulation is vitiated by 'lacunae in the analysis and statement of reasons' in relation to the question whether the three relevant economic sectors in the nuclear energy sector satisfy the conditions of Article 10(2) of the Taxonomy Regulation.

240 In that regard, it must be borne in mind that the duty to state reasons in decisions is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue (see judgment of 18 April 2024, *Dumitrescu and Others* v *Commission and Court of Justice*, C-567/22 P to C-570/22 P, EU:C:2024:336, paragraph 46 and the case-law cited). Yet it is clear that, by its line of argument concerning the 'lacunae in the analysis and statement of reasons', the Republic of Austria in essence calls into question the statement of reasons for the contested regulation and not the well-foundedness thereof, as is also true of the other complaints put forward in support of the action in relation to such lacunae.

241 Moreover, as per the case-law cited in paragraph 216 above, the Court notes that the statement of reasons for why the conditions laid down in Article 10(2) of the Taxonomy Regulation are met is set out to the requisite legal standard in recital 6 of the contested regulation, and also in the explanatory memorandum to Delegated Regulation 2021/2139, which refer to the opinion of the group of experts consulted by the Commission.

242 Thirdly, since the Republic of Austria has not substantiated the complaint alleging breach of the precautionary principle using specific arguments under the present part of the second plea, instead merely referring to that principle, that plea must be held to be inadmissible pursuant to Article 76(d) of the Rules of Procedure (see, to that effect, judgment of 7 November 2019, *ADDE* v *Parliament*, T-48/17, EU:T:2019:780, paragraph 22 and the case-law cited).

243 In the light of the foregoing, the third part of the second plea in law is rejected, as is, therefore, the second plea in law in its entirety.

The third and fourth pleas in law: infringement of Article 17 and Article 19(1)(f) and (g) of the Taxonomy Regulation and of the precautionary principle

244 In support of the third and fourth pleas in law, the Republic of Austria, supported by the Grand Duchy of Luxembourg, states, in essence, that, in including economic activities in the nuclear energy sector in transitional activities and in establishing technical screening criteria for those activities, the contested regulation failed to adhere to the DNSH criterion, that is to say, the criterion according to which the economic activity in question must not cause significant harm to any of the environmental objectives pursued by the Taxonomy Regulation, provided for in Article 17 and Article 19(1)(f) and (g) of that regulation, and also the precautionary principle.

245 Article 17(1) of the Taxonomy Regulation is worded as follows:

‘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 [GHG] emissions;

(b) climate change adaptation, where that activity leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets;

(c) the sustainable use and protection of water and marine resources, where that activity is detrimental:
   (i) to the good status or the good ecological potential of bodies of water, including surface water and groundwater; or
   (ii) to the good environmental status of marine waters;

(d) the circular economy, including waste prevention and recycling, where:
   (i) that activity leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources such as non-renewable energy sources, raw materials, water and land at one or more stages of the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products;
   (ii) that activity leads to a significant increase in the generation, incineration or disposal of waste, with the exception of the incineration of non-recyclable hazardous waste; or
   (iii) the long-term disposal of waste may cause significant and long-term harm to the environment;

(e) pollution prevention and control, where that activity leads to a significant increase in the emissions of pollutants into air, water or land, as compared with the situation before the activity started; or

(f) the protection and restoration of biodiversity and ecosystems, where that activity is:
   (i) significantly detrimental to the good condition and resilience of ecosystems; or
   (ii) detrimental to the conservation status of habitats and species, including those of Union interest.’

246 Article 19(1) of the Taxonomy Regulation, for its part, provides that the technical screening criteria established pursuant to, inter alia, Article 10(3) and Article 11(3) of that regulation, must:

‘(a) identify the most relevant potential contributions to the given environmental objective while respecting the principle of technological neutrality, considering both the short- and long-term impact of a given economic activity;

(b) specify the minimum requirements that need to be met to avoid significant harm to any of the relevant environmental objectives, considering both the short- and long-term impact of a given economic activity;

(c) be quantitative and contain thresholds to the extent possible, and otherwise be qualitative;

(d) where appropriate, build upon Union labelling and certification schemes, Union methodologies for assessing environmental footprint, and Union statistical classification systems, and take into account any relevant existing Union legislation;

(e) where feasible, use sustainability indicators as referred to in Article 4(6) of Regulation … 2019/2088;

(f) be based on conclusive scientific evidence and the precautionary principle enshrined in Article 191 TFEU;

(g) take into account the life cycle, including evidence from existing life-cycle assessments, by considering both the environmental impact of the economic activity itself and the environmental impact of the products and services provided by that economic activity, in particular by considering the production, use and end of life of those products and services;

(h) take into account the nature and the scale of the economic activity, including:

(i) whether it is an enabling activity as referred to in Article 16; or

(ii) whether it is a transitional activity as referred to in Article 10(2);

(i) take into account the potential market impact of the transition to a more sustainable economy, including the risk of certain assets becoming stranded as a result of such transition, as well as the risk of creating inconsistent incentives for investing sustainably;

(j) cover all relevant economic activities within a specific sector and ensure that those activities are treated equally if they contribute equally towards the environmental objectives set out in Article 9 of this Regulation, to avoid distorting competition in the market; and

(k) be easy to use and be set in a manner that facilitates the verification of their compliance.

…'

247 As a preliminary point, it should be borne in mind that the precautionary principle is a general principle of EU law, arising from Article 11, Article 168(1), Article 169(1) and (2) and Article 191(1) and (2) TFEU, requiring the authorities in question, in the particular context of the exercise of the powers conferred on them by the relevant rules, to take appropriate measures to prevent specific potential risks to public health, safety and the environment, by giving precedence to the requirements related to the protection of those interests over economic interests (see, to that effect, judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 58 and the case-law cited).

248 Where there is scientific uncertainty as to the existence or extent of risks to human health or to the environment, the precautionary principle allows the institutions to take protective measures without having to wait until the reality and seriousness of those risks become fully apparent or until the adverse health effects materialise (see, to that effect, judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 59 and the case-law cited).

249 The application of the precautionary principle is not limited to cases in which it is uncertain that there is a risk; the principle may also be applied where a risk has been proved to exist and where the Commission must assess whether that risk is acceptable or not, or assess how it should be dealt with in a risk management context (judgment of 17 May 2018, *Bayer CropScience and Others* v *Commission*, T-429/13 and T-451/13, EU:T:2018:280, paragraph 340).

250 Within the process leading to the adoption by an institution of appropriate measures to prevent specific potential risks to public health, safety and the environment by reason of the precautionary principle, three successive stages can be identified: first, identification of the potentially adverse effects arising from a phenomenon; secondly, assessment of the risks to public health, safety and the environment which are related to that phenomenon; and, thirdly, when the potential risks identified exceed the threshold of what is acceptable for society, risk management by the adoption of appropriate protective measures (judgments of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 60, and of 21 February 2024, *PAN Europe* v *Commission*, T-536/22, under appeal, EU:T:2024:98, paragraph 74).

251 Assessment of the risks to public health, safety and the environment consists, for the institution required to consider potentially adverse effects arising from a phenomenon, in scientifically assessing those risks and in determining whether they exceed the level of risk deemed acceptable for society. Thus, in order for the institutions to be able to carry out a risk assessment, it is important for them, first, to have a scientific assessment of the risks and, secondly, to determine what level of risk is deemed unacceptable for society (see judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 61 and the case-law cited).

252 As a scientific process, the scientific risk assessment must be entrusted by the institution to scientific experts (see judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 64 and the case-law cited).

253 The responsibility for determining the level of risk which is deemed unacceptable for society lies, provided that the applicable rules are observed, with the institutions responsible for the political choice of determining an appropriate level of protection for society (see, to that effect, judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 71 and the case-law cited).

254 In determining the level of risk deemed unacceptable for society, the institutions are bound by their obligation to ensure a high level of protection of public health, safety and the environment. That high level of protection does not necessarily have to be the highest that is technically possible. Moreover, those institutions may not take a purely hypothetical approach to risk and may not base their decisions on a zero risk (see, to that effect, judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 72 and the case-law cited).

255 As regards the judicial review of respect for those principles, the Court of Justice has previously held that it must be acknowledged that the Commission has a wide discretion when it adopts risk management measures. That procedure entails political choices on its part and complex assessments. The validity of a measure adopted in that area can be affected only if the measure is manifestly inappropriate (judgment of 9 June 2016, *Pesce and Others*, C-78/16 and C-79/16, EU:C:2016:428, paragraph 49).

256 It thus follows from the case-law that the precautionary principle must be applied where there is scientific uncertainty as to the existence or extent of risks to human health or to the environment, in order to allow the institutions to take protective measures without having to wait until the reality and seriousness of those risks become fully apparent or until the adverse health effects materialise.

257 It is also apparent from the case-law that the application of the precautionary principle presupposes a scientific assessment of the risks, the determination of the risk deemed acceptable and, if necessary, the adoption of appropriate protective measures.

258 It is in the light of those considerations that the Republic of Austria's arguments must be addressed.

– First part of the third plea in law, first part of the fourth plea in law and fifth complaint of the third part of the third plea in law: failure to adhere to the level of protection

259 The Republic of Austria, supported by the Grand Duchy of Luxembourg, submits, in essence, that the environmental sustainability objective pursued by the Taxonomy Regulation and the precautionary principle weigh in favour of a lower level of acceptable risk under Article 17 of that regulation and, therefore, in relation to the provisions of traditional nuclear-related legislation, in favour of a higher level of protection. The Republic of Austria, supported by the Grand Duchy of Luxembourg, infers therefrom that the technical screening criteria are not sufficient, as those criteria refer most often to rules adopted pursuant to the Euratom Treaty or to EU legal instruments of general application.

260 The Commission, supported by the Republic of Bulgaria, the Czech Republic, the French Republic, Hungary, The Republic of Poland, the Slovak Republic and the Republic of Finland, disputes that line of argument.

261 It should be borne in mind that, when defining technical screening criteria, in particular those relating to the DNSH criterion, the Commission must take account of the precautionary principle pursuant to Article 19(1)(f) of the Taxonomy Regulation.

262 However, the precautionary principle itself does not define a specific level of protection, but rather provides a method allowing the competent institutions to take protective measures where there is scientific uncertainty as to the existence or extent of a risk (see, to that effect, judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 59 and the case-law cited).

263 Moreover, as regards the argument that the environmental sustainability objective of the Taxonomy Regulation weighs in favour of a strict interpretation of Article 17 thereof, it should be borne in mind that recital 40 of that regulation states that an 'economic activity should not qualify as environmentally sustainable if it causes more harm to the environment than the benefits it brings' and that 'technical screening criteria should identify the minimum requirements necessary to avoid significant harm to other objectives, including by building on any minimum requirements laid down pursuant to Union law'.

264 It is clear that that passage of recital 40 of the Taxonomy Regulation confirms that the EU legislature took the view that technical screening criteria could achieve the environmental sustainability objective and be compatible with the precautionary principle by referring to compliance with the minimum requirements laid down in the relevant legislation.

265 That intention of the EU legislature is, moreover, confirmed by Article 19(1)(d) of the Taxonomy Regulation, which requires that, when establishing technical screening criteria, the Commission is to take into account 'any relevant existing Union legislation', and by recitals 43 and 44 of that regulation.

266 Moreover, although it does not impose it, the Taxonomy Regulation does not preclude the Commission from establishing more protective criteria going beyond the minimum requirements arising from other EU law legal norms.

267 That said, the Republic of Austria has not established that, in relation to the DNSH criterion, the contested regulation merely reiterated the requirements arising from other EU legal rules. It even acknowledges, in paragraph 145 of the application, that additional criteria were established.

268 In those circumstances, the General Court does not find that, in the contested regulation, the Commission disregarded the environmental sustainability objective, Article 17 of the Taxonomy Regulation, Article 19(1)(f) of that regulation or the precautionary principle by referring to compliance with the relevant EU legal rules.

269 Consequently, the first part of the third plea in law, the first part of the fourth plea in law and the fifth complaint of the third part of the third plea in law are unfounded.

– Second part of the third plea in law: infringement of Article 19(1)(f) of the Taxonomy Regulation

270 The Republic of Austria, supported by the Grand Duchy of Luxembourg, submits, in essence, that the inclusion of economic activities in the nuclear energy sector in the contested regulation is based on a failure to comply with the evidentiary requirements under Article 17 and Article 19(1)(f) of the Taxonomy Regulation, interpreted in the light of the precautionary principle. In particular, the Republic of Austria claims, first, that the finding that nuclear energy met the DNSH criterion was based on a JRC finding that 'the analyses did not reveal any science-based evidence that nuclear energy does more harm to human health or to the environment than other electricity production technologies already included in the taxonomy as activities supporting climate change mitigation'. That denotes an approach involving a comparison of nuclear energy with other energy types, which is not provided for by Article 17. Secondly, in the examination of compliance with the precautionary principle, the lack of scientific evidence of significant harm is not a relevant criterion; the only material question is whether any reasonable doubt of such harm could be ruled out. Thirdly, the Republic of Austria questions the probative value of the JRC Report on the ground that it is deficient and incomplete, and contains fundamental contradictions in relation to other scientific studies, and that the JRC is an internal body of the Commission. It also questions the JRC Report, relying on the criticisms contained in the SCHEER opinion.

271 The Commission, supported by the Republic of Poland, disputes that line of argument.

272 In the first place, the Court notes that the JRC's approach, criticised by the Republic of Austria, consisted in taking account of the results of research carried out previously, prior to the adoption of Delegated Regulation 2021/2139, in relation to other activities. As rightly highlighted by the Commission, such an approach complies with the principle of technological neutrality, referred to in paragraph 112 above, and allows for an assessment of the risks consistent with that conducted for those other activities.

273 In the second place, nor can the criticism of an error in the assessment of the applicable level of proof, inasmuch as the JRC Report is based on a lack of scientific evidence of significant harm rather than on an absence of any reasonable doubt of the existence of significant harm, succeed.

274 It follows from the case-law that the precautionary principle does not require that all reasonable scientific doubt as to the existence of environmental harm be ruled out, as that would amount to requiring a zero risk of the Commission, contrary to the case-law (see, to that effect and by analogy, judgment of 11 September 2002, *Pfizer Animal Health* v *Council*, T-13/99, EU:T:2002:209, paragraph 145).

275 It should also be noted that the criterion taken into account complies with Article 19(1)(f) of the Taxonomy Regulation, which only requires the Commission to base itself on conclusive scientific evidence.

276 In the third place, as regards the other criticisms of the JRC Report, as already observed in paragraph 212 above, it should be borne in mind that the Commission has broad discretion in both the choice of scientific studies and the assessment thereof. It is also clear that the Republic of Austria has failed to demonstrate that the Commission made a manifest error of assessment in relying on that report.

277 Thus, the Court notes, first, that the Republic of Austria makes a general reference to the BASE technical opinion of the JRC Report, the dissenting opinion of the group of experts referred to in Article 31 of the Euratom Treaty, and to 'different references cited in the other pleas'. In that regard, it should be borne in mind that, according to settled case-law, it is not for the Court to take on the role of the parties by seeking to identify the relevant material in the documents to which they refer (see, to that effect, judgment of 25 June 2020, *Siberia Oriental* v *CPVO (Siberia)*, T-737/18, EU:T:2020:289, paragraph 25 and the case-law cited). Accordingly, in the absence of sufficiently specific identification of the evidence supporting the Republic of Austria's assertions, they may not be taken into account.

278 Secondly, as regards the reference to the SCHEER analysis, the Court notes that it does not have the meaning attributed to it by the Republic of Austria. Although the SCHEER did take the view that dependence on an operational regulatory framework is not always sufficient, it nevertheless stated that it 'broadly agreed with [the JRC's] statements' that nuclear power plant operation activities do not represent unavertable harm to human health or to the environment, provided that the associated industrial activities satisfy appropriate technical screening criteria.

279 Thirdly, in any event, it cannot be inferred from the mere fact that the JRC Report was criticised on certain points by the SCHEER that the Commission based itself on inconclusive evidence, contrary to the precautionary principle. In view of the concerns expressed by the SCHEER about the deficiencies of the operational regulatory framework, the Commission included additional criteria in Annex I to the contested regulation going beyond the level laid down in existing EU legal norms.

280 Fourthly, the Republic of Austria takes the view that the JRC Report cannot be regarded as having greater probative value than other scientific studies, since it emanates from an internal body of the Commission and not an independent body.

281 The Court nevertheless finds that the Republic of Austria has not substantiated its assertion that the JRC Report was deemed to have greater probative value than other studies from scientifically recognised experts.

282 Furthermore, the Republic of Austria has not alleged or demonstrated that the findings in the JRC Report may not be deemed to be conclusive scientific evidence within the meaning of Article 19(1)(f) of the Taxonomy Regulation.

283 Accordingly, the Republic of Austria's arguments do not establish that the Commission disregarded the evidentiary requirements under Article 17 and Article 19(1)(f) of the Taxonomy Regulation, interpreted in the light of the precautionary principle.

284 In the light of the foregoing, the second part of the third plea in law is unfounded.

– The other complaints of the third part of the third plea in law and the second part of the fourth plea in law: disregard of the risks of serious reactor accidents

285 In the third part of the third plea in law, the Republic of Austria, supported by the Grand Duchy of Luxembourg, submits that the inclusion of economic activities in the nuclear energy sector in the taxonomy is based on a disregard of the risks of serious reactor accidents and thus causes significant harm to environmental objectives within the meaning of Article 17(1)(c), (e) and (f) of the Taxonomy Regulation, relating to the protection of water and marine resources, environmental pollution prevention and control, and protection and restoration of biodiversity and ecosystems. The Republic of Austria submits that it is not possible to rule out the possible consequences that serious reactor accidents may have on those environmental objectives. It further submits that the analysis and statement of reasons for the contested regulation contain lacunae in that regard. It further states that the Commission may not contend that the EU legislature conferred on it the power to determine the acceptable risk for society and that the Commission does not have any discretion in the application of the precautionary principle.

286 In the second part of the fourth plea, the Republic of Austria submits that the technical screening criteria set out in Annex I to the contested regulation do not, by referring to existing nuclear safety provisions and standards, rule out the possibility of the occurrence of significant harm caused by the risk of serious reactor accidents to the environmental objectives referred to in, inter alia, Article 17(1)(c), (e) and (f) of the Taxonomy Regulation (protection of water and marine resources, environmental pollution prevention and control, and protection and restoration of biodiversity and ecosystems). The Republic of Austria submits that, in so far as the technical screening criteria sometimes provide for additional criteria, they are vague or unlawfully transfer regulatory powers to national monitoring authorities.

