

Targeted public consultation - draft guidance on the application of the 'do no significant harm' principle under the 2028-2034 Multiannual Financial Framework (MFF)

Introduction

The Commission proposal for a Performance Regulation sets out that the Commission is to issue a simple and single guidance on the application of the Do No Significant Harm (DNSH) principle to the Multiannual Financial Framework (MFF) 2028-2034.

In this context, this targeted consultation aims to gather feedback from stakeholders on the Commission's envisaged approach to applying the principle, presented in the concept paper (attached to this questionnaire). The following survey follows the structure of the concept paper.

This targeted consultation will be open for 9 weeks, until 16 September 2026. It follows the Call for Evidence published on the "Have your say (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/17112-Guidance-on-applying-the-do-no-significant-harm-principle-under-the-2028-2034-multiannual-financial-framework_en)" portal in March 2026.

Profile of respondents

Language of my contribution:

English

I am giving my contribution as:

- ☐ National authority
- ☐ Regional authority
- ☐ National agency
- ☐ Implementing partner of EU funds
- ☐ Business organisation / company
- ☐ Industry or trade association
- ☐ Small and medium-sized enterprise (SME)
- ☒ NGO / Civil society organisation
- ☐ Consumer organisation
- ☐ Trade union / workers' organisation
- ☐ Academic or research organisation
- ☐ International organisation
- ☐ EU citizen
- ☐ non-EU citizen

☐ Other

Please specify the name of your organisation:

1,000 character(s) maximum

ClientEarth

What is the size of your organisation?

- ☐ Micro (fewer than 10 employees)
☐ Small (10-49 employees)
☒ Medium-sized (50-249 employees)
☐ Large (250 employees or more)

First name

.....

Surname

.....

Email address

.....

Country of origin

Belgium

In which sector(s) are you primarily active?

Maximum 3 selection(s)

- ☐ Agriculture and food
☐ Energy and mining
☒ Environment and climate
☐ Financial Services
☐ Health
☐ Digital / ICT
☐ Transport and mobility
☐ Consumer markets / retail
☐ Manufacturing / industry
☐ Construction / infrastructure
☐ Education
☐ Media / culture
☐ Justice / legal services
☐ Public administration
☐ Social services
☐ Defence / security
☐ Consulting services
☐ Cross-sectoral
☐ Other

Please indicate your level of familiarity with the 'Do No Significant Harm' (DNSH) principle.

- ☐ Very high – direct and regular practical experience
☒ High – good knowledge and some practical experience

- ☐ Moderate – general knowledge
- ☐ Limited – only partial familiarity
- ☐ No knowledge

What is the main basis for your replies?

- ☐ Practical experience in applying DNSH rules
- ☐ Experience in enforcement, auditing or supervision of DNSH rules
- ☐ Academic research
- ☒ Representative of an undertaking, industry association, NGO, or other stakeholder organisation
- ☐ Other

General questions on the proposed approach

Overall, do you think that the framework presented in the concept paper strikes a good balance between ensuring an adequate level of environmental protection and remaining proportionate and simple to apply?

- ☐ 1 – not at all
- ☒ 2 – to a limited extent
- ☐ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Please justify your answer, providing examples where possible

2,000 character(s) maximum

We welcome the anchoring of the DNSH principle in Article 5 of the proposed performance regulation and its operationalization through a simplified approach based on a single list of DNSH criteria that applies horizontally across the entire EU budget. Binding, uniform, clear criteria, with strictly defined exemptions, can make the DNSH principle easy to apply and effective. The approach delivers on simplification, efficiency and consistency, but falls short of ensuring an adequate level of environmental protection in accordance with article 11 TFEU.

First, the creation of a "green list" where policy areas or activities are always deemed to be in line with the DNSH criteria needs to be handled with the utmost caution to avoid erosion of the DNSH principle. Many potentially harmful activities will not be subject to DNSH criteria or assessments at all. The intervention fields listed in Annex I of the proposed Performance Regulation are not designed to accommodate an automatic DNSH compliance: some are an outright violation of the DNSH principle, while many others have varying environmental impacts due to their large scope. The Annex I coefficients are designed to account for the positive environmental effects, not the harmful ones.

