

## **ISDA response to the European Commission consultation on the technical screening criteria for climate change mitigation and adaptation**

The International Swaps and Derivatives Association (ISDA) welcomes the opportunity to respond to the European Commission's consultation on the Delegated Acts, specifying the technical screening criteria for climate change mitigation and adaptation

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient.

Today, ISDA has over 925 member institutions from 75 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: [www.isda.org](http://www.isda.org).

In view of our broad membership, we are providing various comments that reflect the views of ISDA's different member institutions.

### **General recommendations**

#### **1. Ensuring alignment between the technical screening criteria and the relevant provisions in the existing EU legislation**

We support the alignment between a number of technical screening criteria laid out in the draft DA and the relevant provisions in the existing EU acquis. Ensuring coherence between the DA and the existing legislation helps streamline compliance and provides certainty to stakeholders directly subject to the rules. We therefore urge the Commission to ensure that such alignment constitutes a common principle underpinning the Taxonomy Regulation, cf. Art. 19(1)(d).

#### **2. Setting a comprehensive framework for activities contributing to climate change mitigation directly, including enabling and transitional activities, based on their respective contributions to climate change mitigation**

We welcome the Commission's commitment to ensuring that technical screening criteria take into consideration whether the given economic activity makes a substantial contribution to climate change mitigation in accordance with the Taxonomy Regulation (EU) 2020/852. The Delegated Act should create a proportionate framework for both transitional and enabling activities, based on their respective contributions to climate change mitigation.

#### **3. Respecting the technological neutrality of the screening criteria in line with Art. 19(1)(a) of the Taxonomy Regulation, identifying the potential contributions of relevant economic activity to the given environmental objective**

We recall that Art 19(1)(a) of the Taxonomy Regulation stipulates that the screening criteria must "identify the most relevant potential contributions to the given environmental objective while respecting the principle of technological neutrality, considering both the short- and the long-term, impact of the given economic activity." We therefore believe that this principle should be respected in the DA. Please refer to a non-exhaustive list of examples in the sections below.

#### 4. **Adverse DNSH test-level for Climate adaptation requirements on Climate mitigation activities:**

We are concerned that the risk assessment criteria and compliance requirements in the DA regarding climate risk adaptation are very broad, as they are integrated via DNSH criteria as listed in Annex E to Annex 1. We recognise the logic in testing climate mitigating activities for a negative impact on and from other objectives. However, the current level in the DA in this regard is problematic in terms of details and scope. Investors only need this information on a general level, and the check for ‘false green activities’ i.e. validated mitigating activities that are subject to climate risks should be made on a proportionate level. We urge the Commission to complement the Annex E requirements with a de minimis threshold and only apply the requirements set for activities with a lifespan of less than 10 years regardless of expected lifespan. The same principle, regarding a proportionate test approach, goes for checks on Minimum Social Safeguards (labor rights, human rights, etc.) and later on when DNSH criteria for water, circular economy, pollution and biodiversity are further developed.

#### 5. **Phase-in approach:**

It is stated that for activities *upgrading or altering existing* assets or processes, the adaptation solutions identified need to be implemented within five years from the start of the activity. A similar phase-in approach should apply for *existing* (already running) activities when the DA comes into application as well as for *new* activities established after this DA comes into application. The length of the phase-in should be proportionate to the type of activity.

#### 6. **Third country equivalence:**

To avoid any doubt, it should be clearly stated that third-country activities count if an Environmental Impact Assessment has been completed in accordance with equivalent national provisions or international standards”.

#### 7. **Data Grandfathering Clause:**

The DA builds on a system of many measures and functions to be taxonomy-aligned. It may not be possible for every part of these ‘gears’ to be verified data-wise from Day 1. Hence, a grandfathering clause should apply when data based on the time before the DA’s entry into force is compiled or transferred into the period for which taxonomy rules apply.

#### 8. **Reality-proof:**

In order to have a workable framework it should be possible to implement the criteria in practical terms, so that they are capable of responding to a fast-changing world. Thus, it is key that DA enables some flexibility in terms of how the criteria are to be implemented. A “where feasible” or “where applicable” principle in application of the criteria is vital, and would benefit from further guidance (with industry input).

## **Specific comments on the relevant business activities**

### **Nuclear power**

- a) ISDA regrets that the assessment of nuclear will not be finalised and completed in 2020, as it “is still ongoing and the Commission will report on its results in the context of the review of this Regulation” (recital 16 of the delegated act).
- b) This delay in the assessment implies uncertainty not only for the nuclear sector but also for the power sector in general. Hence, it prevents the industry from having a clear view on which technologies will have access to sustainable financing. ISDA calls on the European Commission to accelerate the assessment process of nuclear in order to shorten the period of uncertainty as much as possible.
- c) Furthermore, we would highlight the importance of a common publication timing of the eligibility assessment of all existing technologies (currently being assessed by the EC), which substantially contribute to a certain economic activity like electricity production.

### **About ISDA**

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: [www.isda.org](http://www.isda.org).