287 The Commission, supported by the Czech Republic, the French Republic, Hungary, the Republic of Poland, Romania, the Republic of Slovenia and the Slovak Republic, disputes that line of argument.

288 As a preliminary point, it should be noted that compliance with the DNSH criterion cannot be verified in the abstract; rather, it must be done in the light of the technical screening criteria established in the contested regulation.

289 First, it should be borne in mind that Article 3(b) of the Taxonomy Regulation provides that an economic activity is to qualify as environmentally sustainable, inter alia, where that economic activity does not significantly harm any of the environmental objectives laid down in Article 9 of that regulation, in accordance with Article 17 thereof.

290 In particular, under Article 17(1)(c), (e) and (f) and recitals 34 and 40 of the Taxonomy Regulation, in order to qualify as environmentally sustainable, a given economic activity must not significantly harm any of the environmental objectives defined in the Taxonomy Regulation, that is to say, cause harm to the environment to an extent that outweighs that activity's contribution to an environmental objective.

291 Moreover, the technical screening criteria defined for each activity must make it possible to ensure that that activity does not significantly harm any of the environmental objectives defined in the Taxonomy Regulation.

292 To that end, as is apparent from paragraphs 263 to 265 above, the technical screening criteria must define necessary minimum requirements, inter alia on the basis of any minimum requirement laid down under EU law, which includes in particular Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ 2009 L 172, p. 18), without their being prevented from going beyond those requirements.

293 Furthermore, the reference to significant harm means that compliance with the DNSH criterion is aimed at preventing particularly serious harm which outweighs the contribution of the activity in question to climate change mitigation.

294 That reference also implies that, where the significant harm to the environment envisaged results from a risk of accident, that risk carries a certain degree of probability.

295 Thus, in order to address the Republic of Austria's arguments, it is appropriate to examine whether they demonstrate that, in including economic activities in the nuclear energy sector in the taxonomy, the Commission disregarded the risk of serious reactor accidents and thereby caused significant harm to the environmental objectives identified by the Republic of Austria and whether, in establishing the technical screening criteria intended to ward off that risk, the Commission failed to define the necessary minimum requirements to prevent significant harm to those objectives.

296 Secondly, it is common ground among the parties that, although the seriousness of the consequences of a possible reactor accident carry a low degree of uncertainty, the probability of the occurrence of such an accident carries a high degree of uncertainty. Thus, applying the case-law cited in paragraph 248 above, it is in the light of that uncertainty surrounding the probability of the occurrence of a serious reactor accident that the precautionary principle applies.

297 In that regard, it has been held that the adoption of a preventive measure, or, conversely, its withdrawal or relaxation, cannot be made subject to proof of the lack of any risk, in so far as such proof is generally impossible to give in scientific terms since zero risk does not exist in practice

(judgment of 12 April 2013, *Du Pont de Nemours (France) and Others* v *Commission*, T-31/07, not published, EU:T:2013:167, paragraph 140; see also, to that effect, judgment of 21 October 2003, *Solvay Pharmaceuticals* v *Council*, T-392/02, EU:T:2003:277, paragraph 130).

298 It is important, in such a situation, that scientific experts carry out a scientific risk assessment notwithstanding the existing scientific uncertainty, so that the competent public authority has available to it sufficiently reliable and cogent information to allow it to understand the ramifications of the scientific question raised and decide upon a policy in full knowledge of the facts (judgment of 9 September 2011, *France* v *Commission*, T-257/07, EU:T:2011:444, paragraph 77; see also, to that effect, judgments of 11 September 2002, *Pfizer Animal Health* v *Council*, T-13/99, EU:T:2002:209, paragraphs 160 to 163, and of 11 September 2002, *Alpharma* v *Council*, T-70/99, EU:T:2002:210, paragraphs 173 to 176).

299 Applying the case-law cited in paragraph 255 above, it is then appropriate to ascertain whether the Republic of Austria's arguments establish that the inclusion of economic activities in the nuclear energy sector and the determination of the technical screening criteria were manifestly incorrect in the light of the risk of a serious reactor accident.

300 In the first place, the Republic of Austria relies on Communication COM(2000) 1 final from the Commission of 2 February 2000 on the precautionary principle to argue that a risk assessment in the light of that principle cannot be based on a mere probability of the occurrence of an event, but should also integrate the seriousness of the consequences thereof which, for reactor accidents, are extremely serious.

301 In that regard, the Court notes that the existence of serious consequences for humans and the environment and the harm identified by the Republic of Austria are necessarily contingent on the probability of occurrence of a serious reactor accident.

302 That interpretation is not called into question by Communication COM(2000) 1 final, as that communication also provides for the probability of the occurrence of a risk to be taken into account in order to assess that risk.

303 The assessment of the risk of a serious reactor accident therefore presupposes account being taken of the low probability of its occurring, acknowledged by the Republic of Austria in paragraph 98 of the application, and the considerable seriousness of the potential consequences of such an accident.

304 In the second place, the Republic of Austria submits that the JRC Report does not go far enough inasmuch as it is based on the principle that the probability of a hypothetical serious reactor accident causing the death of 30 000 people is extremely low, whereas a more recent statistical study (Wheatley, S., Sovacool, B. and Sornette, D., 'Reassessing the safety of nuclear power', *Energy Research & Social Science*, Elsevier, 2016, Vol. 15, pp. 96 to 100, in particular p. 99), not referred to by the JRC, states, first, that despite improvements in safety standards, there is a 50% probability that a serious reactor accident will occur every 60 to 150 years and, secondly, that, taking account of the severity of the consequences, the overall societal risk of nuclear energy remains high. It infers therefrom that substantial uncertainty persists.

305 As regards the determination of the probabilities of reactor accidents, the JRC stated the following in its report:

'Severe accidents with core melt did happen in nuclear power plants and the public is well aware of the consequences of the three major accidents, namely Three Mile Island (1979, USA), Chernobyl (1986, Soviet Union) and Fukushima (2011, Japan). The [nuclear power plants] involved in these accidents were of various types … and the circumstances leading to these events were also very different. Severe accidents are events with extremely low probability but with potentially serious consequences and they cannot be ruled out with 100% certainty.'

306 The JRC also found that a serious accident in a generation III nuclear power plant was a highly improbable event.

307 The fact that that probability is disputed by the study produced by the Republic of Austria does not in itself suffice to establish a manifest error of assessment given that, following the case-law referred to in paragraph 212 above, the Commission has wide discretion in the assessment of scientific studies.

308 This holds all the more true since the scenario described in the study referred to by the Republic of Austria is based on the hypothesis, not comparable to that envisaged in the JRC Report, that 388 reactors are in operation and no improvements have been made following the Fukushima accident.

309 Nor has the Republic of Austria established that the Commission exceeded the limits of its discretion in determining the level of risk deemed acceptable for society.

310 The Republic of Austria also criticises the JRC Report for referring to comparisons with the risk of dam failure and with victims of atmospheric pollution, smoking and road traffic, and for not addressing long-term repercussions of reactor accidents on human life.

311 However, as is apparent from the JRC Report, those comparisons are aimed at putting the number of fatalities into perspective with other human activities in order to highlight the differences in risk perception. Moreover, the JRC pointed out that the long-term consequences for human life were difficult to assess, whilst recognising that they could be significant.

312 The Republic of Austria also criticises the JRC Report for failing to take sufficient account of the environmental impact, whereas it should be taken into account pursuant to Article 17 of the Taxonomy Regulation. The JRC Report thus failed to examine decisive aspects, such as the assessment of the environmental impact of reactor accidents like the Fukushima accident.

313 However, in that regard, on pages 105 and 121 of its report, the JRC referred to the report of the United Nations Scientific Committee on the Effects of Atomic Radiation ('Levels and effects of radiation exposure due to the accident at the Fukushima Daiichi Nuclear Power Station: implications of information published since the UNSCEAR 2013 Report', *Sources, Effects and Risks of Ionizing Radiation*, *UNSCEAR 2020 Report*, 2021, Vol. II, Annex B), in which the environmental impact of the Fukushima accident is discussed and taken into account in its analysis.

314 The JRC Report cannot therefore be regarded as having lacunae in that regard.

315 It should further be noted that economic activities in the nuclear energy sector are strictly regulated in EU law, which is intended to reduce the probability of serious reactor accidents and the severity of such accidents for human health and the environment.

316 In that regard, the technical screening criteria refer expressly to all EU nuclear energy safety rules, and also to the most recent international guidelines of the International Atomic Energy Agency (IAEA) and the Western European Nuclear Regulators Association (WENRA).

317 Moreover, the Republic of Austria does not put forward any more specific arguments to demonstrate that economic activities in the nuclear energy sector are detrimental to the good ecological status of bodies of water or marine waters, lead to a significant increase in the emissions of pollutants into water, air or land, or are detrimental to the good condition and resilience of ecosystems or to the conservation status of habitats and species within the meaning of Article 17(1)(c), (e) and (f) of the Taxonomy Regulation.

318 Consequently, the Republic of Austria's arguments do not demonstrate that the Commission made a manifest error of assessment in finding that, under the EU nuclear energy safety rules referred to in the contested regulation, the DNSH criterion had been complied with and, in particular, that it had not been established that economic activities in the nuclear energy sector were detrimental to the good ecological status of bodies of water or marine waters, led to a significant increase in the emissions of pollutants into water, air or land, or were detrimental to the good condition and resilience of ecosystems or to the conservation status of habitats and species within the meaning of Article 17(1)(c), (e) and (f) of the Taxonomy Regulation.

319 In the third place, as regards the alleged 'lacunae in the analysis and statement of reasons', as well as the criticisms put forward regarding the JRC Report, the Republic of Austria submits that that report ought to have assessed the harm to environmental objectives by serious reactor accidents and their health impact, in particular taking into account the current critical studies on accident probability, as those are decisive aspects under Article 17 of the Taxonomy Regulation. The Republic of Austria infers therefrom that the contested regulation is vitiated by a failure to provide a proper statement of reasons.

320 In particular, relying on the SCHEER Report, the Republic of Austria criticises the JRC for having failed to take sufficient account of the effects of radioactive emissions on the environment in the event of release of high doses of such emissions following a reactor accident.

321 In that regard, the Court finds that, as observed by the Republic of Austria in paragraph 100 of the application, the JRC expressly acknowledged in its report that a serious reactor accident would have severe consequences for humans and the environment.

322 Accordingly, the JRC Report cannot be regarded as incorrect or incomplete as regards the environmental impact of a serious reactor accident.

323 Moreover, the fact that the JRC did not determine a degree of probability of a reactor accident identical to that assessed in the studies referred to by the Republic of Austria does not suffice to establish that that report is incomplete or incorrect.

324 Accordingly, the Court does not find that the report on which the Commission based itself was deficient or incorrect in that regard.

325 Furthermore, as is apparent from recital 7 of the contested regulation, which refers to the JRC Report and thus forms part of the statement of reasons for the contested regulation as per the case-law cited in paragraph 216 above, the Commission did provide a statement of reasons to the requisite legal standard, to the effect that nuclear energy did not cause significant harm to the objectives pursued by Article 17(1) of the Taxonomy Regulation in view of the risks of serious reactor accidents. In that regard, the Republic of Austria's argument to the effect that the contested regulation is vitiated by 'lacunae in the analysis and statement of reasons' inasmuch as the JRC Report assessed the impact of serious reactor accidents by focusing its analysis on human fatalities, and by excluding other direct and indirect impacts which are more difficult to assess, including environmental impact, must be rejected on the grounds set out in paragraph 313 above.

326 In the fourth place, as regards the technical screening criteria, the Court finds that the Republic of Austria has failed to demonstrate that the Commission made a manifest error of assessment in finding that basing itself on EU health protection and environmental standards, which aim to ensure a high level of protection, fulfilled the conditions laid down in Article 17(1)(c), (e) and (f) of the Taxonomy Regulation, thereby excluding significant harm to the environmental objectives within the meaning of Article 17.

327 The Republic of Austria further cites, by way of example, the technical screening criteria applicable to the pre-commercial stages of advanced technologies, which provide inter alia that the project must be notified to the Commission and that the Commission must give its opinion thereon so that the technical screening criteria are then 'satisfactorily addressed'. It takes the view that that requirement is too vague.

328 However, as observed by the Commission, that technical screening criterion cannot be assessed separately from the other screening criteria. On the contrary, it is aimed precisely at enabling the Commission to examine compliance with all of those technical screening criteria, so that it cannot be regarded as being too vague.

329 Moreover, the Republic of Austria states that, for new installations, the screening criterion specifically relevant for accident risks is defined in the following terms, in point 2 of the general criteria of section 4.27 of Annex I to the contested regulation: 'The project fully applies the best-available technology and from 2025 accident-tolerant fuel. The technology is certified and approved by the national safety regulator.' It takes the view that that wording does not enable the occurrence of significant harm to environmental objectives to be ruled out.

330 First, the Republic of Austria contends that the concept of 'best available technology' is not defined, with the result that it is too vague.

331 In that regard, the Court finds that, as observed by the Commission, the best available technology criterion has the merit of making it possible to include new scientific and technological developments consistent with the approach of technological openness. Thus, in accordance with section 4.27(5) of Annex I to the contested regulation, as from 2025 and at least every 10 years, the Commission is to review the technical parameters corresponding to the best available technology.

332 It should also be noted that, contrary to the Republic of Austria's assertions, the concept of 'best available technology' is defined in the introductory sentence of section 4.27 of Annex I to the contested regulation as technologies that fully comply with the requirements of Directive 2009/71 and fully respect the most recent technical parameters of the IAEA standards and the WENRA safety objectives and reference levels.

333 Secondly, as regards the other conditions, relating to the mandatory use of accident tolerant fuels (ATFs) as from 2025, the Republic of Austria claims that the contested regulation is vitiated by an inherent contradiction, in that ATFs are required for new and old installations only as from 2025, but not for pre-commercial installations (section 4.26 of Annexes I and II to the contested regulation). Thus, if the Commission acknowledges that ATFs are required for new installations in order to prevent significant harm resulting from nuclear accidents, it should also require that same fuel for old installations from before 2025 and for pre-commercial installations.

334 It should be pointed out, however, that the fact that that criterion is not laid down for the economic activity referred to in section 4.26 of Annex I to the contested regulation is not contradictory. As that section concerns non-commercial ('pre-commercial') research and development of innovative electricity generation facilities, the objective of which is to explore as-yet unknown technologies, the Commission did not make a manifest error of assessment in deciding not to impose requirements relating to fuel use.

335 Thirdly, the Republic of Austria observes that the concept of ATFs is too vague, inasmuch as ATFs are at the developmental stage and there are no international or EU criteria or standards defining them. In the absence of a definition of ATFs, it is not possible to gain a technical understanding of their relevance to safety, especially because nor are there any indications of minimum ATF criteria or, as a general rule, a consensus on the definition of ATFs at national level, with the result that it is difficult to foresee if they will be available by 2025 and if they will be certified and authorised by the national regulatory authorities. The screening criteria are, moreover, left to the discretion of the Member States and the use of such fuels can only reduce, not eliminate, the risk of radioactive emissions in the event of an accident, despite the misleading wording 'accident tolerant'.

336 Nevertheless, the assertion that the criticism of the ATFs is vague must be rejected since, as observed by the Commission, the concept of 'ATF' refers to a category of fuel known to specialists.

337 Fourthly, the Republic of Austria submits that it is incompatible with Article 17 of the Taxonomy Regulation to identify definitively safety risks and to require their elimination for the future (by using ATFs), whilst accepting at the current juncture a categorisation as environmentally sustainable for the purposes of that regulation.

338 In that regard, the Court has held previously, as part of its broad discretion, that the Commission could provide for transitional periods in a delegated legal instrument (see, to that effect, judgment of 20 December 2023, *Landesbank Baden-Württemberg* v *SRB*, T-389/21, EU:T:2023:827, paragraphs 231 to 233). Thus, since the Commission enjoys broad discretion in the establishment of technical screening criteria, it could provide that that requirement would apply only as from 2025, in order to give national authorities and economic operators the time needed to adapt to that criterion, especially since no ATFs have yet been authorised. Consequently, it did not make a manifest error of assessment in that regard.

339 Fifthly, the Republic of Austria states that the Taxonomy Regulation and the mission entrusted to the Commission to define the technical screening criteria do not enable it to task the national authorities with approving and certifying ATFs, without defining uniform standards at EU level, because the enabling provisions laid down in Article 10(2), Article 11(3) and Article 23 of the Taxonomy Regulation, for the purposes of adopting delegated regulations, do not allow for transferring the definition of certification criteria to national supervisory authorities.

340 That complaint, based on the powers of national authorities in matters of certification and authorisation, must be rejected, as the contested regulation merely applies the rules on powers in force governing the authorisation of fuels.

341 Lastly, as regards old installations, the Republic of Austria observes that the relevant technical screening criterion for accident risks is worded as follows: 'The upgraded project implements any reasonably practicable safety improvement and from 2025 makes use of [ATFs; t]he technology is certified and approved by the national safety regulator.'

342 The Republic of Austria criticises, first, the fact that the safety requirements are reduced for old installations as compared with new installations on the ground that, for old installations, it is provided only that 'the upgraded project implements any reasonably practicable safety improvement' and, secondly, the fact that the technical screening criteria do not address the conditions of location of an existing installation, which are important from a climate change perspective. The Republic of Austria infers therefrom that, for old installations, the technical screening criteria are inadequate and do not serve to prevent significant harm.

343 In that regard, and for reasons similar to those set out in paragraphs 263 to 265 above, it should be borne in mind that the technical screening criteria must define the minimum requirements necessary for avoiding significant harm to other objectives, inter alia by relying on any minimum requirement laid down pursuant to EU law. Inasmuch as the criterion 'any reasonably practicable safety improvement' in the generation of electricity from nuclear energy in existing installations is already required under Article 6(c) and Article 8a(2)(b) of Directive 2009/71, as amended by Council Directive 2014/87/Euratom of 8 July 2014 (OJ 2014 L 219, p. 42), the use of that same criterion in point 2 of section 4.28 of Annex I to the contested regulation cannot be considered as contrary to Article 17(1)(c), (e) and (f) of the Taxonomy Regulation.