Second, for those activities where DNSH criteria would apply, the overly broad and vague carve outs from the DNSH criteria erode the DNSH principle, create legal uncertainty, which in turn increases administrative burden. Moreover, the concept paper proposes lower standards than the EU Taxonomy for many of 18 activities.

Third, the General Court's case law (T-681/22 and 781/22) supports the Commission's power to identify activities that "do significant harm" based on objective criteria, but not to dilute that test through policy balancing.

Finally, we urge the Commission to consult the public on the guidance itself, not only on this concept paper.

General principles applicable to the DNSH approach (section 1 of the concept paper)

Do you have any comments on the concept paper's section on the principles of reduced administrative burden and proportionality (section 1.A)?

- ☒ Yes
☐ No

Do you think that the proposed approach in the concept paper, relying on a single list of DNSH criteria that are included in a guidance and are known upfront, is simpler and reduces administrative burden compared to the ways the DNSH principle is currently applied across the EU budget?

- ☐ 1 – not at all
☐ 2 – to a limited extent
☒ 3 – to some extent
☐ 4 – to a great extent
☐ Do not know

Please explain your answer

1,000 character(s) maximum

The approach should lead to simplification, efficiency and consistency, and reduces administrative burden for managing authorities and beneficiaries. At the same time, this approach needs to be handled with utmost caution to avoid erosion of the DNSH. Clear and binding DNSH criteria ensure that this simplification delivers both consistency and legal certainty. It is helpful to reduce administrative burden and accelerate the screening and verification processes. However, the proposed exemptions and carve outs from DNSH criteria are vague and often open-ended, which makes it complex, inefficient and subject to inconsistencies.

The principles of economy, efficiency and effectiveness, may be weighed in when drafting the guidance, but they cannot take precedence over the DNSH principle that constitutes the subject matter of the proposal. As said above, the Commission should be mindful to stick to objective criteria and not to dilute the DNSH test through policy balancing.

Do you think that the proposed approach in the concept paper allows to achieve the set objectives of the relevant programmes or instruments in line with the Union's policy priorities?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☒ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Please explain your answer

1,000 character(s) maximum

While the proposed approach broadly aligns with the objectives of the relevant programmes and Union priorities, the blanket assumption that direct income support measures automatically comply with DNSH is particularly problematic in the agricultural sector. Such an exemption risks undermining the environmental objectives of the CAP itself, given agriculture significant impact on biodiversity, climate and air, water and soil pollution. Although the proposed NRP (Art. 7) and CAP (Art. 3) Regulations qualify the interventions falling under the Farm stewardships (listed in Art. 5(1), (a) – (f), (o) – (p), proposed CAP Regulation) as DNSH-compliant by default, this should not preclude their assessment against the DNSH principle. We therefore strongly encourage the Commission to clarify in its guidance that the NRPP, including the Farm stewardships, will undergo a DNSH assessment as part of the Commission assessment required by Art. 23, proposed NRPR Regulation.

Do you think that the proposed approach in the concept paper avoids duplication with existing EU environmental legislation?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☒ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Please explain your answer

1,000 character(s) maximum

While the proposal avoids duplication with existing EU law, the guidance needs to clearly state that compliance with EU environmental legislation is a prerequisite DNSH compliance. The added value of EU funding is to support activities of which the standards must go beyond the legal baseline. This notably means that the EU budget cannot fund activities or assets the legality or regularity of which is directly affected by a Commission decision to issue a reasoned opinion under Article 258 of the TFEU or by a judicial or administrative decision from a national public authority.

The alignment with the EU Taxonomy creates an inconsistent and confusing approach, since several DNSH criteria in the concept paper set a lower standard than the EU taxonomy. The equivalence should be deleted. MFF DNSH criteria should exceed the Taxonomy's screening criteria, never merely import a standard the Commission's own Platform on Sustainable Finance warned undermines the Taxonomy's credibility.

