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Questions and answers on my individual action against the Delegated Taxonomy Regulation

What kind of is raised?

The action raised is an action for annulment under Article 263 of the Treaty on the Functioning of the EU (TFEU). Such an action can be brought against EU legislative acts or other measures of the EU institutions insofar as these produce legal effects. A delegated act is such an act of the Commission which is subject to an action for annulment.

What is this action about?

The action has two purposes:

1. The action is intended to **institute an individual and enforceable right for a single member of the European Parliament** to review the legality of legal acts of the Commission or legislative acts adopted under special legislative procedure in front of the CJEU.

So far, only the European Parliament can raise an action in front of the CJEU in case the Commission or the Council have violated Parliament's participation rights. Such a violation is conceivable when the Commission adopts a delegated act instead of initiating an ordinary legislative procedure, or when the Council adopts a legislative act under the special legislative procedure, where Parliament only has to be consulted, instead of under the ordinary legislative procedure, where Parliament has co-decides.

To raise such an action by the European Parliament must be decided by a majority of the Parliament. A minority right for individual Members of the European Parliament to raise an action against violations of Parliamentary rights before the CJEU has not yet been recognized in EU law. This becomes particularly relevant in the present case concerning the judicial review of the Delegated Taxonomy Regulation: in the competent committees in the European Parliament (the Committee on the Environment (ENVI) and the Committee on Economic and Monetary Affairs (ECON), being the committees responsible for taxonomy, as well as the Legal Affairs Committee (JURI), (being the committee responsible for raising an action by the European Parliament), a majority of ID, ECR, EPP and Renew have prevented the European Parliament from raising an action for annulment.

The present action aims to institute a minority right for individual Members of the European Parliament. Because: if in a particular decision-making process Parliament



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does not have a formal say, the rights of single MEPs, such as tabling amendments (according to Rule 218(1) of the Rules of Procedure of the European Parliament) in committees and their participation in the formation of political will within Parliament, are violated. It must therefore be possible for an individual member of the European Parliament to claim the violation of Parliamentary rights before the CJEU, in particular when the European Parliament as a institution drops out.

2. The action seeks the **annulment of the Delegated Taxonomy Regulation**, with which the Commission qualified the production of energy from fossil natural gas and nuclear energy as environmentally sustainable economic activities within the meaning of the Taxonomy Regulation.

I am of the opinion that this decision regarding the qualification of energy sources such as nuclear energy and gas (at the latest since the outbreak of the Ukraine war on February 24, 2022) is a political (essential) and not a technical (non-essential) one. However, by means of delegated legislation, the Commission may only make decisions that are “non-essential” (Article 290 (1) TFEU). Essential decisions may only be made by the legislature following the procedure provided for it in the Treaties: the ordinary legislative procedure. The CJEU has decided that an essential element of a certain field is one that requires a political decision. A political decision is necessary where conflicting interests need to be balanced and weighed. Only the legislature has the necessary legitimacy to make such decisions.

Dealing with nuclear energy has always been a contentious political issue, especially in the European Union, where opinions range from a complete nuclear phase-out (e.g. in Germany or Austria) to building new nuclear power plants (e.g. in the Netherlands). Dealing with fossil natural gas is also a politically controversial issue, as the handling of the ‘North Stream 1’ and ‘North Stream 2’ pipelines in the EU in the past has shown. At the latest with the outbreak of Russia’s illegal war against Ukraine and the resulting question of how to deal with Russian gas, the issue of fossil natural gas has become a highly political one.

The qualification of energy production from fossil natural gas and nuclear energy as a sustainable economic activity is therefore a political question, the answer to which is solely the responsibility of the legislator, the European Parliament and the Council, in the ordinary legislative procedure.

Why to raise an action when there was a majority in the European Parliament for the Delegated Taxonomy Regulation?

On 6 July 2022, in its plenary session the European Parliament decided by 328 votes in favour against 278 votes with 33 abstentions not to raise any objections to the Delegated



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Taxonomy Regulation. Under Article 290(2)(b) TFEU, the European Parliament can only stop a delegated act if a “majority of its members” (i.e. an absolute majority) votes in favour. That objection was the subject of the vote on 6 July.

The present action is directed against the fact that the qualification of energy production from fossil natural gas and nuclear energy as sustainable economic activities was carried out by the Commission by means of delegated act and not by the legislator in the ordinary legislative procedure. The Commission has combined the treatment of both energy sources into one delegated act. A separate treatment of both energy sources was therefore not possible. Also, the criteria could no longer be changed. Parliament could only reject this ‘complete package’ with an absolute majority (delegated legislation) instead of voting on amendments with a simple majority, requesting split votes and voting on the amended version with a simple majority (ordinary legislation). In the case of delegated legislation, the individual MEP is deprived of the right to table amendments in the competent committees in accordance with Article 218(1) of the Rules of Procedure of the European Parliament.

This action is therefore not directed against the result of the vote in plenary, but against the procedure chosen by the Commission and the impossibility of correcting the Commission’s preliminary political decisions in Parliament. Decisions of such scope and sensitivity should not be taken by means of a delegated act, but should be the responsibility of the members of parliament in the ordinary legislative procedure.