344 Nor can it be inferred therefrom that, for old installations, the technical screening criteria do not serve to prevent significant harm, since that criterion imposes the same requirement as Directive 2009/71.

345 Consequently, the arguments put forward by the Republic of Austria do not serve to demonstrate that the Commission made a manifest error of assessment in finding that the technical screening criteria laid down in Annex I to the contested regulation rule out the occurrence of significant harm to environmental objectives caused by the risk of serious nuclear reactor accidents, referring to existing safety provisions and standards.

346 In the light of the foregoing, the third part of the third plea in law and the second part of the fourth plea in law are unfounded.

– Fourth part of the third plea in law and third part of the fourth plea in law: disregard of the risks associated with high-level radioactive waste

347 In the fourth part of the third plea in law, the Republic of Austria, supported by the Grand Duchy of Luxembourg, submits that the inclusion of economic activities in the nuclear energy sector in the taxonomy is based on a disregard of the risks of high-level radioactive waste which seriously undermine the environmental objectives referred to in Article 17(1)(c) to (f) of the Taxonomy Regulation. It further submits that the contested regulation is also vitiated by an 'insufficient analysis' and statement of reasons in that regard.

348 In the third part of the fourth plea, the Republic of Austria submits that the technical screening criteria laid down in Annex I to the contested regulation are not sufficient to prevent the final disposal of radioactive waste from causing significant harm to the environmental objectives referred to in Article 17(1)(c) to (f) of the Taxonomy Regulation.

349 The Commission, supported by the Czech Republic, the French Republic, Hungary, the Republic of Poland, Romania, the Slovak Republic and the Republic of Finland, disputes that line of argument.

350 It should be borne in mind that, under Article 17(1)(d) of the Taxonomy Regulation, taking into account the life cycle of the products and services provided by an economic activity, including evidence from analyses of existing life-cycle assessments, that economic activity is considered to cause significant harm to the circular economy, including the prevention of waste and recycling, where:

‘(i) that activity leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources such as non-renewable energy sources, raw materials, water and land at one or more stages of the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products;

(ii) that activity leads to a significant increase in the generation, incineration or disposal of waste, with the exception of the incineration of non-recyclable hazardous waste; or

(iii) the long-term disposal of waste may cause significant and long-term harm to the environment’.

351 In that regard, it should be noted that the compatibility of economic activities in the nuclear sector with the DNSH criterion must be examined in the light of the technical screening criteria established for remedying the risk associated with radioactive waste.

352 It should also be noted that, after having inter alia described and analysed the advanced projects for construction and operation of deep geological repositories (DGRs) in Sweden, Finland and France, the JRC concluded the following in its report:

‘There is broad consensus in the scientific community that deep geological disposal is the safest long-term solution for spent nuclear fuel and high level radioactive waste. The deep geological repositories (DGR) are based on a multi barrier combination including both engineered and natural barriers. The operational safety of geological disposal facilities is provided by means of engineered systems and active operational controls. Disposal facilities are designed to be passively safe after closure. The DGR are designed so that potential radioactive release from them occurring in the remote future are well below the maximum allowed dose limit set by the relevant regulation, which, in turn are orders of magnitude below natural background dose levels, and which ensure that no significant harm will be caused to humans by the repository. There are presently no deep geological repositories in operation, but after four decades of research and technology development the construction and operation of several repositories is expected in the present decade …’.

353 In the first place, after having stated that economic activities in the nuclear energy sector referred to in the contested regulation generate considerable quantities of high-level radioactive waste, which may take hundreds of thousands of years to come down to an acceptable radiotoxicity

level, the Republic of Austria states, in essence, that it cannot be ruled out that the increased use of temporary disposal capacity may cause significant harm to the environment, as its use beyond the duration initially foreseen raises safety issues which have not yet been resolved, as found by the JRC in its report. The Republic of Austria also submits, in essence, that, even if there is sufficient DGR availability, the disposal of high-level radioactive waste could still cause significant harm to the environment.

354 In that regard, it should be borne in mind that Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste (OJ 2011 L 199, p. 48) establishes, in Article 1(1) thereof, a framework for ensuring, in EU law, responsible and safe management of spent fuel and radioactive waste to avoid imposing undue burdens on future generations. Moreover, under Article 1(2), it ensures that Member States provide for appropriate national arrangements for a high level of safety in spent fuel and radioactive waste management to protect workers and the general public against the dangers arising from ionising radiation.

355 It should also be noted that the technical screening criteria in Annex I to the contested regulation, which apply to economic activities in the nuclear energy sector, refer to Directive 2011/70.

356 In particular, it should be borne in mind, as observed by the Commission, that, for the climate change mitigation measures provided for in Annex I to the contested regulation, that regulation lays down, in point 1(e) and (f), technical screening criteria pertaining to the substantial contribution of Annex I, sections 4.26, 4.27 and 4.28, in the contested regulation, and provides that the Member States have operational final disposal facilities for all very-low-, low- and intermediate-level radioactive waste, that is to say, more than 99% of radioactive waste, and also a documented plan with detailed steps to have in operation, by 2050, a disposal facility for high-level radioactive waste.

357 In those circumstances, the Republic of Austria's argument, to the effect that the possibility cannot be ruled out that the increased use of temporary disposal capacity may cause significant harm to the environment, does not demonstrate a manifest error of assessment by the Commission, since the contested regulation provides for measures aimed specifically at resolving problems relating to the environmental risks highlighted by the Republic of Austria.

358 Moreover, the Republic of Austria criticises the JRC Report for not having further analysed the diverging viewpoints on the adequacy of the DGR technology, whereas the empirical data give rise to doubts as to their ecological durability. It further submits that the contested regulation is vitiated by a manifest error of assessment in that it is based on the JRC Report, whereas it is not apparent from that report that there are no scientific doubts that the final disposal of high-level radioactive waste will not significantly harm the environmental objectives referred to in Article 17(1)(c) to (f) of the Taxonomy Regulation. The Republic of Austria further submits that the technical screening criteria cannot remedy the significant harm associated with nuclear waste because they cannot guarantee any safety.

359 However, the Commission cannot be required to rely on scientific evidence which is beyond doubt, as that would amount to imposing zero risk on it, contrary to the case-law (see, to that effect and by analogy, judgment of 11 September 2002, *Pfizer Animal Health* v *Council*, T-13/99, EU:T:2002:209, paragraphs 144 to 147).

360 Consequently, those arguments put forward by the Republic of Austria do not demonstrate that the Commission's finding that there was no significant harm to the environment due to the management of nuclear energy waste is vitiated by a manifest error of assessment.

361 In the alternative, the Republic of Austria criticises the Commission for having failed to analyse in greater depth the risks arising from the lack of sufficient DGR capacity and for having failed to examine the opinions of experts who consider that the technology currently available does not suffice to rule out environmental harm. That argument may be interpreted as criticising the Commission for having made a manifest error of assessment and for having infringed the principle of sound administration by failing to discharge its duty to act diligently.

362 However, it is apparent from the JRC Report that there is broad scientific consensus on the point that DGRs are the safest solution for the long-term management of fuels and high-level radioactive waste. Furthermore, the group of experts referred to in Article 31 of the Euratom Treaty concurred with the JRC on that point. In those circumstances, the Commission did not make a manifest error of assessment or fail to discharge its duty to act diligently in not examining other expert opinions.

363 Moreover, as is apparent from recital 7 of the contested regulation, the Commission based itself on the JRC Report, finding, in section 5.2.5 thereof, that the DGRs were the safest solution. As is apparent from section 5.3 of that report, that finding is based on a large number of bibliographic references. Thus the Republic of Austria may not criticise the Commission for having failed in its obligation, arising from the principle of sound management, to examine carefully and impartially all the relevant aspects.

364 Lastly, the Republic of Austria submits that the contested regulation is vitiated by an insufficient statement of reasons as regards the grounds on which the Commission takes the view that, despite those risks and those expert opinions, it is guaranteed that high-level radioactive waste will not cause long-term significant harm to the environment.

365 However, as is apparent, first, from recital 7 of the contested regulation, in which reference is made to the JRC Report, which thus forms part of the statement of reasons for that regulation as per the case-law cited in paragraph 216 above, and, secondly, from recital 14 of that regulation, the finding that nuclear energy does not cause significant harm to the objectives pursued by Article 17(1) of the Taxonomy Regulation, given the existing and future solutions for managing radioactive waste, has been demonstrated to the requisite legal standard.

366 In the second place, as regards the technical screening criteria, it should be borne in mind that, according to the wording of the introductory paragraphs of sections 4.26 to 4.29 of Annex I to the contested regulation, an economic activity is an activity as referred to in Article 10(2) of the Taxonomy Regulation if it meets the technical screening criteria defined in those sections.

367 Among the general criteria pertaining to substantial contribution to climate change mitigation and the DNSH criterion, the criterion set out in point 1(f) of sections 4.26 to 4.28 of Annex I to the contested regulation is worded as follows:

'The project related to the economic activity ("the project") is located in a Member State which complies with all of the following:

…

(f) the Member State has a documented plan with detailed steps to have in operation, by 2050, a disposal facility for high-level radioactive waste describing all of the following:
   (i) concepts or plans and technical solutions for spent fuel and radioactive waste management from generation to disposal;
   (ii) concepts or plans for the post-closure period of a disposal facility's lifetime, including the period during which appropriate controls are retained and the means to be employed to preserve knowledge of that facility in the longer term;
   (iii) the responsibilities for the plan implementation and the key performance indicators to monitor its progress;
   (iv) cost assessments and financing schemes.

For the purposes of point (f), Member States may use plans drawn up as part of the national programme required by Articles 11 and 12 of Directive [2011/70].'

368 First, the Republic of Austria states that the technical screening criteria laid down in point 1(f) of sections 4.26 to 4.29 of Annex I to the contested regulation are limited to a reference to the general applicable legal framework, in any event, under Directive 2011/70, which has not to date led to a resolution of the problems associated with high-level radioactive waste. The Republic of Austria further submits that, in merely subordinating the categorisation of nuclear energy as environmentally sustainable to a 'plan' for commissioning a final disposal facility 'by 2050', the Commission changes nothing about the fact that sufficiently foreseeable availability of DGRs is not guaranteed. Moreover, the technical screening criteria are worded in too flexible and imprecise a manner to guarantee, for the foreseeable future, the commissioning of final disposal facilities and to eliminate the safety risks and ensuing uncertainties.

369 It should be noted that the technical screening criteria provided for in point 1(f) of sections 4.26 to 4.29 of Annex I to the contested regulation impose measures intended to allow for high-level radioactive waste disposal solutions to be put in place by 2050.

370 As observed by the Commission, the final disposal plan has been required since the date the contested regulation entered into force.

371 Moreover, as is apparent from recital 14 of the contested regulation, like Directive 2011/70, the technical screening criteria for high-level radioactive waste are intended to enable realistic solutions for treating that type of waste to be put in place.

372 In that regard, as is apparent from recital 23 of Directive 2011/70, Member States, while retaining responsibility for their respective policies in respect of the management of their spent fuel and low-, intermediate- or high-level radioactive waste, should include planning and implementation of disposal options in their national policies. In that recital, it is also stated that, since the implementation and development of disposal facilities will take place over many decades, many programmes recognise the necessity of remaining flexible and adaptable, inter alia in order to incorporate new knowledge about site conditions or the possible evolution of disposal systems.

373 In that context, the Republic of Austria's arguments do not demonstrate that the Commission made a manifest error of assessment in finding that the implementation and development of disposal facilities for high-level radioactive waste by 2050 ruled out the possibility of significant harm to environmental objectives.

374 In fact, until 2050, the Commission is not leaving the Member States free to plan the transition to DGRs, but rather obliges them to draw up plans which could be the same ones as the programmes referred to in Directive 2011/70. Moreover, as provided for by Article 12 of Directive 2011/70, those programmes are to have a precise content and, pursuant to Article 13 thereof, they are to be notified to the Commission. In that context, the existence of a transitional period until disposal facilities are put in place does not give rise to an environmental risk.

375 This is all the more so because that approach corresponds to the approach taken previously by the EU legislature in Directive 2011/70, so that the Commission cannot be criticised for having made a manifest error of assessment in opting for an approach similar to that of the legislature.

376 Secondly, the Republic of Austria states that the criterion pertaining to a 'documented plan with detailed steps to have in operation, by 2050, a disposal facility', referred to in point 1(f) of section 4.28 of Annex I to the contested regulation, applies only to 'projects authorised after 2025', with the result that such a plan is not required for old installations. The Republic of Austria submits that that derogation is not justified. Although the Commission takes the view that a waste management plan is necessary for nuclear installations in order to rule out the possibility of any significant harm within the meaning of Article 17 of the Taxonomy Regulation, that should *a fortiori* be the case for existing installations, irrespective of the date of authorisation of the projects concerned.

377 The Commission observes that the date of entry into force in 2025 was introduced so as to give the Member States the time needed to adopt the documented detailed plan, in order to avoid a situation where, in the interval, no upgrade project could be considered to be aligned with the taxonomy, so as to address the objective of the Taxonomy Regulation of avoiding inaction or delayed action.

378 It should be borne in mind that installations predating 2025 remain subject to other obligations under point 1(a) to (e) of section 4.28 of Annex I to the contested regulation. Thus, the Commission, in dismissing a criterion that would have had the effect of excluding those installations from the scope of the Taxonomy Regulation, and therefore limiting the incentive to carry out upgrade projects of current installations, acted in accordance with the objective of that regulation consisting in avoiding inaction or delayed action. The Court accordingly does not find that it made a manifest error of assessment.

379 Consequently, the Commission did not make a manifest error of assessment in finding that the criterion of a 'documented plan with detailed steps to have in operation, by 2050, a disposal facility', referred to in point 1(f) of section 4.28 of Annex I to the contested regulation, applied only partially to old installations, namely 'projects authorised after 2025'.

380 Thirdly, according to the Republic of Austria, even if there was sufficient DGR capacity available in a timely manner, the possibility cannot be ruled out that the final disposal of high-level radioactive waste in DGRs may cause significant and long-term harm to the environment for the purposes of Article 17(1)(d)(iii) of the Taxonomy Regulation. Moreover, the technical screening criteria do not contain any provision liable to remedy that situation.

381 However, as is apparent from recital 14 of the contested regulation, the DGRs are currently the safest and most sustainable option. The Republic of Austria has not succeeded in rebutting that finding.

382 The technical screening criteria in Annex I to the contested regulation refer to Directive 2011/70. As is apparent from paragraphs 263 to 265 above, the EU legislature took the view that the technical screening criteria could attain the objective of environmental sustainability and be compatible with the precautionary principle by referring to compliance with the minimum requirements provided for in the relevant legislation.

383 In those circumstances, the Republic of Austria's arguments do not demonstrate that the Commission made a manifest error of assessment in finding that the final disposal of high-level radioactive waste in DGRs was liable to prevent the occurrence of significant harm to environmental objectives.

384 In the light of the foregoing, the fourth part of the third plea in law and the third part of the fourth plea in law are unfounded.

– Fourth part of the fourth plea in law: failure to take account of the risks associated with normal operation of nuclear power plants

385 The Republic of Austria states that, even in normal operation periods, nuclear power plants release radiation which, even in low doses, increases the risk of cancer and the effects of which, in any event, are not well documented and have not been examined in the reports relied on by the Commission. The Republic of Austria submits that this gives rise to an infringement of Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle.

386 The Commission disputes that line of argument.

387 In that regard, the Court finds that the JRC Report contains an in-depth analysis of the effects of radioactive releases in sections 3.4 and 4.3.

388 In particular, it is apparent from the JRC Report that the average annual exposure to a member of the public, due to effects attributable to nuclear energy-based electricity production, is about 0.2 microsievert (μSv), which is four orders of magnitude less than the average annual dose due to the natural background radiation.

389 The Republic of Austria has failed to demonstrate that the Commission's findings based on that report lack plausibility, inasmuch as it merely cites a study in order to allege that the effects of low-dose radiation are not well documented.

390 Moreover, as observed by the Commission, the Euratom *acquis* lays down strict requirements for radiation protection. Article 2(b) of the Euratom Treaty provides for the establishment of uniform safety standards to protect the health of workers and of the general public. Article 30 thereof defines 'basic standards' for the protection of the health of workers and the general public against the dangers arising from ionising radiations. In that context, Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (OJ 2014 L 13, p. 1) establishes uniform basic safety standards for the protection of the health of individuals subject to occupational, medical and public exposures against the dangers arising from ionising radiation.

391 The technical screening criteria established by the contested regulation concerning nuclear energy activities refer expressly to that directive.

392 Consequently, the Republic of Austria's assertions do not demonstrate that the Commission did not base its assessment of the risks of low-dose radiation in the course of normal operation of nuclear power plants on conclusive scientific evidence.

393 On those grounds, the fourth part of the fourth plea in law is unfounded.

– Fifth part of the third plea in law and fifth part of the fourth plea in law: undermining of the objective of climate change adaptation

394 In the fifth part of the third plea in law, the Republic of Austria submits that the contested regulation infringes the DNSH criterion in the light of the objective of climate change adaptation referred to in Article 17(1)(b) of the Taxonomy Regulation since, in essence, the frequency and duration of drought periods have increased substantially over the last 20 years due to climate change and it is acknowledged that the consequences of climate change have and will have an increasingly greater negative impact on nuclear energy.

395 In the fifth part of the fourth plea in law, the Republic of Austria submits, in essence, that the contested regulation infringes Article 17(1)(b) of the Taxonomy Regulation inasmuch as, first, the technical screening criteria are inadequate and do not rule out with certainty the specific risks associated with cooling water requirements and, secondly, they are not based on conclusive scientific evidence.

396 In particular, the Republic of Austria submits that the substantial water requirements of nuclear power plants lead to shortages during periods of heat waves or drought, which proves that the activity also exacerbates the current and anticipated negative climate impact on the activity itself, since continuity of operations is no longer guaranteed in such circumstances.

397 The Commission, supported by the French Republic, the Republic of Poland and Romania, disputes that line of argument.

398 In that regard, it should be borne in mind that, under Article 17(1)(b) of the Taxonomy Regulation, an activity is to be considered to significantly harm climate change adaptation where that activity leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets.

399 In order to prevent such harm, the contested regulation lays down, in Annexes I and II thereof, under the title 'Sustainable use and protection of water and marine resources', the technical screening criteria pertaining to the principle consisting in not causing significant harm to water and marine resources, according to which:

'Environmental degradation risks related to preserving water quality and avoiding water stress are identified and addressed, in accordance with a water use and protection management plan, developed in consultation with stakeholders concerned.