Do you think that the proposed approach in the concept paper to applying the proportionality principle is adequate and operational?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☒ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Please explain your answer

1,000 character(s) maximum

A binding, clear and exhaustive list of DNSH criteria is the appropriate way to ensure legal certainty, reduced administrative burden and proportionality. Introducing thresholds depending on the size of the activity or sector-specific exemptions would lead to fragmentation, increased administrative burden and potential loopholes, that the single DNSH guidance is designed to remove. The list of activities to which DNSH criteria apply is concise and easy to implement and proportionality should rather be reflected in the design of the criteria themselves.

In any event, if the Commission decides to apply any differentiation to ensure proportionality, this should be a science-based only. For example, the criteria should enable small-scale, low-impact fishers to comply with the DNSH principle more easily than large-scale industrial fishing vessels that use bottom-touching gear or have a high incidence of bycatch.

Do you think that developing a differentiated or specific approach for research activities would be necessary to cater for their specificities?

- ☐ Yes
- ☒ No

Do you think that a specific approach should be developed for applying the DNSH principle to financial instruments and budgetary guarantees?

- ☐ Yes
- ☒ No

Do you have any comments on the concept paper's section on the principle of 'where feasible or appropriate' (section 1.B)?

- ☒ Yes
☐ No

Is your comment related to:

- ☒ The proposed definition of crisis
☒ The proposed definition of reasons of overriding public interest
☒ The proposed definition of defence and security, including dual-use activities
☒ The application of the 'where feasible or appropriate' principle
☒ Other

Please provide your comment on the definition of crisis

1,000 character(s) maximum

Aligning the definition with Article 2 (22) Financial Regulation seems consistent. It rightfully entails elements of extraordinariness (as opposed to recurring) and intensity. A crisis needs to be assessed in light of the gravity of the consequences for human and environmental well-being that would arise from it. It should be clearly distinct from force majeure cases. The definition may also borrow from the Regulation on Crisis Situations in migration law. Besides the elements of extraordinariness and intensity, a crisis should be assessed against the recipient's vulnerability. The Digital Services Act integrates similar elements. As a result, "crisis" needs to be circumscribed as an extraordinary event, characterized by an intensity which could hypothetically lead to grave consequences, considering the vulnerability existing in the affected field. This implies a narrow interpretation in line with the case law and its application must take account of the other exclusions.

Please provide your comment on the definition of reasons of overriding public interest

1,000 character(s) maximum

This exception is problematic. IROPI is treated too broadly and implies an automatic DNSH compliance. Under EU law, IROPI is a derogation of last resort, to be interpreted strictly, and cannot serve as a justification for setting aside environmental protections. Nor is it interchangeable: a project of overriding public interest to the WFD, may not be for the Habitats Directive. Any reference to IROPI should clarify that it is only one cumulative condition within specific derogation tests, not a standalone exemption. Compliance with derogations under the WFD or Nature Directives is not equivalent to DNSH compliance, given their distinct legal objectives. The text should expressly require case-by-case assessment and avoid any suggestion of automatism. This is especially concerning given the proposals to speed up environmental assessments, which risk extending IROPI presumptions to many projects: this should not create automatic DNSH exemptions or replace individual assessments.

Please provide your comment on the definition of defence, including dual-use activities

1,000 character(s) maximum

Any exemptions from DNSH compliance under the defence objective should be limited to single use activities, i.e. only for activities with defence as their sole purpose and actual use thereof. Allowing dual-use activities would overly widen the exemption. Moreover, the term "security" could mean anything. For instance, if it were to also encompass "energy security", such derogation could become a backdoor for continued fossil fuel funding, thereby circumventing the DNSH criteria under section 2 points 1 and 2. Similarly, derogations cannot be granted on justifications relating to "food security", insofar as a crisis situation has not been identified based on the best available evidence. Instead, the logic of the EIA Directive should be applied whereby exemptions must have defence or response to civil emergencies as their sole purpose to avoid problems of interpretation and ensure harmonized implementation of the exemption.

