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EU's General Court Dismisses Action by MEP Against the Commission's Inclusion of Nuclear Energy and Natural Gas in the EU Taxonomy

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On June 21, 2023, the General Court of the European Union **rejected an action** brought by a Member of the European Parliament (MEP) seeking to annul European Commission legislation that identified certain activities related to nuclear power and natural gas as environmentally sustainable economic activities. In bringing the action, **MEP René Repasi claimed** that the Commission exceeded the powers conferred upon it when it adopted the Delegated Regulation 2022/1214, which establishes the criteria upon which certain economic activities can be deemed transitional activities contributing to the EU's climate-change mitigation objectives. The General Court ruled the action was inadmissible on the basis that Repasi had no legal standing or direct concern over the adoption of the Delegated Regulation.

In 2020, the European Commission adopted **Regulation 2020/852 (the Taxonomy Regulation)** providing a classification system for economic activities to be considered as environmentally sustainable. The Taxonomy Regulation forms part of the European Green Deal, a suite of regulations forming the EU's plan for addressing the challenges associated with climate change. A key objective is to reorient capital flows towards sustainable investment. The supplementary Delegated Regulation came into force in 2022, and provides for the inclusion of nuclear energy and natural gas in the Taxonomy, thereby labelling them as sustainable investment activities. Repasi argued that the regulation infringed the European Parliament's legislative competence and, therefore, his rights as an MEP.

This case is the first time that the General Court has ruled on the legal standing of an MEP to challenge a delegated regulation of the Commission. The General Court ruled that while MEPs can challenge Commission regulations that directly impact their work, the Delegated Regulation did not directly affect the position of the MEP. The rights and powers Repasi possesses as an MEP, such as participating in law-making and influencing decisions, were intended to be used

within the Parliament's rules. The adoption of the regulation did not directly change his position and the General Court dismissed his claim.

Taking the Temperature: The Parliament and the Commission's decision to classify nuclear power and natural gas-related activities as environmentally sustainable has been the subject of much controversy and there are concerns that the overall credibility of the Taxonomy Regulation has been diminished. [As we reported recently](#), Greenpeace filed a lawsuit with the European Court of Justice against the Commission over the inclusion of natural gas and nuclear energy on the basis that it contravened the Taxonomy Regulation as well as the EU's obligations pursuant to the 2015 Paris Agreement. ClientEarth [filed a similar claim](#) over the European Commission's refusal to remove fossil gas from the Taxonomy.

The challenge brought by MEP Repasi is an example of the increasing use of strategic litigation. [As we have discussed recently](#), strategic litigation refers to cases that are filed with the objective of influencing the wider debate around climate change decision-making rather than obtaining a specific judgment or legal remedy. Strategic litigation against governments or state authorities that raise issues around the validity or interpretation of climate change framework laws have increased in the 12 months, according to a report from the Grantham Institute. Other examples include: [Held v. Montana](#), a case involving Montana residents who are claiming that the State of Montana violated their constitutional rights by virtue of state support of fossil fuel-based energy policies; and [Greenpeace Italy et. al. v. ENI S.p.A.](#), where Italian citizens and two NGOs sued ENI S.p.A asserting violations of their human rights safeguarded by the Italian Constitution by virtue of the company's alleged contributions to climate change.