In order to limit thermal anomalies associated with the discharge of waste heat, operators of inland nuclear power plants utilising once-through wet cooling by taking water from a river or a lake control:

(a) the maximum temperature of the recipient freshwater body after mixing, and

(b) the maximum temperature difference between the discharged cooling water and the recipient freshwater body.

The temperature control is implemented in accordance with the individual licence conditions for the specific operations, where applicable, or threshold values in line with the Union law.

…’

400 The Republic of Austria does not dispute the suitability of those technical screening criteria for guaranteeing that activities in the nuclear energy sector do not lead to an increased adverse impact of the current climate and the expected future climate, on the activities themselves or on people, nature or assets within the meaning of Article 17(1)(b) of the Taxonomy Regulation and, in particular, do not increase the risk of drought. What it does state is that those criteria do not rule out with certainty the specific risks associated with cooling water requirements.

401 The Court finds that the Republic of Austria’s argument alleging, in essence, that nuclear energy loses some of its usefulness in a scenario of more frequent and severe droughts is too speculative to establish that the Commission made a manifest error of assessment. Although it may be considered that there is scientific consensus on the occurrence of such droughts, the extent of any impact of them on the very functioning of nuclear power plants in all of the geographical areas of the European Union is pure conjecture.

402 In those circumstances, the allegation that nuclear energy activities cause significant harm to the objective of climate change adaptation must be rejected.

403 Under Article 10(3)(a) of the Taxonomy Regulation, the purpose of the technical screening criteria is to determine the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation. As is apparent from Article 10(3)(b) of that regulation, an additional purpose of those criteria is to determine, for each relevant environmental objective, whether an economic activity in respect of which technical screening criteria have been established causes significant harm to one or more of those objectives.

404 Accordingly, compliance with Article 17(1)(b) of the Taxonomy Regulation cannot be assessed by leaving technical screening criteria adopted precisely in order to implement that provision out of the equation.

405 Consequently, the Republic of Austria’s arguments do not demonstrate that the contested regulation is vitiated by a manifest error of assessment as to the condition laid down in Article 17(1)(b) of the Taxonomy Regulation.

406 In the alternative, the Republic of Austria submits that the contested regulation is vitiated by lacunae in the analysis and an insufficient statement of reasons regarding the environmental objective of climate change adaptation, inasmuch as neither the Commission nor its experts have verified whether nuclear energy causes harm to that environmental objective.

407 However, as is apparent from recital 7 of the contested regulation, in which reference is made to the JRC Report and which thus forms part of the statement of reasons for the contested regulation as per the case-law cited in paragraph 216 above, the Commission did provide a statement of reasons to the requisite legal standard, to the effect that nuclear energy does not cause significant harm to the objectives pursued by Article 17(1) of the Taxonomy Regulation.

408 As regards the technical screening criteria, first of all, the Republic of Austria submits that the contested regulation infringes Article 19(1)(f) of the Taxonomy Regulation in the light of the environmental objective of climate change adaptation since, first, the extent to which the technical screening criteria in Annex I to the contested regulation are based on conclusive scientific evidence on nuclear energy is not readily apparent and, secondly and in any event, the available opinions on nuclear energy do not take a position on that question.

409 In that regard, the Court notes that, at page 357 of its report, in the line titled 'Climate change adaptation', the JRC stated the following:

'The activity complies with the criteria set out in Appendix E to this Annex.

1. Extension of the service time of existing nuclear power plants

Compliance with the WENRA Safety Reference Levels for Existing Reactors and [Directive 2009/71] ensures that the existing facility is able to cope with extreme natural hazards (such as floods and extreme weather conditions) potentially resulting from future climate change.

The resilience of the EU nuclear power plants against extreme natural hazards (including earthquakes) was demonstrated in the EU stress-tests exercise.

2. Construction and operation of new nuclear power plants

Fulfilling the WENRA Safety Objectives for New Nuclear Power Plants and compliance with [Directive 2009/71] guarantees that the new facility will be able to cope with extreme natural hazards (such as floods and extreme weather conditions) potentially resulting from future climate change.'

410 Appendix E, which is found at page 369 of the JRC Report, contains clarifications on climate risk and vulnerability assessment, including a list of climate risks.

411 It follows that the JRC carried out an assessment of the risks associated with climate change adaptation.

412 Accordingly, the argument to the effect that the extent to which the technical screening criteria in Annex I to the contested regulation are based on conclusive scientific evidence on nuclear energy pertaining to the climate change adaptation criterion is not readily apparent, and also the argument that the available opinions on nuclear energy do not take a position on that question, cannot succeed.

413 Next, the Republic of Austria criticises the fact that the technical screening criteria laid down in Annex I to the contested regulation are limited, for nuclear energy, for the purposes of preventing significant harm to the climate change adaptation objective, to referring to Appendix A to Annex I to Delegated Regulation 2021/2139, Directive 2009/71 and guidance of the IAEA and WENRA relating to extreme natural hazards. It is not possible, in those circumstances, to address properly, still less with certainty, the specific risks associated with cooling water requirements and use, which would have a significant adverse impact for nuclear energy within the meaning of Article 17(1)(b) of the Taxonomy Regulation.

414 Moreover, according to the Republic of Austria, Appendix A to Annex I to Delegated Regulation 2021/2139 contains a procedural obligation to carry out a climate risk and vulnerability assessment. In that regard, the Republic of Austria submits that, inasmuch as Appendix A also requires economic operators to develop and implement 'adaptation solutions', that obligation remains vague and, in any event, limited to a 'substantial reduction' in 'the most important … climate risks'. In its view, that makes it possible to mitigate the adverse impact of nuclear energy on the environmental objective of climate change adaptation, whereas it is necessary to rule out such significant adverse impact completely. The Republic of Austria submits that the criteria 'should' also ensure that 'adaptation solutions are implemented to minimise or avoid possible losses or impacts on business continuity', as stated in recital 51 of Delegated Regulation 2021/2139, and that the obligations laid down in Appendix A to that regulation are not sufficient, inter alia for taking account of the specific consequences of climate change.

415 In that regard, the Court notes that, as acknowledged by the Republic of Austria, those technical screening criteria allow for mitigation of the damage caused by nuclear energy to the environmental objective of climate change adaptation.

416 Moreover, the argument to the effect that it is necessary to rule out such significant damage entirely must be rejected in so far as it amounts to imposing zero risk on the Commission, contrary to the case-law (see, to that effect and by analogy, judgment of 11 September 2002, *Pfizer Animal Health* v *Council*, T-13/99, EU:T:2002:209, paragraphs 144 to 147).

417 The claim that the reference to Directive 2009/71, and also to the guidance of the IAEA and WENRA, does not rule out the possibility of adverse impact does not demonstrate that the contested regulation is vitiated by a manifest error of assessment, inasmuch as it is not sufficiently substantiated, as the Commission followed the approach provided for by Article 17 of the Taxonomy Regulation, as interpreted in the light of recital 40 of that regulation (see paragraphs 263 to 265 above). Similarly, for reasons similar to those set out in paragraph 401 above, the criticism relating to the alleged failure to take account of future cooling water requirements cannot succeed.

418 The Republic of Austria adds that, for existing installations, under the abovementioned provisions, safety improvements are prima facie required only in so far as they are considered reasonably feasible, which is vague and not sufficiently ambitious. In particular, location factors threatening the safety of installations do not preclude taxonomy eligibility, as those factors, such as the location of rivers threatened by drying up, cannot 'reasonably' be modified.

419 However, since that criterion of reasonably practicable improvement used in point 2 of section 4.28 of Annex I to the contested regulation is required by Directive 2009/71 for existing installations, its use in the contested regulation does not establish a manifest error of assessment by the Commission, for reasons similar to those set out in paragraphs 263 to 265 above.

420 Lastly, the Republic of Austria states that the implementation of adaptation solutions and improvements to safety standards do not establish that there is no adverse impact within the meaning of Article 17(1)(b) of the Taxonomy Regulation. The environmental objective of climate change adaptation is not limited to ensuring safety for humans and nature, but also covers other subordinate objectives, such as accessibility to and stability of supply of energy and water. According to the Republic of Austria, those objectives are seriously called into question when

nuclear power plants are stopped in the event of heat wave or drought, the authorised temperature of the injected cooling water is raised or costly adaptation solutions must be implemented, assuming they are even possible.

421 However, as already discussed above in paragraph 401, the Court finds that the scenario envisaged by the Republic of Austria, alleging, in essence, that global warming has such effects on nuclear power plants that they lose their usefulness as a source of energy, is too speculative in nature to establish that the Commission made a manifest error of assessment.

422 In that regard, the fact that the Commission's analysis is disputed in the scientific literature does not suffice by itself to call that finding into question, given that, as per the case-law cited in paragraph 212 above, the Commission has broad discretion in the assessment of scientific studies and in the choice of which studies are to prevail over others.

423 In the light of the foregoing, the Republic of Austria's arguments do not establish that the contested regulation fails to observe the DNSH criterion in the light of the objective of climate change adaptation referred to in Article 17(1)(b) of the Taxonomy Regulation.

424 The fifth part of the third plea in law and the fifth part of the fourth plea in law must accordingly be rejected.

– Sixth part of the third plea in law: non-compliance with the requirement of a life-cycle assessment

425 According to the Republic of Austria, supported by the Grand Duchy of Luxembourg, the contested regulation infringes Article 17(2) and Article 19(1)(g) of the Taxonomy Regulation, inasmuch as it is, in essence, based on an assessment that fails to take sufficient account of the entire life-cycle of nuclear energy, namely the mining and processing of uranium ore, refining, conversion, uranium enrichment, fuel assembly, transport and potential armed conflicts.

426 In particular, the Republic of Austria states that the Commission expressly omitted the mining and processing of uranium in the contested regulation following criticisms from the SCHEER, whose life-cycle assessment finding that compliance with environmental standards corresponding at least in essential respects with those of the European Union cannot be guaranteed for those activities it thereby endorsed. In that regard, the Republic of Austria submits that the JRC Report had also found that there was at least a high risk of significant harm to a number of environmental objectives, whilst taking the view that that risk should be excluded by a reference to the requirements of EU law in the technical screening criteria. Since the Commission did not follow that JRC opinion, the Republic of Austria considers that it thereby implicitly acknowledged in the contested regulation that there was significant harm to environmental objectives at the stage of mining and processing of uranium and, therefore, that the contested regulation is vitiated by a manifest error of assessment.

427 The Commission, supported by the French Republic, Hungary, the Republic of Poland and Romania, disputes that line of argument.

428 In that regard, it should be borne in mind that, under Article 17(2) of the Taxonomy Regulation, in the assessment of an economic activity in the light of the DNSH criterion, both the environmental impact of the activity itself and the environmental impact of the products and services provided by that activity throughout their life cycle are to be taken into account, in particular by considering the production, use and end of life of those products and services.

429 Under Article 19(1)(g) of the Taxonomy Regulation, the technical screening criteria are to take into account the life cycle, including evidence from existing life-cycle assessments, by considering both the environmental impact of the economic activity itself and the environmental impact of the products and services provided by that economic activity, in particular by considering the production, use and end of life of those products and services.

430 It should also be noted that, according to recital 40 of the Taxonomy Regulation, 'when establishing and updating the technical screening criteria, the Commission should ensure that those criteria are based on available scientific evidence, are developed by taking into account life-cycle considerations, including existing life-cycle assessments, and are updated regularly.'

431 Moreover, recital 47 of the Taxonomy Regulation states that 'technical screening criteria could require carrying out a life-cycle assessment where sufficiently practicable and where necessary.'

432 Thus, both Article 17(2) and Article 19(1)(g) of the Taxonomy Regulation refer specifically to a given economic activity – as well as the products and services resulting from that activity – for which technical screening criteria are to be established.

433 Moreover, Article 17(2) and Article 19(1)(g) of the Taxonomy Regulation do not require the Commission to conduct a life-cycle assessment of all economic activities; it requires only that the life cycle be taken into consideration.

434 Thus, as observed by the Commission, it is apparent from the wording of Article 17(2) and Article 19(1)(g) of the Taxonomy Regulation that the requirement to take the life cycle of an activity into account does not necessarily extend to activities situated upstream or downstream from the economic activity in question.

435 That interpretation is not called into question by the fact that, according to Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ 2013 L 124, p. 1), referred to in the contested regulation, all activities from the extraction of raw materials through the processing, distribution, storage and use stages, to disposal or recycling, should be taken into account in the calculation of the environmental footprint.

436 That recommendation does not aim to assess the contribution of an activity to climate change mitigation or potential harm caused by that activity to the environmental objectives defined in the Taxonomy Regulation.

437 It should also be noted that the approach taken by the Commission in the contested regulation is not specific to nuclear energy, but was used for other activities included in the taxonomy, including renewable energy electricity generation facilities also involving the extraction of raw materials or rare earth metals for their construction and maintenance.

438 Consequently, the Commission did not infringe Article 17(2) and Article 19(1)(g) of the Taxonomy Regulation in not taking into account, at the time it established the technical screening criteria, considerations relating to the life cycle of economic activities such as extraction and processing of uranium ore, uranium refining, conversion and enrichment, and fuel assembly and transport, which are activities situated upstream or downstream from activities in the nuclear energy sector referred to in the contested regulation.

439 It should also be noted that the impact of decommissioning and disposal of radioactive waste and spent nuclear fuel was taken into account by the Commission in its assessment of the DNSH criterion, as is apparent from recitals 3 and 7 of the contested regulation.

440 In those circumstances, the fact, as claimed by the Republic of Austria, that, first, the Commission did not include those activities in the taxonomy following the SCHEER and JRC Reports; secondly, fuel processing, conversion, enrichment and assembly are essentially carried out by third countries; or even, thirdly, the Commission implicitly acknowledged the harm caused to the environment by those activities, does not per se demonstrate that the contested regulation is vitiated by a manifest error of assessment.

441 Articles 17 and 19 of the Taxonomy Regulation, in so far as they refer to given activities which it is for the Commission to define, do not prevent it from considering the activities identified by the Republic of Austria as autonomous from nuclear energy generation activities covered by the contested regulation.

442 Moreover, contrary to the Republic of Austria's claims, the Commission was not required to take into account, in the analysis of the life cycle of use of civilian nuclear energy, aspects relating to the effects of armed conflicts, sabotage and risk of abuse and proliferation of civilian and military applications of nuclear energy in its assessment of significant harm caused to environmental objectives.

443 There is nothing in Article 17 of the Taxonomy Regulation, or any other provisions of that regulation, to suggest that those factors should be taken into account for the purpose of establishing technical screening criteria.

444 Lastly, the Republic of Austria claims that the contested regulation is vitiated by 'lacunae in the analysis and statement of reasons' relating to all aspects of taking the life cycle of nuclear energy into account.

445 However, as the Commission was not required to take into account the life cycle of activities situated upstream or downstream from economic activities in the nuclear energy sector, it cannot be criticised for having failed to provide a sufficient statement of reasons for those factors, which it found did not form part of the life cycle of those activities.

446 The sixth part of the third plea in law is therefore unfounded.

– Sixth part of the fourth plea in law: contradictory and insufficient nature of the provisions of Annex II to the contested regulation relating to the prevention of significant harm resulting from serious reactor accidents and final disposal of high-level radioactive waste

447 The Republic of Austria submits that the provisions of Annex II to the contested regulation relating to the prevention of significant harm resulting from serious reactor accidents and final disposal of high-level radioactive waste are contradictory and insufficient in the light of the DNSH criteria laid down in Annex I to the contested regulation. Annex II to the contested regulation contains as criteria aimed at preventing significant harm to environmental objectives only those laid down in Annex I to the contested regulation under the title 'Additional criteria pertaining to Do no significant harm ("DNSH")'. The Republic of Austria refers in that regard to the arguments put forward under the first part of the third plea, the first part of the fourth plea, the third part of the third plea, the second part of the fourth plea, the fourth part of the third plea

and the third part of the fourth plea, which address protection levels and risks of serious reactor accidents and final disposal of high-level radioactive waste. It infers therefrom that the abovementioned illegalities vitiate the provisions of Annex II to the contested regulation and also the provisions of that regulation referring thereto, inasmuch as they coincide with Annex I to the contested regulation.

448 The Republic of Austria adds that Annex II to the contested regulation does not contain any of the criteria listed in the 'general criteria' at the start of Annex I to that regulation. Thus, the few criteria that go beyond the legal requirements in force and are still contained in Annex I to that regulation are not even applicable according to Annex II to the contested regulation.

449 The Republic of Austria adds that the provisions of Annex II to the contested regulation infringe Article 19(1)(f) of the Taxonomy Regulation and the precautionary principle solely because that annex does not contain 'general criteria', whereas such general criteria were considered necessary and were included in Annex I to the contested regulation.

450 The Commission disputes that line of argument.

451 As the Republic of Austria has failed to demonstrate that the additional criteria relating to the DNSH criterion for protection levels (paragraphs 261 to 269 above) and also the risks of serious reactor accidents (paragraphs 288 to 346 above) and final disposal of high-level radioactive waste (paragraphs 350 to 384 above) were vitiated by a manifest error of assessment, that argument is not such as to demonstrate, in the absence of additional explanation, that the provisions in Annex II to the contested regulation are contradictory and insufficient.

452 Moreover, it should be borne in mind that Annex I to the contested regulation establishes, in accordance with Article 10 of the Taxonomy Regulation, the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation and whether the economic activity causes significant harm to any of the other environmental objectives set out in Article 9 of the Taxonomy Regulation.

453 Annex II to the contested regulation, for its part, establishes, on the basis of Article 11 of the Taxonomy Regulation, the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change adaptation and whether the economic activity causes significant harm to any of the other environmental objectives set out in Article 9 of the Taxonomy Regulation.

454 Article 11(1) of the Taxonomy Regulation, which is implemented by the technical screening criteria laid down in Annex II to the contested regulation, does not apply the criterion of best performance in the sector or industry laid down in Article 10(2)(a) of the Taxonomy Regulation.

455 Thus, for the purpose of qualifying as contributing substantially to climate change adaptation and, unlike the categorisation as contributing substantially to climate change mitigation laid down in Annex I to the contested regulation, the Commission did not require compliance with a more stringent condition for disposal facilities.