Please provide your comment on the application of the 'where feasible or appropriate' principle
1,000 character(s) maximum

It is vague, open-ended and can be subject to interpretation. Yet, this exception is without prejudice to the EU Treaties, including the integration and coherence principles, and can thus not be interpreted in a way that reduces existing environmental protection. Any exception to a principle needs to be read narrowly, in line with the case law. The Proposal states that Member States should provide a justification when relying on this exception and submitting their NRPPs. However, beyond such justification, Member States should not have the sole discretion to decide unilaterally on what is considered feasible and appropriate. They should duly and publicly provide reasons for such genuine exceptional circumstance which shall under all circumstances remain subject to rigorous scrutiny and prior approval by the Commission, following on predetermined, objective SMART criteria and always on a case-by-case basis.

Please provide your comment
1,000 character(s) maximum

Are there any other areas or cases for which the application of the DNSH principle should be considered not feasible or appropriate?

1,000 character(s) maximum

No, on the contrary, the existing cases are sufficiently wide in scope and the list is non-exhaustive. Adding other areas or cases would erode the application of the DNSH principle even more.

The principles of economy, efficiency and effectiveness, which are the sub-principles of sound financial management, which may be used to argue for other areas where the DNSH principle should not apply, may be weighed when drafting the guidance, but these principles cannot take precedence over the DNSH principle which is the subject matter of the proposal. These principles act as a mandate to calibrate application to clear and determined exceptions.

A restrictive interpretation of exceptions and fewer exceptions would promote the principle of clarity and the aim to achieve a high level of protection. Conversely, multiplying exceptions hampers the principle of simplification.

Do you consider that additional criteria for climate change adaptation are necessary (section 1.C of the concept paper)?

- ☒ Yes
☐ No

How may any such additional criteria be best introduced in a proportionate manner and without adding excessive administrative burden?

2,000 character(s) maximum

We support the inclusion of additional climate change adaptation criteria for some activities. The principle of sound financial management would require any EU funding activities and projects that are directly exposed to climate change (e.g. coastal zones, wildfire prone areas, areas with severe water scarcity), to include climate adaptation criteria. It should be stressed that such climate adaptation criteria should be purely additional and cannot lead to a generally more lenient DNSH criteria/assessments.

Do you consider the elements outlined in section 1.C of the concept paper (i.e. exposure and size) adequate for guiding the application of such additional criteria?

- ☐ 1 – not at all
☒ 2 – to a limited extent
☐ 3 – to some extent
☐ 4 – to a great extent
☐ Do not know

Please explain your answer

1,000 character(s) maximum

While the size of an activity and its exposure to climate risks are relevant factors, the Guidance should not be limited to assessing how climate risks affect an activity. It should also consider the extent to which an activity, including activities beyond infrastructure, contributes to existing climate risks or heightens vulnerability to such risks. This reflects the approach under Article 17 of the Taxonomy Regulation, which captures both the impact of climate risks on an activity and the impact of the activity on people, nature and assets through climate-related risks.

DNSH areas and criteria (section 2 of the concept paper)

Do you have any comments on point 1) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes
☐ No

Are the scope and formulation of point 1) and its exemptions clear?

- ☐ 1 – not at all
☒ 2 – to a limited extent
☐ 3 – to some extent
☐ 4 – to a great extent
☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

- a) The approach in para. 285 CEEAG should be followed, placing the burden on the Member State to prove that it has taken all necessary measures to identify the responsible entity and hold it legally liable. Also, where this carve-out covers the decommissioning of stranded regulated assets that could otherwise earn a regulated return, it should apply only if a decommissioning framework exists for that asset class. Although the Gas Directive now requires distribution-level decommissioning plans in some cases, many Member States still lack frameworks for dismantling gas networks. In such cases, no entity may be legally obliged to decommission the asset, meaning the carve-out would apply. However, using EU funds in these circumstances may not be economically or politically justified. Limiting the carve-out to cases where a decommissioning framework exists would encourage Member States to adopt appropriate frameworks and help ensure that EU funds are used only where no entity can be held liable.
- b) "Pure" hydrogen covers all hydrogen types, risking continued reliance on non-renewable hydrogen. Eligibility should also be limited to actual hydrogen use rather than merely enabling it. Technical H₂-readiness alone does not address key risks, including lock-in effects, stranded assets, price volatility, and increased geopolitical dependency. This carve-out should apply only where assets can credibly demonstrate the use of 100% renewable hydrogen throughout their regulatory lifetime. If funding is extended to "hydrogen-ready" assets, additional binding conditionalities on conversion timelines and costs etc. should apply.
- d) Funding for the production and transport of fossil-based fuels is problematic. This is a lower standard than the Taxonomy. The ISBT recommendations call for removing low-carbon fuel references. This carve out should thus be restricted to renewable hydrogen, as the underlying "low-carbon" thresholds are politically negotiated rather than science-based.

Do you expect any challenges in the implementation and verification of point 1) and its exemptions?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☐ 3 – to some extent
- ☒ 4 – to a great extent
- ☐ Do not know

Please justify your answer, providing examples where possible, and drafting suggestions if relevant.

2,000 character(s) maximum

- a) Further to what has been set out above, the burden of proof should be on the Member State to show it has taken all necessary measures to identify the responsible entity and hold it legally liable. Decommissioning/rehabilitation can be evidenced ex-ante via written confirmation from the competent national authority on the absence or insolvency of the liable polluter.
- b) Verifying "Hydrogen-readiness" of infrastructure without further adaptation needs independent and ongoing technical certification, and ongoing monitoring and enforcement around compliance. Otherwise, the claim is unverifiable. Also, this aspect is insufficient. Project promoters benefiting from EU funding for hydrogen-ready infrastructure should be required to comply with conversion timelines, monitor hydrogen supply and demand, and guarantee upfront that any conversion costs have been anticipated (see our report).
- d) Low-carbon fuel compliance would rely on RED/Union-database certification, but for grid-connected gas physical traceability is impossible (book-and-claim risk).
- f) The carve-out for transport infrastructure and mobile assets capable of transporting renewable, low-carbon or non-energy products could in theory be verified ex-ante. However, a contractual dedication to the transport of renewable products as well as a clearly defined set of non-energy products should instead be required in the grant agreement. Monitoring of actual use should be ensured.

Do you have any comments on point 2) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes
- ☐ No

Are the scope and formulation of point 2) and its exemptions clear?

- ☐ 1 – not at all
- ☒ 2 – to a limited extent
- ☐ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant.

2,000 character(s) maximum

a) It is unclear whether this applies to "generation" or "generation assets" since both terms are used. If the former, the fossil fuels exclusion should be clarified through a methodology distinguishing fossil-based from non-fossil electricity, heat or cold. If the latter, we suggest aligning with the State aid GBER/CEEAG approach: no support for the installation or construction of fossil-fuel based generation assets (wholly or partly), while the remainder of the facility remains eligible, subject to conditions. In this respect, under article 26 EED a Member State can demonstrate "efficiency" through the primary energy mix, which does not exclude the most polluting fossil fuels, or on greenhouse gas emissions thresholds, which are less ambitious than the taxonomy technical screening criteria where lower emissions thresholds apply more quickly. To ensure that EU funding aligns with DNSH objectives and science, the more ambitious Taxonomy criteria should apply.

c) generation of electricity with low-carbon fuels: We oppose this carve-out which would support significantly less efficient technologies and risk further fossil fuel lock-in in a sector where renewable alternatives are readily available. Moreover, the thresholds for "low-carbon" fuels are politically negotiated rather than science based. Treating compliance with these thresholds as equivalent to DNSH undermines the principle's scientific integrity.

d) The carve-out for heat and cold generation for net-zero technologies creates an open-ended sectoral exemption. It lacks a clearly defined scope and risks supporting continued fossil fuel use in sectors that can largely be electrified. It would also create inconsistency by allowing fossil energy use in the manufacture of net-zero technologies while excluding comparable uses elsewhere. If retained, it should be limited to cases where no mature alternatives exist, be subject to clear emission reduction requirements and phase out plans.