456 It follows that the discrepancies between Annex I and Annex II to the contested regulation relied on by the Republic of Austria do not by themselves demonstrate that there was a manifest error of assessment or an infringement of Article 19(1)(f) of the Taxonomy Regulation. Lastly, since the discrepancies result from Article 10(2)(a) and Article 11(1) of the Taxonomy Regulation, nor do they demonstrate that there was an insufficient statement of reasons.

457 In the light of the foregoing, the sixth part of the fourth plea in law is unfounded.

– Seventh part of the fourth plea: in the alternative, 'lacunae in the analysis and statement of reasons'

458 The Republic of Austria submits, in the alternative, that there are 'lacunae in the analysis and statement of reasons' in respect of the technical screening criteria for, inter alia, serious reactor accidents, final disposal of high-level radioactive waste, the environmental objective of climate change adaptation and the general criteria for the DNSH criterion, laid down in Annex II to the contested regulation, referring to the arguments put forward under the other parts of the fourth plea.

459 The Commission, supported by the Republic of Bulgaria, disputes that line of argument.

460 Since the complaints alleging 'lacunae in the analysis and statement of reasons' in respect of serious reactor accidents, final disposal of high-level radioactive waste, the environmental objective of climate change adaptation and the general criteria for the DNSH criterion, laid down in Annex II to the contested regulation, have been rejected in paragraphs 325, 365 and 407 above respectively, the seventh part of the fourth plea must also be rejected, on the same grounds.

461 In the light of the foregoing, the Republic of Austria's arguments do not demonstrate that, by including economic activities in the nuclear energy sector in the transitional activities and by establishing technical screening criteria for those activities, the contested regulation disregarded the DNSH criterion, as laid down in Article 17 and Article 19(1)(f) and (g) of the Taxonomy Regulation or the precautionary principle.

462 As a result, the third and fourth pleas in law must be rejected.

Fifth plea in law: infringement of Article 11 and Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle

463 The Republic of Austria submits that, in so far as the contested regulation categorises economic activities in the nuclear energy sector as activities contributing substantially to climate change adaptation, it infringes Article 11 and Article 19(1)(f) of the Taxonomy Regulation and the precautionary principle.

464 The Commission, supported by the Republic of Bulgaria and Romania, disputes that line of argument.

465 In that regard, it should be borne in mind that Article 11 of the Taxonomy Regulation provides as follows:

'1. An economic activity shall qualify as contributing substantially to climate change adaptation where that activity:

(a) includes adaptation solutions that either substantially reduce the risk of the adverse impact of the current climate and the expected future climate on that economic activity or substantially reduce that adverse impact, without increasing the risk of an adverse impact on people, nature or assets; or

(b) provides adaptation solutions that, in addition to satisfying the conditions set out in Article 16, contribute substantially to preventing or reducing the risk of the adverse impact of the current climate and the expected future climate on people, nature or assets, without increasing the risk of an adverse impact on other people, nature or assets.

2. The adaptation solutions referred to in point (a) of paragraph 1 shall be assessed and ranked in order of priority using the best available climate projections and shall, at a minimum, prevent or reduce:

(a) the location-specific and context-specific adverse impact of climate change on the economic activity; or

(b) the potential adverse impact of climate change on the environment within which the economic activity takes place.

…'

466 Moreover, Article 19(1)(f) of the Taxonomy Regulation requires the technical screening criteria to be based on conclusive scientific evidence and the precautionary principle.

467 It should also be noted that, under the heading 'Substantial contribution to climate change adaptation' in Annex II to the contested regulation for activities coming under sections 4.26 to 4.28, it is stated, in essence, that the economic activities concerned must have implemented physical and non-physical solutions ('adaptation solutions') that substantially reduce the most important physical climate risks that are material to that activity. It is further stated that the physical climate risks that are material to the activities in question have been identified from those listed in Appendix A to Annex II to Delegated Regulation 2021/2139, in which sections 4.26 to 4.31 were inserted by the contested regulation, by performing a robust climate risk and vulnerability assessment.

468 First, according to the Republic of Austria, since economic activities in the nuclear energy sector for the purposes of the contested regulation have an adverse impact on the environmental objective of climate change adaptation within the meaning of Article 17(1)(b) of the Taxonomy Regulation, they cannot make a substantial contribution to the environmental objective of climate change adaptation. The Republic of Austria refers in that regard to the arguments put forward by it in the fifth part of the third plea and the fifth part of the fourth plea.

469 However, inasmuch as the Republic of Austria's arguments, in the fifth part of the third plea and the fifth part of the fourth plea, did not demonstrate that the Commission made a manifest error of assessment of the DNSH criterion as regards climate change adaptation, a reiteration of those arguments under the present plea does not by itself demonstrate that the Commission made a manifest error of assessment in finding that economic activities in the nuclear energy sector made a substantial contribution to the objective of climate change adaptation.

470 Secondly, the Republic of Austria submits that the finding that economic activities in the nuclear energy sector do not make a substantial contribution to climate change adaptation cannot be called into question by the wording in Annex II to the contested regulation under the heading 'Substantial contribution to climate change adaptation'. The term 'includes' in Article 11(1) of the Taxonomy Regulation requires a 'substantial' contribution to climate change adaptation, with the result that not just any kind of adaptation measure can be accepted. Moreover, the requirement concerns a substantial contribution, that is to say, substantial physical adaptation measures which must form an integral part of the economic activity per se. Yet such measures are not defined in Annex II to the contested regulation, since the criteria laid down in said Annex II largely coincide with those of Annex I to the same regulation and are essentially procedural in nature. According to the Republic of Austria, due to the imprecise wording, it is not possible to determine whether and to what extent they result in physical adaptation measures.

471 As is apparent from paragraph 467 above, point 1 of the various technical screening criteria, under the heading 'Substantial contribution to climate change adaptation' in Annex II to the contested regulation, for activities coming under sections 4.26 to 4.28, requires the implementation of physical and non-physical solutions that substantially reduce the most important physical climate risks that are material to that activity. As stated in point 2 under that heading, the physical climate risks that are material to the activity concerned were identified from among those listed in Appendix A to Annex II to Delegated Regulation 2021/2139, by performing a climate risk and vulnerability assessment carried out in accordance with the stages detailed in point 2. Points 5 and 6 under that heading refer to the relevant Euratom *acquis*.

472 The Republic of Austria's argument alleging a lack of physical solution and the procedural and vague nature of the requirements laid down in Annex II to the contested regulation must accordingly be rejected.

473 Thirdly, the Republic of Austria states that the technical screening criteria laid down in Annex II to the contested regulation do not address the effects of heat and cold waves on reactor safety or energy supply, which are essential to that safety. It adds that nor is there any reference to specific climate-related problems posed by nuclear energy alone and induced by the anticipated increase in conflicts of interest liable to arise in the area of water use between energy supply and water protection or in the sphere of energy safety.

474 In that regard, as is apparent from paragraph 467 above, Annex II to the contested regulation refers to Appendix A to Annex II to Delegated Regulation 2021/2139. That appendix contains a classification of climate-related hazards which includes, inter alia, heat waves, cold waves and, in water-related hazards, water stress. Moreover, for reasons similar to those set out in paragraph 401 above, the allegation of failure to take account of future specific climate-related problems posed by nuclear energy is too speculative to succeed.

475 The argument alleging that the technical screening criteria in question do not address those climate-related risks must accordingly be rejected.

476 Fourthly, the Republic of Austria submits that the first sentence of Article 19(1) of the Taxonomy Regulation, read in conjunction with Article 11(3) thereof, also requires the application of the criterion laid down in Article 19(1)(f) of that regulation and the precautionary principle to the technical screening criteria aimed at ensuring compliance with the conditions laid down in Article 11(1) of that regulation. It states that the Commission did not obtain expert advice on the question whether and to what extent economic activities in the nuclear energy sector may make a substantial contribution to climate change adaptation. In particular, in dealing with the anticipated effects of climate change in the form of increasing drought, drying up of water courses and increases in water temperature, no discussion took place about the specific safety risks and potential conflicts of interest to which water use will be exposed by the pursuit of economic activities in the nuclear energy sector (in the three regulated economic sectors). The Republic of Austria infers therefrom, first, that failure to obtain relevant expert advice precludes the technical screening criteria from being based in that regard on conclusive scientific evidence and, secondly, that the precautionary principle could not be taken into consideration, given that its application presupposes complete, precise and definitive findings and that, by definition, it also applies to such scientific uncertainties associated with those findings.

477 However, contrary to the Republic of Austria's assertions, the JRC analysed the question of the contribution of economic activities in the nuclear energy sector to climate change adaptation at page 357 of its report. It cannot therefore be argued that the Commission failed to obtain expert advice on the question whether and to what extent nuclear energy may make a substantial contribution to climate change adaptation. Moreover, at page 358 of the JRC Report, it is stated, in respect of the sustainable use and the protection of water and marine resources, that environmental degradation risks related to preserving water quality and avoiding water stress are identified and addressed, in accordance with a water use and protection management plan, developed in consultation with relevant stakeholders. Reference is also made to Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

478 Thus, contrary to the Republic of Austria's assertions, the Court does not find that the technical screening criteria are not based in that regard on conclusive scientific evidence and that account could not be taken of the precautionary principle.

479 In the light of the foregoing, the Republic of Austria's arguments do not demonstrate that the contested regulation was adopted contrary to Article 11 and Article 19(1)(f) of the Taxonomy Regulation and the precautionary principle, inasmuch as it categorises nuclear energy as contributing substantially to climate change adaptation.

480 The fifth plea in law must therefore be rejected.

Sixth plea in law: infringement of Article 19(1)(k) of the Taxonomy Regulation

481 The Republic of Austria submits that the technical screening criteria do not meet the requirements of Article 19(1)(k) of the Taxonomy Regulation because they are based on imprecise legal concepts and conditions the performance of which can be ensured only in future, such as final disposal planning and use of ATFs as from 2025.

482 The Commission, supported by the Republic of Bulgaria and Romania, disputes that line of argument.

483 It should be noted that, under Article 19(1)(k) of the Taxonomy Regulation, technical screening criteria established under Article 10(3) and Article 11(3) of that regulation are to be easy to use and set in a manner that facilitates the verification of their compliance.

484 The Court finds that the fact that the technical screening criteria are based on imprecise legal concepts and conditions to be complied with in future does not, by itself, demonstrate that they are not easy to use or are set in a manner that facilitates the verification of their compliance within the meaning of Article 19(1)(k) of the Taxonomy Regulation. In any event, no requirement precludes an EU institution from having recourse, in a norm that it adopts, to an abstract legal notion, or requires that such an abstract norm refer to the various specific hypotheses in which it applies, given that all those hypotheses could not be determined in advance by that institution (see, to that effect, judgment of 16 February 2022, *Poland* v *Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 320).

485 Moreover, inasmuch as, by its line of argument, the Republic of Austria seeks to allege breach of the principle of legal certainty, suffice it to recall that a provision of an EU legal instrument infringes the principle of legal certainty due to a lack of clarity only where it displays such ambiguity as to prevent individuals from resolving with sufficient certainty any doubts as to the scope or meaning of that provision (judgment of 24 January 2024, *Volkskreditbank* v *SRB*, T-348/21, not published, EU:T:2024:32, paragraph 70).

486 In the present case, the Republic of Austria has not demonstrated that the technical screening criteria display such ambiguity as to prevent individuals from resolving with sufficient certainty any doubts as to the scope or meaning of those criteria.

487 On those grounds, the sixth plea in law is rejected.

Seventh plea in law: infringement of the purpose and practical effect of the Taxonomy Regulation due to the risk of fragmentation of the market

488 The Republic of Austria, supported by the Grand Duchy of Luxembourg, submits that the categorisation of economic activities in the nuclear energy sector as sustainable carries the general risk of fragmentation of the market, contrary to the purpose of the Taxonomy Regulation and the obligation to safeguard the practical effect thereof.

489 According to the Republic of Austria, the specific publication obligations regarding investments, inter alia, in nuclear energy production activities, give rise to a differentiation between ‘better’ and ‘less good’ environmental sustainability, contrary to the spirit and objective of the Taxonomy Regulation, which is aimed at ensuring transparency by establishing uniform EU-wide criteria for environmentally sustainable activities.

490 That objective is called into question by the classification of economic activities in the nuclear energy sector as sustainable because, since the Commission announced its intention to categorise those activities as sustainable, the very fragmentation the EU legislature sought to avoid is emerging on the market. The Republic of Austria states that investors are engaging in targeted advertising of ‘green’, ‘non-nuclear’ financial products, that institutional investors have already stated that they do not wish to invest in financial products involving nuclear energy aspects or have adopted positions to that effect, and that most national sustainable finance labels in Europe explicitly exclude activities in the nuclear energy sector from eligibility for their criteria.

491 The Commission, supported by the Republic of Bulgaria, the French Republic and Romania, disputes that line of argument.

492 It should be borne in mind that, according to recital 14 of the Taxonomy Regulation, in order to avoid market fragmentation and harm to the interests of consumers and investors as a result of diverging notions of environmentally sustainable economic activities, national requirements that financial market participants or issuers have to comply with in order to market financial products or corporate bonds as environmentally sustainable should build on the uniform criteria for environmentally sustainable economic activities.

493 First, the Court notes that the Taxonomy Regulation is aimed at defining conditions allowing for certain economic activities to be deemed to be environmentally sustainable, in particular in Article 10(1) and (2) of that regulation, and that, consequently, in categorising certain economic activities in the nuclear energy sector as sustainable under Article 10(2), the Commission failed to differentiate between economic activities.

494 Secondly, the Republic of Austria's argument to the effect that the classification of economic activities in the nuclear energy sector in the transitional activities category had the effect on the market of a loss of certain operators, or a fragmentation due to the development of 'non-nuclear' sustainable financial products or investment, does not mean the contested regulation is vitiated by illegality.

495 The legality of an EU act is not contingent on how effective it is, alleged conduct by the economic and institutional operators concerned, or the manner in which the act is applied in practice (see, to that effect, judgments of 25 June 1998, *British Airways and Others* v *Commission*, T-371/94 and T-394/94, EU:T:1998:140, paragraph 291 and the case-law cited, and of 29 November 2006, *Campoli* v *Commission*, T-135/05, EU:T:2006:366, paragraph 124 and the case-law cited).

496 On those grounds, the seventh plea in law must also be rejected.

Tenth to sixteenth pleas in law: economic activities in the fossil gas sector

497 The contested regulation defines three types of activities for the fossil gas sector:

– electricity generation from fossil gaseous fuels (new sections 4.29 in Annexes I and II to Delegated Regulation 2021/2139, inserted in those annexes by the contested regulation);

– high-efficiency co-generation of heat/cool and power from fossil gaseous fuels (new sections 4.30 in Annexes I and II to Delegated Regulation 2021/2139, inserted in those annexes by the contested regulation);

– production of heat/cool from fossil gaseous fuels in an efficient district heating and cooling system (new sections 4.31 in Annexes I and II to Delegated Regulation 2021/2139, inserted in those annexes by the contested regulation) (together, 'economic activities in the fossil gas sector').

498 For each of those activities, Annex I to the contested regulation establishes the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation and whether the economic activity causes significant harm to any of the other environmental objectives set out in Article 9 of the Taxonomy

Regulation. Annex II to the contested regulation, for its part, establishes the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change adaptation and whether the economic activity causes significant harm to any of the other environmental objectives set out in Article 9 of the Taxonomy Regulation.

Tenth plea in law: infringement of Article 10(2) and Article 19(1)(f) and (g) of the Taxonomy Regulation and of the precautionary principle

499 The Republic of Austria, supported by the Grand Duchy of Luxembourg, submits, in essence, that the contested regulation infringes Article 10(2) and Article 19(1)(f) and (g) of the Taxonomy Regulation and the precautionary principle inasmuch as it provides, for economic activities in the fossil gas sector, for thresholds of 270 g CO_2e/kWh and 550 kg CO_2e/kW as an annual average over 20 years.

500 The Republic of Austria submits that economic activities in the fossil gas sector do not make a substantial contribution to climate change mitigation, at least in so far as they are authorised for above the threshold limit of 100 g CO_2e/kWh, even under the threshold limits of 270 g CO_2e/kWh and 550 kg CO_2e/kW.

501 The Commission, supported by Hungary, the Republic of Poland and Romania, disputes that line of argument.

502 This plea in law is divided into eight parts: (i) the existence of low-carbon alternatives; (ii) the absence of contribution to a carbon-neutral economy in accordance with the 1.5 °C objective; (iii) non-compliance with the requirement of a life-cycle assessment; (iv) delays in the best sector or industry performance; (v) impediment to low-carbon alternatives; (vi) disregard of the prohibition of lock-in effects; (vii) infringement of Article 19(1)(g) of the Taxonomy Regulation; and, in the alternative, (viii) infringement of Article 19(1)(f) of that regulation and of the precautionary principle and 'lacunae in the analysis and statement of reasons'.

– *First part of the tenth plea in law: the existence of low-carbon alternatives*

503 The Republic of Austria submits that the condition requiring that there not be a low-carbon alternative is not satisfied because renewable energy, intelligent networks and energy disposal and consumption reduction techniques are all low-carbon alternatives that are substitutable for economic activities in the fossil gas sector.

504 The Republic of Austria adds that, in finding that low-carbon alternatives 'may not yet be commercially available', as stated in recitals 4 and 6 of the contested regulation, the Commission bases that regulation on an 'extension' of Article 10(2) of the Taxonomy Regulation which is incompatible with the wording, overall scheme and purpose of that provision, for the reasons put forward in support of the second plea in law.

505 The Republic of Austria further submits that the requirement to the effect that, in essence, the power and/or heat/cool to be replaced cannot be generated from renewable energy sources, based on a comparative assessment with the most cost-effective and technically feasible renewable alternative for the same capacity, laid down in point 1(b)(ii) of section 4.29 and point 1(b)(iii) of sections 4.30 and 4.31 of Annex I to the contested regulation, amounts to an

unlawful extension of the scope of Article 10(2) of the Taxonomy Regulation. It submits that the latter provision requires a comparison to be made not only with 'the most cost-effective' alternative, but also with all 'economically feasible' alternatives, and that that provision precludes a categorisation as environmentally sustainable not only where 'the same capacity' may be attained with alternative sources, but also as soon as they exist.

506 The Commission, supported by Hungary, the Republic of Poland and Romania, disputes that line of argument.

507 It should be borne in mind, first, that it is, in essence, apparent from recital 4 of the contested regulation that the Commission found that the green transition required significant reductions in GHG emissions in sectors where low-carbon alternatives are not feasible inasmuch as they do not make it possible to guarantee necessary energy supply.