Do you expect any challenges in the implementation and verification of point 2) and its exemptions?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☒ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Please justify your answer, providing examples where possible, and drafting suggestions if relevant.

2,000 character(s) maximum

b) Add an ex-post monitoring/reporting obligation for the 300 hours/year back-up cap under b) .

c) Low-carbon fuel usage is verifiable via the certification provided in line with Art. 9 of the Gas and Hydrogen Directive. This should be limited to on-site use provided through a dedicated chain that can be physically verified and proven via delivery records/invoices. For grid gas, physical traceability is not possible.

Do you have any comments on point 3) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
- ☒ No

Do you have any comments on point 4) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
- ☒ No

Do you have any comments on point 5) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes
- ☐ No

Are the scope and formulation of point 5) and its exemptions clear?

- ☐ 1 – not at all
- ☒ 2 – to a limited extent
- ☐ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

This carve-out could be applied extremely broadly, with no consideration of the potentially significant impacts of road infrastructure, including on land take, habitat fragmentation, induced traffic and impact of water bodies and biodiversity. The requirement to foresee "proportionate flanking measures" is vague and will be subject to interpretation. It should be replaced by objective and verifiable criteria.

A blanket exemption for agricultural and forest roads is not justified by the purpose and may enable significant indirect impacts, including increased access to previously undisturbed areas and land-use change. The 2 km threshold for small-scale interventions is arbitrary and readily circumventable through project-splitting (cumulative impacts of these roads).

Do you expect any challenges in the implementation and verification of point 5) and its exemptions?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☐ 3 – to some extent
- ☐ 4 – to a great extent
- ☒ Do not know

This criterion does not apply to interventions that cover small-scale roads, which are defined as roads that are shorter than 2 km. Is the 2km threshold reasonable?

- ☐ Yes, it is reasonable
- ☒ No, the threshold is too high
- ☐ No, the threshold is too low

Do you have any comments on point 6) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
- ☒ No

Do you have any comments on point 7) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
- ☒ No

Do you have any comments on point 8) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes

☐ No

Are the scope and formulation of point 8) and its exemptions clear?

- ☐ 1 – not at all
☒ 2 – to a limited extent
☐ 3 – to some extent
☐ 4 – to a great extent
☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

Overall, we support carrying the EMFAF safeguards (Articles 13 and 17-19) into the next MFF, and the inclusion of investments in fishing vessels and gear in the list of harmful activities, as these can drive overcapacity and overfishing. Yet, the carve-outs as drafted are a legal compliance exercise, not an environmental safeguard: mere compliance with EU law cannot justify exemption from DNSH assessment. They are also so broad that the exception risks becoming the rule.

On the carve-out a):

1) the first condition that the vessel "belong to a fleet segment, in compliance with the CFP Regulation", is not selective: every Union fishing vessel belongs to one. It should require belonging to a segment for which the latest report under Article 22(2) CFP Regulation has shown a balance with available fishing opportunities, as under Articles 17 to 19 EMFAF.

2) The second condition requires the vessel to target stocks "under fisheries management measures". Nearly all stocks are (catch limits, multiannual plans, technical measures). Targeted stocks should also not be overfished (below BMSY or a proxy per the latest ICES, GFCM or RFMO advice), unless the investment supports their recovery, in line with Article 4 WTO Agreement on Fisheries Subsidies.

3) The third condition requires an electronic catch logbook and a vessel monitoring system. These are already mandatory for all vessels, including those under 12 meters, from 10 January 2028 and 1 January 2030. The condition duplicates existing EU law and adds no safeguard.

Overall, none of these conditions concerns the environmental effects of the investment itself. Carve-out a) should also require that the investment does not increase fishing capacity (kW, GT) or the ability to find or catch fish, in line with Articles 13, 18 and 19 EMFAF.

On carve-out b), actual use of renewable fuel or electricity should be required, not mere capability, with priority to investments achieving the greatest phase-out of conventional engines.

Do you expect any challenges in the implementation and verification of point 8) and its exemptions?