508 To that end, the Commission found, in essence, that it was necessary to establish technical screening criteria for economic activities in the fossil gas sector when GHG emissions generated by those activities remain below an appropriate threshold, but also when those types of production do not yet comply with that appropriate threshold.

509 The Commission also found that provision should be made for an approach other than direct limitation of GHG emissions. Under that approach, which should deliver similar results over a 20-year period, facilities may achieve such results by limiting the number of hours of operation or by advancing the date of their transition to renewable or low-carbon gases. In addition, the technical screening criteria for the use of fossil gas should also ensure that robust evidence is available to demonstrate that the same capacity cannot be generated from renewable sources, and that effective plans are put in place for each facility, in line with the best performance in the sector, with a view to switching entirely to renewable or low-carbon gases by a specific date.

510 Secondly, as is apparent from paragraphs 164 to 169 above, the condition requiring that there be no technologically and economically feasible low-carbon alternative, laid down in Article 10(2) of the Taxonomy Regulation, involves taking into account the aspects relating to security of supply.

511 Thirdly, it follows that the argument that Article 10(2) of the Taxonomy Regulation precludes a categorisation as environmentally sustainable not only where 'the same capacity' may be attained with alternative sources, but also as soon as they exist, must be rejected.

512 As is apparent from paragraphs 164 to 169 above, the condition laid down in Article 10(2) of the Taxonomy Regulation, requiring that there be no technologically and economically feasible low-carbon alternative, involves taking into account the aspects relating to security of supply. Yet the interpretation advocated by the Republic of Austria disregards the imperative of security of supply.

513 Fourthly, contrary to the Republic of Austria's assertions, the requirement to the effect that the energy to be replaced may not be generated from renewable energy sources, based on a comparative assessment with the most cost-effective and technically feasible renewable alternative for the same capacity, laid down in point 1(b)(ii) of section 4.29 and point 1(b)(iii) of sections 4.30 and 4.31 of Annex I to the contested regulation, does not entail an unlawful extension of the scope of Article 10(2) of the Taxonomy Regulation in order to include in that provision the imperative of security of supply.

514 In fact, that requirement is also aimed at ensuring the imperative of security of supply, consistently with the interpretation apparent from paragraphs 164 to 169 above, whilst also ensuring that there is evidence clearly demonstrating that the same capacity cannot be generated from renewable sources, in accordance with the Commission's approach described in paragraph 509 above. Thus it does not entail an extension of the scope of Article 10(2) of the Taxonomy Regulation.

515 Fifthly, it should be noted that, according to the Commission's models, relying on the impact analysis accompanying its Communication COM(2020) 562 final of 17 September 2020, entitled 'Stepping up Europe's 2030 climate ambition – Investing in a climate-neutral future for the benefit of our people', gas-fired electric power plants were necessary as transitional and reserve capacity in current technological and market conditions, inasmuch as the European Union will require new gas capacity of between 23 and 31 gigawatts (GW) in the period from 2020 to 2030.

516 The Republic of Austria's assertions, which are based on Platform statements, do not demonstrate that the Commission made a manifest error of assessment in finding that low-carbon alternatives may not yet be commercially available and do not guarantee security of supply.

517 The mere statement that viable alternatives based on renewable energy exist does not suffice to undermine the Commission's assessment.

518 Therefore, the Republic of Austria's arguments do not demonstrate that the condition requiring there not be a low-carbon alternative, laid down in Article 10(2) of the Taxonomy Regulation, is not satisfied.

519 On those grounds, the first part of the tenth plea in law is unfounded.

– *Second part of the tenth plea in law: the absence of contribution to a carbon-neutral economy in accordance with the 1.5 °C objective*

520 The Republic of Austria submits, in essence, that the threshold limits of 270 g CO_2e/kWh and 550 kg CO_2e/kW, used in Annex I to the contested regulation, are not compatible with the 1.5 °C objective fixed by the Paris Agreement and the corresponding subobjectives of the European Union for 2030 and 2050, and that the other technical screening criteria do not make it possible to contribute to climate change mitigation.

521 The Commission, supported by Romania and the Republic of Poland, disputes that line of argument.

522 It should be borne in mind that Article 10(2) of the Taxonomy Regulation requires that the economic activity in question, inter alia, supports the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1.5 °C above pre-industrial levels, including by phasing out GHG emissions, in particular emissions from solid fossil fuels.

523 It also follows from recital 41 of the Taxonomy Regulation that activities coming within Article 10(2) of that regulation must, on a credible trajectory, support the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1.5 °C above pre-industrial levels, including by phasing out GHG emissions.

524 Thus, Article 10(2) of the Taxonomy Regulation requires the Commission to ensure that an economic activity coming within the scope of that provision supports the transition to a climate-neutral economy and aims to limit the temperature increase to 1.5 °C above pre-industrial levels, including by phasing out GHG emissions.

525 It follows from Article 10(2) of the Taxonomy Regulation that the Commission's assessments would lack plausibility and be vitiated by a manifest error of assessment if the Republic of Austria were to demonstrate that, contrary to what the Commission found, in essence, in the contested regulation, the technical screening criteria are not suitable for phasing out or gradually reducing GHG emissions.

526 In that regard, for electricity generation from fossil gaseous fuels (section 4.29 of Annex I to the contested regulation), under the technical screening criterion relating to the substantial contribution to climate change mitigation, point 1(b) of section 4.29 of Annex I to the contested regulation provides as follows:

'facilities for which the construction permit is granted by 31 December 2030 comply with all of the following:

(i) direct GHG emissions [from] the activity are lower than 270 g CO_2e/kWh of the output energy, or annual direct GHG emissions [from] the activity do not exceed an average of 550 kgCO_2e/kW of the facility's capacity over 20 years;

(ii) the power to be replaced cannot be generated from renewable energy sources, based on a comparative assessment with the most cost-effective and technically feasible renewable alternative for the same capacity identified; the result of this comparative assessment is published and is subject to a stakeholder consultation;

(iii) the activity replaces an existing high emitting electricity generation activity that uses solid or liquid fossil fuels;

(iv) the newly installed production capacity does not exceed the capacity of the replaced facility by more than 15%;

(v) the facility is designed and constructed to use renewable and/or low-carbon gaseous fuels and the switch to full use of renewable and/or low-carbon gaseous fuels takes place by 31 December 2035, with a commitment and verifiable plan approved by the management body of the undertaking;

(vi) the replacement leads to a reduction in emissions of at least 55% GHG over the lifetime of the newly installed production capacity;

(vii) where the activity takes place on the territory of a Member State in which coal is used for energy generation, that Member State has committed to phase-out the use of energy generation from coal …'.

527 The threshold limit of 270 g CO_2e/kWh of the output energy is also used in the technical screening criteria for high-efficiency co-generation of heat/cool and power from fossil gaseous fuels (section 4.30 of Annex I to the contested regulation) and the production of heat/cool from fossil gaseous fuels in an efficient district heating and cooling system (section 4.31 of Annex I to the contested regulation).

528 In the first place, the Republic of Austria states that the TEG takes the view that the threshold limit of 100 g CO_2e/kWh frames scientifically the compliance with the condition consisting in supporting the transition to a climate-neutral economy and that it should be lowered every five years, whilst observing that the TEG also stated that that threshold could not be adhered to by traditional gas-fired power plants, but only by those using carbon capture and storage technology. It adds that the Platform considered that the threshold limits of 270 g CO_2e/kWh and 550 kg CO_2e/kW were not compatible with the climate objectives of the European Union and the Paris Agreement, and that the Commission considered that limit of 100 g CO_2e/kWh to be decisive, in particular for the other activities deemed to contribute substantially to climate change mitigation in Delegated Regulation 2021/2139 and for nuclear energy.

529 First, the Court notes that, in the TEG Final Report, the following was stated concerning the threshold limit of 100 g CO_2e/kWh:

‘An overarching, technology-agnostic emissions intensity threshold of 100 g CO_2e/kWh is proposed for electricity generation, heat production and the co-generation of heat and electricity. This threshold will be reduced every five years in line with political targets set out to achieve net-zero emissions by 2050.

…

Method for selecting the emissions intensity threshold

The EU annual power sector emissions trajectory will need to reach net-zero emissions by 2050, in accordance with the … Paris Agreement and other climate and energy policy commitments.

The calculation of the 100 g CO_2e/kWh threshold is based on the political targets for future allowed emissions from the power sector, divided by the expected evolution of electricity demand.

The threshold will be set at a single value for all new investments in electricity generation, until it is revised in future. It applies equally to the production of heating / cooling and co-generation of heat and electricity.

For a given investment or activity to be compatible with this trajectory, its average emissions over its physical lifetime, or 40 years (whichever is shorter), must be lower than the threshold.

…

The threshold was determined as follows:

– Historical power sector emissions and electricity demand data for EU28 are sourced from Eurostat.

– Future emissions are in line with EU political commitments for the [Emissions Trading System] (-43% by 2030), then linearly decline to zero by 2050. Future electricity demand (net generation) is assumed to grow as per the EU 2016 PRIMES Reference Scenario.

– Dividing the projected power sector emissions by the projected electricity demand results in policy-consistent projected annual values for emissions factors of the EU power sector.

– A given power generator is considered aligned with these policy targets if its emissions are below the average of these annual emissions factors over its lifetime.

– To determine a single technology-neutral threshold covering all technologies, the methodology considers the average annual emissions factors over a period of 40 years … from the time of commissioning.

…’

530 The calculation of the 100 g CO_2e/kWh threshold was thus obtained by dividing the projected power sector emissions (taking account of the objective of net zero emissions by 2050) by the projected electricity demand.

531 According to the TEG, the 100 g CO_2e/kWh threshold represents the average value of electricity generation between 2020 and 2050 in order to enable the European Union to attain the objective of net zero emissions by 2050.

532 That threshold is based on the ratio between the estimated value of total emissions not to be exceeded by 2050 in order to tend towards limitation or elimination of GHG emissions and the estimated value of electricity demand between now and 2050.

533 In other words, the 100 g CO_2e/kWh threshold determines a hypothetical value of CO_2e/kWh generated not to be exceeded in order to limit or eliminate GHG emissions in a manner compatible with the objective of limiting the temperature increase to 1.5 °C above pre-industrial levels by 2050.

534 Secondly, it should be noted however that the threshold established by the TEG is not per se a parameter of the lawfulness of the technical screening criteria laid down in the contested regulation, as the Commission may take account of a range of factors.

535 In that regard, as observed by the Commission in its statement in defence and without being contradicted on the point, the 100 g CO_2e/kWh threshold is not feasible at the current juncture for gas-fired power plants that do not have a CO_2 capture system. The Commission’s approach consists, in essence, in applying a 270 g CO_2e/kWh threshold to those installations, so as to bring them within the scope of the contested regulation and make them subject to the other technical screening criteria. It is clear that such an approach is compatible with the objective of the Taxonomy Regulation consisting in avoiding inaction or delayed action, already referred to in paragraph 377 above.

536 In those circumstances, the Republic of Austria's arguments alleging non-adherence to the 100 g CO_2e/kWh threshold do not demonstrate by themselves that the Commission made a manifest error of assessment in finding that the technical screening criteria may favour a reduction or elimination of GHG emissions and, therefore, the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1.5 °C.

537 Thirdly, nor do the Republic of Austria's arguments demonstrate that the technical screening criteria are not suitable for contributing to the achievement of the intermediate target for 2030, provided for in Article 4(1) of the European Climate Law, consisting in a reduction, in the European Union, of net GHG emissions (emissions after deduction of removals) of at least 55% compared to 1990 levels by 2030.

538 It is clear that, by its line of argument, the Republic of Austria is disputing, in essence, the sufficiently stringent or ambitious nature of the criteria in question, although it does not call into question their suitability for phasing out or gradually reducing GHG emissions. Therefore, for the reasons already set out in paragraphs 523 to 525 above, that line of argument does not establish that the Commission made a manifest error of assessment in the implementation of Article 10(2) of the Taxonomy Regulation. Moreover, and for reasons similar to those set out in paragraph 378 above, it should be borne in mind that the Commission's decision to favour potentially less stringent criteria may be related to the objective of avoiding inaction or delayed action, by allowing the contested regulation and all of the criteria laid down therein a broader scope.

539 This holds all the more true since the activities in question must also replace an existing high-emitting electricity generation activity that uses solid or liquid fossil fuels and lead to a reduction in GHG emissions of at least 55% over the lifetime of the newly installed production capacity, and the Member State must have committed to phase out the use of energy generation from coal (point 1(b)(iii), (vi) and (vii) of section 4.29 and point 1(b)(iv), (vii) and (ix) of sections 4.30 and 4.31 of Annex I to the contested regulation).

540 Moreover, the Republic of Austria's argument also disregards the fact that the approach taken for economic activities in the fossil gas sector is a gradual approach aimed at reducing the generation of energy in the fossil gas sector in stages, whilst allowing for security of supply, as is apparent inter alia from recital 4 of the contested regulation. Thus, as stated by the Commission, installations may either limit the number of hours of operation at a constant level, or switch rapidly to full use of renewable and/or low-carbon fuels following exhaustion of the carbon budget. Consequently, although they use a larger share of their carbon budget over the first few years, they will have to compensate in the following years by reducing the number of hours of operation or by switching earlier to renewable or low-carbon fuels. That approach is consistent with the EU legislature's intention not to include only economic activities suitable for ensuring the most substantial contribution possible to the objective of climate change mitigation while not causing any harm – or as little harm as possible – to the other environmental objectives.

541 In the second place, the Republic of Austria claims, first, that nor do the technical screening criteria ensure attainment of those objectives. In particular, the condition to switch, on 31 December 2035, to full use of renewable and/or low-carbon gaseous fuels cannot contribute to the attainment of the intermediate objective for 2030, which is binding under Article 4(1) of the European Climate Law.

542 The Republic of Austria states that the required change in fuel does not suffice to guarantee a sufficient contribution to compliance with the European Union's climate objectives, which presuppose that the energy sector will already become virtually climate-neutral by 2040 (and at any rate by 2050) and accordingly does not generate any significant GHG emissions.

543 By that argument, the Republic of Austria submits that the technical screening criterion relating to fuel change does not suffice to guarantee a sufficient contribution to compliance with the European Union's climate objectives.

544 It is clear that the Republic of Austria has not demonstrated, or even alleged, that the required change in fuel is not suitable for phasing out or gradually reducing GHG emissions. Accordingly, for reasons similar to those set out in paragraph 538 above, such a line of argument cannot succeed.

545 Secondly, the Republic of Austria claims that the technical screening criteria allow for envisaging well beyond 2040 (or even 2050) installations generating significant quantities of GHG emissions. It states that, according to the technical screening criteria, new installations can be considered environmentally sustainable if they are authorised before 31 December 2030 and if the other conditions of the contested regulation are satisfied. According to the Republic of Austria, the average period of operation of those installations is 25 to 30 years. Even as from 1 January 2036, the technical screening criteria do not provide specifically for the exclusive use of renewable fuels, but only for the use of low-carbon fuels, which is unrelated to the 270 g CO_2e/kWh threshold limit and does not require the slightest specific reduction in relation to that limit or any other threshold whatsoever.

546 According to the Republic of Austria, even if it were held that the obligation to use low-carbon fuels requires a 70% reduction compared to the reference value for fossil fuels, in accordance with Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82), it would lead only to a reduction in the level of emissions authorised to slightly less than 200 g CO_2e/kWh. The Republic of Austria infers therefrom that, even after 2035 and given the period of operation of installations, GHG emissions would remain authorised well beyond 2040 and 2050 at levels largely exceeding the 100 g CO_2e/kWh threshold limit, compliance with which is necessary if climate objectives are to be attained.

547 It is clear that the Republic of Austria has not demonstrated, or even alleged, that the obligation to use low-carbon fuel is not suitable for phasing out or gradually reducing GHG emissions. Accordingly, for reasons similar to those set out in paragraph 538 above, such a line of argument cannot succeed.

548 Thirdly, the Republic of Austria alleges that the reference to the objective of a reduction of 55%, laid down in point 1(b)(vi) of section 4.29 and point 1(b)(vii) of sections 4.30 and 4.31 of Annex I to the contested regulation, refers incorrectly to the implementation of the requirement imposed by Article 4 of the European Climate Law to reduce net GHG emissions in Europe by 55% by 2030, whereas, since the energy sector represents 75% of those emissions, it is obvious that greater reductions should be achieved.

549 It is clear, however, that the Republic of Austria does not demonstrate, or even allege, that the technical screening criteria according to which the replacement of an old facility leads to a reduction in GHG emissions of at least 55% over the lifetime of the newly installed production

capacity, or of at least 55% of GHG emissions per kWh of energy generated, are not suitable for phasing out or gradually reducing GHG emissions. Accordingly, for reasons similar to those set out in paragraph 538 above, such a line of argument cannot succeed.

550 Fourthly, according to the Republic of Austria, the conditions for replacing an old facility through the setting-up of a new one, laid down in point 1(b)(vi) of section 4.29 and point 1(b)(vii) of sections 4.30 and 4.31 of Annex I to the contested regulation, are insufficient. That economic activity should replace electricity generation activities which are currently ensured by combined coal-fired power plants or lignite-fired power plants, and it is even possible to increase capacity by 15% for facilities referred to in section 4.29, in accordance with point 1(b)(iv) of that section. Moreover, the conditions laid down in point 1(b)(v) of sections 4.30 and 4.31 correspond to the condition laid down in point 1(b)(iv) of section 4.29, except for where a capacity increase is not possible for those activities and a capacity reduction in relation to the status quo ante is not required.

551 By that argument, the Republic of Austria submits that the conditions for replacing an old facility through the setting-up of a new one, laid down in point 1(b)(vi) of section 4.29 and point 1(b)(vii) of sections 4.30 and 4.31 of Annex I to the contested regulation, are insufficient.

552 However, the Republic of Austria does not demonstrate, or even allege, that the conditions for replacing an old facility, taken in conjunction with the other technical screening criteria, are not suitable for phasing out or gradually reducing GHG emissions. Accordingly, for reasons similar to those set out in paragraph 538 above, such a line of argument cannot succeed.

553 Fifthly, the Republic of Austria takes the view that the conditions laid down in point 1(b)(vii) of section 4.29 and point 1(b)(ix) of sections 4.30 and 4.31 of Annex I to the contested regulation bind only those Member States using coal to generate electricity, but do not constitute an essential condition, since no time limit is laid down for the switch from that generation and the announced switch date may therefore be several decades in the future.

554 In that regard, the Court finds that the Republic of Austria does not demonstrate that the technical screening criteria requiring a given Member State to commit to phasing out energy generation from coal are not suitable for phasing out or gradually reducing GHG emissions. Accordingly, for reasons similar to those set out in paragraph 538 above, such a line of argument cannot succeed.

555 In the third place, the Republic of Austria states, first, that the newly installed production capacity may exceed the capacity of the replaced facility by more than 15%, with the result that capacities for fossil fuels may even by increased in relation to the previous fossil capacities in question, without that changing anything about the sustainability of the investment.

556 However, the Republic of Austria does not demonstrate that the limitation of the newly installed production capacity to 15% more than the replaced production capacity, taken in conjunction with the other technical screening criteria, is not suitable for phasing out or gradually reducing GHG emissions. Accordingly, for reasons similar to those set out in paragraph 538 above, such a line of argument cannot succeed.

557 Secondly, the Republic of Austria takes the view that a certain reduction in GHG emissions in relation to the current status quo does not suffice to enable a transitional activity to satisfy the condition of adherence to a ‘pathway’ towards the attainment of the European Union’s climate

objectives. It infers therefrom that the additional provisions of the technical screening criteria set out in the contested regulation, which may contribute to the creation of new electric power plants reducing emissions in relation to the electric power plants they replace, are irrelevant for the purposes of Article 10(2) of the Taxonomy Regulation.

558 However, that argument does not demonstrate that the technical screening criteria relating to fossil gas activities are not suitable for phasing out or gradually reducing GHG emissions. Accordingly, for reasons similar to those set out in paragraph 538 above, such a line of argument cannot succeed.

559 Accordingly, as is apparent from paragraphs 538, 544, 547, 549, 552, 554, 556 and 558 above, the Republic of Austria's arguments do not demonstrate that the technical screening criteria, taken individually or as a whole, are not suitable for phasing out GHG emissions.

560 In any event, the Court notes that the projections put forward by the Republic of Austria do not by themselves render implausible those on which the contested regulation is based.

561 Thirdly, the Republic of Austria argues that the conditions laid down in point 1(b)(i) of sections 4.30 and 4.31 of Annex I to the contested regulation merely reproduce the definition given in Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ 2012 L 315, p. 1) of high-efficiency combined production of heat and electricity or efficient combined production of district heating and cooling.

562 Nevertheless, such an alleged correspondence between the technical screening criteria and that directive is not such as to demonstrate that those criteria are vitiated by illegality. Moreover, as is apparent from paragraphs 263 to 265 above, the Commission could rely on any minimum requirement fixed pursuant to EU law.

563 In the fourth place, the Republic of Austria claims that the upper threshold limits of 100 g CO_2 e/kWh are not based on conclusive scientific evidence within the meaning of Article 19(1)(f) of the Taxonomy Regulation, as they were not included in the TEG study and contradict it.

564 As observed by the Commission in its responses to measures of organisation of procedure of 30 September 2024, the 270 g CO_2e/kWh threshold finds support in the Technical Annex to the TEG Final Report, which had recommended a value close to that threshold, namely 262 g CO_2 e/kWh for the DNSH criterion.

565 Moreover, as is apparent from its responses to measures of organisation of procedure of 30 September 2024, it was on the basis of the threshold of 270 g CO_2e/kWh that the Commission calculated the threshold of 550 kg CO_2e/kW. It took as its model a gas-fired power plant with direct emissions of 270 g CO_2e/kWh, operated at 25% of annual hours of operation, therefore 2 190 hours per year, with the result that, in such a scenario, total annual emissions correspond to 270 g CO_2e/kWh, multiplied by 2 190 hours, or even 591.3 kg CO_2e/kW. The Commission made that value more stringent by rounding it off to 550 kg CO_2e/kW.

566 In those circumstances, the Commission cannot be criticised for having failed to rely on available scientific assessments, with the result that that argument must be rejected.

567 In the light of the foregoing, the Republic of Austria has not demonstrated that the contested regulation is vitiated by a manifest error of assessment inasmuch as the Commission found, in essence, that the threshold limits of 270 g CO_2e/kWh and 550 kg CO_2e/kW, used in Annex I to the contested regulation, were compatible with the 1.5 °C objective fixed by the Paris Agreement and the corresponding subobjectives of the European Union for 2030 and 2050, and that the other technical screening criteria made it possible to contribute to climate change mitigation.

568 The second part of the tenth plea in law is therefore unfounded.

– Third part of the tenth plea in law: non-compliance with the requirement of a life-cycle assessment

569 According to the Republic of Austria, a life-cycle assessment is applicable not only under the DNSH criterion (Article 17(2) of the Taxonomy Regulation), but also for the purposes of classification as a transitional activity under Article 19(1)(g) of that regulation, read in conjunction with Article 10(3) of that regulation, with the result that the life-cycle assessment of GHGs ought to have been taken into account.

570 The Republic of Austria claims that the two threshold limits disregard the requirement of a life-cycle assessment, as they relate explicitly only to 'direct GHG emissions [from] the activity' and not, as for the threshold limit of 100 g CO_2e/kWh, to the 'life-cycle GHG emissions'. It adds that, in masking methane emissions, the Commission contradicts its own strategy for reducing methane emissions.

571 The Republic of Austria infers therefrom that parameters incompatible with the required life-cycle assessment are fixed as threshold limits, whilst at the same time nothing is said about significant, particularly harmful methane emissions, whereas they are generated at all stages of the supply chain, including during extraction and distribution of fossil gas, upstream from combustion.

572 Moreover, according to the Republic of Austria, the contested regulation disregards the requirement of a life-cycle assessment in that the technical screening criteria do not guarantee that renewable or low-carbon fuels, the use of which is required by 31 December 2035, are themselves produced with low-carbon impact. In particular, the technical screening criteria do not rule out the substitution of 'green' hydrogen combustion with 'grey' hydrogen combustion, the production of which in turn releases significant GHG emissions.

573 The Commission, supported by the Republic of Poland, disputes that line of argument.

574 In that regard, it should be borne in mind that both Article 17(2) and Article 19(1)(g) of the Taxonomy Regulation provide that the technical screening criteria are to take into account the life cycle, including evidence from existing life-cycle assessments, by considering both the environmental impact of the economic activity itself and the environmental impact of the products and services provided by that economic activity, in particular by considering the production, use and end-of-life of those products and services.

575 However, as is apparent from paragraphs 428 to 434 above, the requirement to take account of the life cycle of an activity does not necessarily extend to activities situated upstream or downstream from the economic activity in question.

576 Thus, the obligation to take account of production, use and end-of-life of those products and services provided by economic activities in the fossil gas sector does not entail taking account of the extraction and distribution of fossil gas, upstream from combustion, as those activities do not per se come within the generation of electricity.

577 Moreover, as stated in paragraph 4 above, the Taxonomy Regulation is aimed at establishing a unified classification system for economic activities considered to be environmentally sustainable. That classification or taxonomy therefore concerns given economic activities. Thus, the establishment, by the Commission, of technical screening criteria for determining whether an activity may be regarded as contributing substantially to climate change mitigation and does not cause significant harm to environmental objectives targets, on a case-by-case basis, a specific economic activity.

578 In those circumstances, the Republic of Austria's arguments do not demonstrate that the Commission made a manifest error of assessment in taking account of direct GHG emissions from the activity, and not life-cycle GHG emissions.

579 The third part of the tenth plea in law is therefore unfounded.

– *Fourth part of the tenth plea in law: in essence, infringement, by the threshold limits of 270 g CO_2 e/kWh and 550 kg CO_2e/kW, of the obligation to correspond to the best performance in the sector or industry*

580 The Republic of Austria submits that the threshold limits of 270 g CO_2e/kWh and 550 kg CO_2 e/kW infringe Article 10(2)(a) of the Taxonomy Regulation because they do not correspond to the best performance in the sector or industry.

581 According to the Republic of Austria, Article 10(2)(a) of the Taxonomy Regulation has been infringed solely because the technical screening criteria for fossil gas fix three different average threshold limits of 100 g CO_2e/kWh, 270 g CO_2e/kWh and 550 kg CO_2e/kW as an annual average over 20 years. It states that the 270 g CO_2e/kWh threshold corresponds to a performance lower than the 100 g CO_2e/kWh threshold, and the 550 kg CO_2e/kW threshold corresponds to an even lower threshold than the two other thresholds.

582 Moreover, the Republic of Austria claims that the threshold limits are situated well above the thresholds attained by renewable energy and other energy sources, including wind power and hydropower, which attain life-cycle GHG emission thresholds of below 30 g CO_2e/kWh.

583 The Republic of Austria adds that, even though energy generation from fossil gas should be treated as an autonomous sector or industry, the threshold limits of 270 g CO_2e/kWh and 550 kg CO_2e/kW do not correspond to the best performance in the sector or industry. In fact, gas-fired carbon capture and removal power plants can achieve much better performance and comply with the 100 g CO_2e/kWh threshold limit.

584 The Commission, supported by Hungary and the Republic of Poland, disputes that line of argument.

585 In that regard, it should be borne in mind that, under Article 10(2)(a) of the Taxonomy Regulation, an economic activity is to qualify as contributing substantially to climate change mitigation, inter alia, where that activity has GHG emission levels that correspond to the best performance in the sector or industry.

586 As observed by the Commission, per the wording of recital 41 of the Taxonomy Regulation, transitional activities comply with that condition where their GHG emissions are substantially lower than the sector or industry average.

587 Moreover, since, for the reasons already stated in paragraph 535 above, the 100 g CO_2e/kWh threshold is not feasible at the current juncture for gas-fired power plants that do not have a CO_2 capture system, it cannot serve as a standard for determining whether economic activities in the fossil gas sector comply with the condition requiring that they correspond to the best performance in the sector or industry.

588 Moreover, the mere fact that the threshold for a given sector is higher than the 100 g CO_2e/kWh threshold or the threshold for another sector, such as renewable energy, does not mean that that threshold is not substantially lower than the average of the sector concerned. The comparison done by the Republic of Austria with emission thresholds for wind power and hydropower is, therefore, irrelevant.

589 Moreover, even if the 270 g CO_2e/kWh and 550 kg CO_2e/kW thresholds per se could be regarded as not corresponding to a GHG emission value that is substantially lower than the sector or industry average, it is clear that they are combined with other technical screening criteria which are aimed at gradually reducing the GHG emission levels of activities in the fossil gas sector.

590 In those circumstances, the Republic of Austria has failed to demonstrate that the Commission made a manifest error of assessment in finding that the 270 g CO_2e/kWh and 550 kg CO_2e/kW thresholds, combined with other technical screening criteria, could enable a finding that the activities concerned in the fossil gas sector achieved the best performance in the sector or industry.

591 On those grounds, the fourth part of the tenth plea in law is unfounded.

– *Fifth part of the tenth plea in law: impediment to low-carbon alternatives*

592 The Republic of Austria submits that the contested regulation is contrary to Article 10(2)(b) of the Taxonomy Regulation, on the ground that economic activities in the fossil gas sector hamper the development and deployment of low-carbon alternatives. The Republic of Austria adds that that impediment is not ruled out by the fact that the contested regulation requires that the power to be replaced 'cannot be generated from renewable energy sources, based on a comparative assessment with the most cost-effective and technically feasible renewable alternative'.

593 The Commission, supported by Hungary and the Republic of Poland, disputes that line of argument.

594 In that regard, it should be borne in mind that, as is apparent from paragraphs 164 to 169 above, the condition requiring there not be a technologically and economically feasible low-carbon alternative, laid down in Article 10(2) of the Taxonomy Regulation, necessarily entails that the Commission must take account of the imperative of security of supply.

595 Moreover, the Republic of Austria has not demonstrated that the Commission's finding that renewable energy-based alternatives are not technologically and economically feasible is vitiated by a manifest error. It merely states that renewable energy, intelligent networks and energy disposal and consumption reduction techniques are all low-carbon alternatives that are substitutable for the activities chosen. In so doing, it does not provide anything showing that those alternatives enable the imperative of security of supply to be safeguarded.

596 It is also worth noting that point 1(b)(ii) or (iii) of sections 4.29 to 4.31 of Annex I to the contested regulation requires that it be demonstrated that the capacity cannot be produced from renewable energy sources, which is relevant for determining whether there is an impediment to low-carbon alternatives. Moreover, the condition laid down in point 1(b)(v) or (vi) of those sections, requiring that the switch to full use of renewable and/or low-carbon gaseous fuels must take place by 31 December 2035, also favours low-carbon alternatives.

597 On those grounds, the fifth part of the tenth plea in law is unfounded.

– *Sixth part of the tenth plea in law: disregard of the prohibition of lock-in effects*

598 The Republic of Austria claims that the contested regulation fails to adhere to the prohibition of lock-in effects of carbon-intensive activities, laid down in Article 10(2)(c) of the Taxonomy Regulation. Such effects are to be expected, at least in view of the 270 g CO_2e/kWh and 550 kg CO_2e/kW threshold limits and since facilities held to be taxonomy-eligible in that regard require substantial investments which are undertaken for 25 to 30 years and are, as a result, not available for renewable alternative energies.

599 The Republic of Austria further states that capacities for fossil fuels may be increased by up to 15% over existing fossil capacities, with the result that the capital necessary for that purpose is also blocked and cannot or can no longer be invested for years in renewable energy, up to the amount for the new fossil capacities.

600 The Commission disputes that line of argument.

601 In that regard, it should be borne in mind that Article 10(2)(c) of the Taxonomy Regulation is aimed at avoiding a lock-in, that is to say, a ring-fencing of carbon-intensive assets.

602 As observed by the Commission, the technical screening criteria established in point 1(b) of sections 4.29 to 4.31 of Annex I to the contested regulation comply with that objective, as they require inter alia that the facility switch to the use of renewable and/or low-carbon fuels by 31 December 2035. They are, accordingly, not non-recoverable investments in carbon-intensive activities.

603 Moreover, the technical screening criteria, referred to in paragraph 526 above, also provide that the activity concerned must replace an existing high-emitting electricity generation activity, that the newly installed production capacity must not exceed the capacity of the replaced facility by more than 15%, and that the replacement must lead to a reduction of at least 55% in GHG emissions.

604 In those circumstances, the Republic of Austria's arguments do not demonstrate that the contested regulation is vitiated by a manifest error of assessment in that the Commission found, in essence, that the activities in the fossil gas sector adhered to the prohibition of lock-in effects of carbon-intensive activities.

605 On that ground, the sixth part of the tenth plea in law is unfounded.

– *Seventh part of the tenth plea in law: infringement of Article 19(1)(g) of the Taxonomy Regulation*

606 According to the Republic of Austria, the infringements of Article 10(2) of the Taxonomy Regulation set out above 'are even more evident with respect to Article 19(1)(g)' of that regulation. The obligation under that latter provision to take account of the life cycle and the results of existing life-cycle assessments is also applicable under Article 10(3) of that regulation, through the first sentence of Article 19(1) thereof. Thus, the Republic of Austria takes the view that the Commission failed to take account, in view of, inter alia, the hampering of low-carbon alternatives and lock-in effects, of the lengthy periods for planning, authorisation and operation of the relevant economic activities and, consequently, the entire life cycle.

607 The Commission disputes that line of argument.

608 In that regard, the Court finds that the Republic of Austria's line of argument merely reiterates its arguments put forward under the third part of the present plea, which have been rejected, and the allegation that the Commission failed to take account of the lengthy periods for planning, authorisation and operation of the relevant economic activities and, consequently, the entire life cycle.

609 That latter argument, which consists of a mere, unsubstantiated allegation, must be rejected on that ground.

610 The seventh part of the tenth plea in law is therefore unfounded.

– *Eighth part of the tenth plea in law: infringement of Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle and 'lacunae in the analysis and statement of reasons'*

611 The Republic of Austria submits that the inclusion of economic activities in the fossil gas sector and the definitions and criteria drawn up for that purpose in the technical screening criteria are not based on conclusive scientific evidence and disregard the precautionary principle, as the contested regulation does not make it possible to determine whether the technical screening criteria are compatible with the climate objectives of the Paris Agreement and the European Union, and is, in any event, vitiated by 'lacunae in the analysis and statement of reasons'.

612 The Commission disputes that line of argument.

613 It should be borne in mind that Article 19(1)(f) of the Taxonomy Regulation provides that the technical screening criteria are based on conclusive scientific evidence and the precautionary principle.

614 Moreover, as is apparent from paragraphs 79 to 82 above, the fossil gas sector was part of the preparatory research phase that led to the adoption of Delegated Regulation 2021/2139.

615 The Commission states that the technical screening criteria were drawn up on the same analytical basis used for the impact assessment underlying the 'Fit for 55' legislative package, in particular as regards the role of economic activities in the fossil gas sector in 2030 and 2050, and that the technical screening criteria for economic activities in the fossil gas sector are compatible with the scenarios in the Commission's modelling.

616 In those circumstances, the Republic of Austria's arguments, alleging that the Commission did not base the technical screening criteria for economic activities in the fossil gas sector on conclusive scientific evidence, must be rejected.

617 The Republic of Austria adds that the Commission did not even attempt to base the 270 g CO_2 e/kWh and 550 kg CO_2e/kW threshold limits on projections or other scientific evidence capable of demonstrating the compatibility of those threshold limits with the European Union's climate objectives.

618 It should be borne in mind, with respect to the 270 g CO_2e/kWh and 550 kg CO_2e/kW threshold limits, that the Commission used scientific assessments, including the Technical Annex to the TEG Final Report, to establish the reference values of the technical screening criteria.

619 The fact that the Commission departed in certain cases from the thresholds proposed on the basis of a scientific assessment or that there is no scientific consensus on the thresholds chosen by it does not establish an infringement of Article 19(1)(f) of the Taxonomy Regulation, as it does not call into question the fact that the Commission based the technical screening criteria on conclusive scientific evidence, including the Technical Annex to the TEG Final Report, which it then took into account as part of its broad discretion.

620 Lastly, since the Republic of Austria has not substantiated its arguments alleging breach of the precautionary principle and 'lacunae in the analysis and statement of reasons', they must be rejected.