- ☐ 1 – not at all
☐ 2 – to a limited extent
☐ 3 – to some extent
☒ 4 – to a great extent
☐ Do not know

Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

The suggested modifications to conditions (i) and (ii) for carve out a) are verifiable ex-ante without additional burden: the balance of fleet segments is reported annually under Art. 22(2) CFP Regulation, stock status follows from ICES, GFCM or RFMO advice, and capacity is recorded in the Union fleet register. Condition (iii) under carve out a) generates administrative work without environmental added value, as it will be a general legal obligation from 10 January 2028.

Carve out b) is not verifiable as drafted in the concept paper: hybrid and dual-fuel propulsion is certified at design stage, but nothing ensures that the vessel actually uses renewable fuel or electricity rather than conventional fossil fuel over its lifetime. We suggest:

- a binding commitment in the grant agreement to use a minimum share of renewable fuel or electricity in the energy used on board, applicable from the entry into service of the engine and throughout its operational lifetime;
- ex-post monitoring and reporting of actual use, relying on data already collected under Reg. (EC) No 1224/2009 (electronic logbook, continuous measurement of propulsive engine power);

Effects of fishing capacity are verifiable ex-ante and ex-post, and should be verified: engine power and gross tonnage before and after the investment, physical verification of replaced engines (Art. 18(3) EMFAF), and monitoring of days at sea and fishing effort through vessel tracking and logbook data.

Do you have any comments on point 9) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
☒ No

Do you have any comments on point 10) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes
☐ No

Are the scope and formulation of point 10) and its exemptions clear?

- ☐ 1 – not at all
☒ 2 – to a limited extent
☐ 3 – to some extent
☐ 4 – to a great extent
☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

We welcome the inclusion of this activity but the proposed carve-out permitting a new airport to be supported when an existing one is decommissioned should be removed. Should this nevertheless be maintained, it should be ensured that the construction of new airports does not do significant harm. It should at the very least be required that the new airport does not lead to a net increase in passengers/cargo or aircraft-movement capacity and should be limited to isolated outermost regions (for purpose of EU cohesion) where no alternatives are available.

Do you expect any challenges in the implementation and verification of point 10) and its exemptions?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☐ 3 – to some extent
- ☐ 4 – to a great extent
- ☒ Do not know

Do you have any comments on point 11) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
- ☒ No

Do you have any comments on point 12) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
- ☒ No

Do you have any comments on point 13) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
- ☒ No

Do you have any comments on point 14) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes
- ☐ No

Are the scope and formulation of point 14) and its exemptions clear?

- ☐ 1 – not at all
- ☒ 2 – to a limited extent
- ☐ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

We strongly support the inclusion of deep-sea mining (DSM) to the list of activities that could be considered harmful. Yet, the scope and formulation of point 14 could be further clarified to ensure that the exclusion cannot be circumvented through activities that are indirectly linked to deep-sea mining (DSM). Indeed, "extraction of minerals in the deep sea" narrows the scope of DSM activities and should explicitly cover the full DSM value chain (extraction, transport, processing, refining, manufacturing in downstream products). Otherwise, activities falling outside the narrow definition of extraction could receive EU support while directly facilitating future mining activities. Second, the conditionality regarding "sufficient scientific evidence" is broad and vague, and it could therefore create a potentially weak threshold. The formulation should make clear that the burden of demonstrating the absence of unacceptable risks lies with the beneficiary or the operator, and that the absence of evidence of harm cannot be interpreted as evidence of no harm. The precautionary principle should explicitly guide this assessment. Third, "poses no threat to marine ecosystems" could be clarified as DSM will never pose no threat to marine ecosystems. Given the current scientific uncertainty surrounding DSM, relevant thresholds based on robust scientific data are required.