621 It follows from the foregoing that the eighth part of the tenth plea in law is unfounded.

622 Consequently, the tenth plea in law must be rejected.

Eleventh plea in law: breach of the principle of equal treatment and of Article 19(1)(a) and (j) of the Taxonomy Regulation, due to non-observance of the principle of technological neutrality

623 The Republic of Austria submits, in essence, that the inclusion of the 270 g CO_2e/kWh and 550 kg CO_2e/kW threshold limits in the contested regulation infringes the principle of technological neutrality laid down in Article 19(1)(a) and (j) of the Taxonomy Regulation and also the principle of non-discrimination inasmuch as, in relaxing, for fossil gas, the generally applicable threshold limits, the contested regulation introduces a more favourable, unjustifiable scheme for a given technology.

624 The Commission, supported by Hungary and Romania, disputes that line of argument.

625 First of all, it should be borne in mind that Article 19(1)(a) of the Taxonomy Regulation provides that the technical screening criteria are to identify the most relevant potential contributions to the given environmental objective while respecting the principle of technological neutrality, considering both the short- and long-term impact of a given economic activity.

626 As stated in paragraph 113 above, the principle of technological neutrality means that the rules in question must specify the rights and obligations of persons in a generic manner, so as not to favour the use of one technology to the detriment of another.

627 Moreover, the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 23 and the case-law cited).

628 Next, the Court finds that, although, as regards the threshold limits expressed in CO_2e/kWh, the contested regulation defined higher values for economic activities in the fossil gas sector, that definition led to different aspects specific to those activities being taken into account, such as the state of current technologies and infrastructures, and other factors such as the imperative of security of supply and the use of fossil gas as a transitional energy.

629 Nor are those thresholds the only technical screening criteria applicable to economic activities in the fossil gas sector.

630 In those circumstances, the Republic of Austria's arguments do not demonstrate that the technical screening criteria established for economic activities in the fossil gas sector, taken as a whole, are more favourable than the technical screening criteria defined for the other transitional activities for the purposes of Article 10(2) of the Taxonomy Regulation.

631 Therefore, the Republic of Austria has not established that the contested regulation is vitiated by non-observance of the principle of technological neutrality.

632 Moreover, since economic activities in the fossil gas sector are different from other transitional activities coming under Article 10(2) of the Taxonomy Regulation because they do not concern the same energy source or the same infrastructures, differential treatment of those activities does not establish that the contested regulation is vitiated by a breach of the principle of equal treatment.

633 Lastly, the fact that the contested regulation makes recognition of the contribution of economic activities in the fossil gas sector to the climate change adaptation objective referred to in Article 11(1) of the Taxonomy Regulation subject to compliance with the 100 g CO_2e/kWh threshold limit does not prove breach of the principles of equal treatment or technological neutrality, since that article does not pursue the same objectives as Article 10(2) of that regulation.

634 Article 10(2) of the Taxonomy Regulation relates to activities which contribute substantially to climate change mitigation, whereas Article 11 of that regulation relates to activities which contribute substantially to climate change adaptation.

635 The Republic of Austria adds that the contested regulation is based on another unjustifiable difference in treatment, in sections 4.29 to 4.31 of Annex II to the contested regulation, which refer only to the criteria laid down in point 1(a) of sections 4.29 to 4.31 of Annex I to that regulation. Even for fossil gas, it makes recognition of a contribution to the climate change adaptation objective referred to in Article 11(1) of the Taxonomy Regulation subject to compliance with the 100 g CO_2e/kWh threshold limit. The Republic of Austria takes the view

that there is no explanation for why a much higher GHG emission level should be authorised for recognition of a contribution to the climate change mitigation objective than to the climate change adaptation objective.

636 In that regard, as observed by the Commission, the explanatory memorandum to the draft contested regulation explains why economic activities in the fossil gas sector which may be categorised as transitional for the purpose of the technical screening criteria established in point 1(a) of sections 4.29 to 4.31 of Annex I to the contested regulation are not taken into account for climate change adaptation measures. It is stated therein that, for those activities 'for which this Delegated Act provides for a time-limited recognition of contribution to climate change mitigation, it is not necessary to provide for specific technical screening criteria for climate change adaptation in view of that time-limited recognition'.

637 In the absence of a more specific line of argument, the Republic of Austria's argument, to the effect that there is no explanation for why a much higher GHG emission level should be authorised for recognition of a contribution to the climate change mitigation objective than to the climate change adaptation objective, must accordingly be rejected.

638 Consequently, the eleventh plea in law must be rejected.

Twelfth plea in law: infringement of Article 17 and Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle

639 The Republic of Austria submits that the 270 g CO_2e/kWh and 550 kg CO_2e/kW threshold limits are incompatible with the DNSH criterion laid down in Article 17(1)(a) of the Taxonomy Regulation, as those threshold limits lead to significant GHG emissions which are harmful to the climate, at the very least inasmuch as, in basing itself on direct GHG emissions from the activity, they mask particularly harmful methane emissions.

640 The Republic of Austria further claims that, as the Commission uses only the 270 g CO_2e/kWh threshold limit as a condition of compliance with the DNSH criterion for other activities in the energy sector, the 550 kg CO_2e/kW threshold, which authorises GHG emissions above the 270 g CO_2e/kWh threshold, does not comply with the DNSH criterion, 'according to the very criteria defined by the Commission'.

641 The Republic of Austria further submits that the Commission did not base the abovementioned thresholds on scientific studies or on the precautionary principle, thereby disregarding Article 19(1)(f) of the Taxonomy Regulation and that precautionary principle, and vitiating the contested regulation with 'lacunae in the analysis and statement of reasons'.

642 The Commission, supported by Romania, disputes that line of argument.

643 It should be borne in mind that, under Article 17(1)(a) of the Taxonomy Regulation, an economic activity is deemed to significantly harm climate change mitigation where that activity leads to significant GHG emissions.

644 It should also be noted that the Republic of Austria claims that, in basing itself on direct GHG emissions from the activity, the Commission masked methane emissions, contrary to Article 17(1)(a) of the Taxonomy Regulation.

645 However, as is apparent from paragraphs 575 to 578 above, the Commission did not make a manifest error of assessment in basing itself on direct GHG emissions from the activity and not on GHG emissions from other activities situated upstream or downstream from them.

646 The Court accordingly finds that the Republic of Austria has not proven, or even alleged, that the 270 g CO_2e/kWh and 550 kg CO_2e/kW threshold limits lead to significant GHG emissions which are harmful to the climate, generated by that activity alone.

647 Moreover, the fact that, for other activities in the energy sector, the Commission used the 270 g CO_2e/kWh threshold limit as a condition of compliance with the DNSH criterion does not prove that the 550 kg CO_2e/kW threshold, which authorises GHG emissions above the 270 g CO_2e/kWh threshold, does not comply with the DNSH criterion.

648 Compliance with the DNSH criterion for economic activities in the fossil gas sector does not involve only compliance with those thresholds, but with all of the relevant technical screening criteria.

649 Consequently, the mere fact that the thresholds applied to those activities are higher than for other activities does not prove that the Commission made a manifest error of assessment in that regard.

650 Moreover, for the same reasons as those set out in paragraphs 614 to 619 above, the argument to the effect that the Commission did not base the abovementioned thresholds on scientific studies or the precautionary principle, thereby disregarding Article 19(1)(f) of the Taxonomy Regulation and the precautionary principle, and vitiating the contested regulation with 'lacunae in the analysis and statement of reasons', must be rejected.

651 The twelfth plea in law must therefore be rejected.

Thirteenth plea in law: infringement of Article 11 and Article 19(1)(f) of the Taxonomy Regulation and of the precautionary principle

652 The Republic of Austria submits that the contested regulation is vitiated by illegality inasmuch as it categorised economic activities in the fossil gas sector as activities contributing substantially to climate change adaptation within the meaning of Article 11 of the Taxonomy Regulation.

653 The Republic of Austria observes that the technical screening criteria defined for the fossil gas sector in Annex II to the contested regulation correspond to those established for the nuclear energy sector for substantial contribution to climate change adaptation, which are also the same as the ones established for the DNSH criterion.

654 According to the Republic of Austria, for the same reasons as those put forward for the nuclear energy sector, those criteria are insufficient.

655 The Republic of Austria further alleges infringement of Article 19(1)(f) of the Taxonomy Regulation and the precautionary principle, and also 'lacunae in the analysis and statement of reasons', inasmuch as no reference is made to any study or specific expert advice relating to the economic sectors in question.

656 The Commission, supported by Romania, disputes that line of argument.

657 In that regard, it should be borne in mind that Article 11 of the Taxonomy Regulation defines the conditions under which an economic activity is to be deemed to contribute substantially to climate change adaptation.

658 Thus, under inter alia Article 11(1)(a) of the Taxonomy Regulation, that activity must include adaptation solutions that either substantially reduce the risk of the adverse impact of the current climate and the expected future climate on that economic activity, or substantially reduce that adverse impact, without increasing the risk of an adverse impact on people, nature or assets.

659 The Republic of Austria merely states that, as for the nuclear energy sector, the increase in extreme droughts caused by climate change also gives rise to difficulties in generating energy from fossil gas, such as the operation and use of cooling water from the collector.

660 However, consistently with what was held in respect of the similar argument put forward for the nuclear energy sector in paragraph 401 above, the Court notes that such an allegation is too speculative in nature to support a finding of manifest error of assessment.

661 Nor has the Republic of Austria provided the Court with any specific evidence proving that the contested regulation is vitiated by a manifest error of assessment relating to those aspects.

662 The reference to general statements by the Platform is not sufficient to render the Commission's assessment implausible.

663 Lastly, since the Republic of Austria has not substantiated its arguments alleging breach of the precautionary principle and 'lacunae in the analysis and statement of reasons', they must be rejected.

664 On those grounds, the thirteenth plea in law is rejected.

Fourteenth plea in law: infringement of Article 19(1)(i) of the Taxonomy Regulation due to the creation of stranded assets

665 The Republic of Austria submits that the contested regulation infringes Article 19(1)(i) of the Taxonomy Regulation inasmuch as the inclusion of fossil gas in the taxonomy carries, at the very least, a significant risk of creating stranded assets.

666 According to the Republic of Austria, the projections established by the Commission in 2020 on the impact of the 'Fit for 55' package of measures already foreshadowed a significant decrease in the use of fossil gas as an energy vector and, since then, it is especially price increases for gas deliveries and the GHG emissions trading system that have increased economic pressure on fossil gas as an energy vector. In addition, Russia's invasion of Ukraine in February 2022 once again starkly highlighted that pressure, so that gas deliveries to the European Union are quite threatened.

667 In that context, the Republic of Austria expresses concern that the inclusion of fossil gas in the taxonomy gives rise to an infelicitous incentive which will ultimately produce stranded assets, as gas will be available as a fuel only at a much higher price, or will even become unavailable.

668 The Commission, supported by Romania and the Republic of Poland, disputes that line of argument.

669 In that regard, the Court finds that those allegations put forward by the Republic of Austria are not substantiated or proven, with the result that they must be rejected as unfounded.

670 The reference to general statements by the Platform is not sufficient to render the Commission's assessment implausible.

671 The fourteenth plea in law must therefore be rejected.

Fifteenth plea in law: infringement of Article 19(1)(k) of the Taxonomy Regulation

672 The Republic of Austria submits that the provisions of the contested regulation applicable to activities in the fossil gas sector infringe Article 19(1)(k) of the Taxonomy Regulation, since they provide that the technical screening criteria must be easy to use and be set in a manner that facilitates the verification of their compliance, as the technical screening criteria provided for those activities largely contain imprecise legal concepts and conditions which will be satisfied only in the future.

673 The Republic of Austria submits that, as regards fossil gas, the illegality relates in particular to compliance with the annual threshold limit of 550 kg CO_2e/kW over 20 years and with that of the use of renewable or low-carbon gas as from 31 December 2035. It further states that, in order to verify compliance with those conditions, it is provided that an independent third party is to draw up annual reports aimed at determining whether the activity is on a 'credible path' towards compliance with those criteria. It infers therefrom that there is no intention to monitor compliance with the 550 kg CO_2e/kW threshold after 20 years or with that of the switch in gas supply for the end of 2035, with the result that non-compliance with those obligations would have no consequences for the classification as environmentally sustainable.

674 The Republic of Austria further states that monitoring of and compliance with the obligation to replace, by 2035, fossil gas with renewable or low-carbon gas are not guaranteed and, in particular, that the possibility of switching to hydrogen for 2035 does not seem certain.

675 The Commission, supported by Romania, disputes that line of argument.

676 First, it should be borne in mind that, as is apparent from paragraphs 483 to 485 above, the allegation that the technical screening criteria largely contain imprecise legal concepts and conditions which will be satisfied only in the future does not establish that those criteria are not easy to use or that they are not set in a manner that facilitates the verification of their compliance.

677 Secondly, the Court notes that the second to fourth subparagraphs of point 1 of section 4.29 of Annex I to the contested regulation state the following:

'Compliance with the criteria referred to in point 1(b) is verified by an independent third party. The independent third-party verifier has the necessary resources and expertise to perform such verification. The independent third party verifier does not have any conflict of interest with the owner or the funder, and is not involved in the development or operation of the activity. The independent third party verifier carries out diligently the verification of compliance with the technical screening criteria. In particular, every year the independent third party publishes and transmits to the Commission a report:

(a) certifying the level of direct GHG emissions referred to in point 1(b)(i);

(b) where applicable, assessing whether annual direct GHG emissions [from] the activity are on a credible trajectory to comply with the average threshold over 20 years referred to in point 1(b)(i);

(c) assessing whether the activity is on a credible trajectory to comply with point 1(b)(v).

When undertaking the assessment referred to in point 1(b), the independent third party verifier takes into account in particular the planned annual direct GHG emissions for each year of the trajectory, realised annual direct GHG emissions, planned and realised operating hours, and planned and realised use of renewable or low carbon gases.

On the basis of the reports transmitted to it, the Commission may address an opinion to the relevant operators. …'

678 Contrary to the Republic of Austria's assertions, it cannot be inferred from those provisions that there is no intention to monitor compliance with the 550 kg CO_2e/kW threshold after 20 years or with that of the switch in gas supply for the end of 2035.

679 The same holds true for the allegation that there are serious doubts about the monitoring of and compliance with the obligation to replace, by 2035, fossil gas with renewable or low-carbon gas, inasmuch as the actual possibility of performing that obligation does not seem certain.

680 As is apparent from the statement to the effect that compliance, in particular with the criteria referred to in point 1(b) of section 4.29 of Annex I to the contested regulation, is verified by an independent third party, a verification mechanism is provided for all of those criteria.

681 Consequently, those arguments put forward by the Republic of Austria do not prove that the contested regulation is vitiated by an infringement of Article 19(1)(k) of the Taxonomy Regulation.

682 On that ground, the fifteenth plea in law must be rejected.

Sixteenth plea in law: infringement of the purpose and practical effect of the Taxonomy Regulation due to the risk of fragmentation of the market

683 The Republic of Austria submits, in essence, that the categorisation of energy in the fossil gas sector as sustainable risks leading to a fragmentation of the market, contrary to the purpose of the Taxonomy Regulation and the obligation to safeguard the practical effect thereof.

684 According to the Republic of Austria, the correlative differentiation between 'better' and 'less good' environmental sustainability is contrary to the spirit and objective of the Taxonomy Regulation, which is aimed at ensuring transparency by establishing uniform EU-wide criteria for environmentally sustainable activities.

685 The Commission, supported by Romania, disputes that line of argument.

686 In that regard, the Court notes that, as is apparent from paragraphs 493 to 495 above, the differentiation criticised by the Republic of Austria is an application of the Taxonomy Regulation that introduces different categories of activities according to their sustainability, in particular in Article 10(1) and (2) of that regulation.

687 On those grounds, the sixteenth plea in law is rejected.

688 In the light of all of the foregoing, the action must be dismissed in its entirety.

The statement of modification lodged by the Republic of Austria

689 Pursuant to Article 86(1) of the Rules of Procedure, the applicant may modify the application to take account of the new factor, consisting in the fact that the measure the annulment of which is sought is replaced or amended by another measure with the same subject matter.

690 On 20 February 2024, the Republic of Austria lodged a statement of modification in order to expand its forms of order sought concerning Commission Delegated Regulation (EU) 2023/2485 of 27 June 2023 amending Delegated Regulation (EU) 2021/2139 establishing additional technical screening criteria for determining the conditions under which certain economic activities qualify as contributing substantially to climate change mitigation or climate change adaptation and for determining whether those activities cause no significant harm to any of the other environmental objectives (OJ L, 2023/2485).

691 The Commission, the Republic of Bulgaria, the Czech Republic, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Republic of Poland, Romania, the Republic of Slovenia, the Slovak Republic and the Republic of Finland were given the opportunity to lodge observations on that statement of modification.

692 In that regard, as observed by the Commission, Article 86(2) of the Rules of Procedure provides that the modification of the application must be made by a separate document within the time limit laid down in the sixth paragraph of Article 263 TFEU within which the annulment of the measure justifying the modification of the application may be sought.

693 Delegated Regulation 2023/2485 was published in the *Official Journal of the European Union* of 21 November 2023. Under Article 59 of the Rules of Procedure, the time limit for lodging the modification of the application is to be calculated from the end of the fourteenth day after publication, that is to say, as from 5 December 2023. The date corresponding to the time limit of two months after that date is 5 February 2024. Given the extension on account of distance laid down in Article 60 of the Rules of Procedure, the time limit for lodging the application for modification thus expired on 15 February 2024.

694 In those circumstances, the statement of modification lodged on 20 February 2024 is inadmissible on the ground that it was lodged out of time.

Costs

695 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Republic of Austria has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the latter.

696 The Republic of Bulgaria, the Czech Republic, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Republic of Poland, Romania, the Republic of Slovenia, the Slovak Republic and the Republic of Finland are to bear their own costs, in accordance with Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Grand Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the Republic of Austria to bear its own costs and to pay those incurred by the European Commission;**

3. **Orders the Republic of Bulgaria, the Czech Republic, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Republic of Poland, Romania, the Republic of Slovenia, the Slovak Republic and the Republic of Finland to bear their own costs.**

Van der Woude	Papasavvas	Marcoulli
Costeira	Porchia	Kancheva
Öberg	De Baere	Pynnä
Laitenberger	Steinfatt	Petrlík
Zilgalvis	Tichy-Fisslberger	Spangsberg Grønfeldt

Delivered in open court in Luxembourg on 10 September 2025.

[Signatures]

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[i] The names of the parties and the wording of paragraph 561 of this document have been amended since it was first put online.