Do you expect any challenges in the implementation and verification of point 14) and its exemptions?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☒ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Please justify your answer, providing examples where possible, and drafting suggestions if relevant
2,000 character(s) maximum

Significant implementation and verification challenges can be expected, particularly because DSM is an emerging industry involving complex corporate structures and cross-border activities and technologies. Verification should therefore not rely solely on the stated purpose of an EU-funded project. It should also consider the entire value-chain and the different actors involved. A further challenge concerns the assessment of whether "sufficient scientific evidence" exists. This assessment should not be left to beneficiaries without clear, science-based criteria. It should be based on independent scientific evidence and subject to regular review. In accordance with the precautionary principle, scientific uncertainty should not be interpreted as demonstrating that an activity poses no threat. We recommend establishing clear due-diligence and reporting requirements for beneficiaries, including disclosure of links to DSM operators, contractors, technology developers and financial entities.

Do you have any comments on point 15) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes
- ☐ No

Are the scope and formulation of point 15) and its exemptions clear?

- ☐ 1 – not at all
- ☒ 2 – to a limited extent

- ☐ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

While IROPI may justify derogations in exceptional cases, barriers should remain a measure of last resort, subject to a case-by case assessments, legally required procedures, demonstration of the absence of feasible alternatives, mitigation of impacts, and effective compensatory measures to safeguard river continuity and ecosystem functionality. Derogations under the WFD and Nature Directives are not legally equivalent to DNSH, as they serve different objectives and operate under distinct legal regimes. More broadly exempting ROPI projects from DNSH would risk undermining the principle, as the balancing tests under environmental legislation are not necessarily appropriate for a broader sustainability standard. The scale of an activity should not be the sole indicator of harm, particularly where impacts are irreversible, cumulative, or affect highly sensitive ecosystems.

The TEN-T carve-out is difficult to reconcile with Regulation (EU) 2024/1991, which requires the maintenance of restored river connectivity, and the objective to restore 25,000 km of free-flowing rivers by 2030 under the EU Biodiversity Strategy. It is therefore unclear why new artificial barriers in free-flowing river stretches should be exempt from DNSH scrutiny and allowed funding merely because they form part of a TEN-T project.

This carve-out also appears inconsistent with Regulation (EU) 2024/1679, whose Article 5(3) expressly requires relevant TEN-T projects to be assessed for compliance with the DNSH principle, suggesting that DNSH review is an integral part of TEN-T project development, rather than a basis for carve-out.

Further clarification is needed on how this carve out could be reconciled with the 2030 river restoration target during the 2028-2034 MFF period. Allowing EU funding for new barriers risks undermining the objective of restored river connectivity and creating inconsistencies by supporting both river restoration and activities that may compromise it.

Do you expect any challenges in the implementation and verification of point 15) and its exemptions?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☐ 3 – to some extent
- ☒ 4 – to a great extent
- ☐ Do not know

Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

First, the combination of the TEN-T carve-out and the requirement for TEN-T projects to demonstrate compliance with the DNSH principle lacks coherence and may therefore create implementation challenges and lead to divergent interpretations across Member States, EU bodies and funding programmes.

Second, implementation challenges may arise due to differences in the progress made by Member States in identifying, mapping and restoring free-flowing rivers under Regulation (EU) 2024/1991. In practice, Member States that have made limited progress towards river restoration objectives, may face fewer constraints when applying point 15 than those that have already created and protected free-flowing river stretches. This could create unintended incentives to not contribute to the restoration objective.

Third, footnote 51 of the concept paper explains the term "new artificial barriers" by referring to "dams, weirs, sluices, ramp/bed sills, fords and culverts as per Annex 2 to Guidance Document No. 41 under the Common Implementation Strategy for EU Water Law". However, Annex 2 of the referred Guidance Document contains a broader range of barrier types. In particular, barriers affecting lateral and vertical connectivity do not appear to be covered by the list provided in the footnote. It is unclear why only selected types of barriers have been included and whether the omission of other barriers is intentional – this may also lead to implementation challenges.

Fourth, the term "river continuity" used in point 15 should be aligned with the terminology used in Regulation (EU) 2024/1991, which refers to "river connectivity". Consistent terminology would improve legal clarity and facilitate implementation.

Do you have experience in proving that a project does not disrupt river continuity in free-flowing river stretches?

- ☐ Yes
☒ No

Do you have any comments on point 16) and/or its related exemptions in section 2.A of the concept paper?

- ☐ Yes
☒ No

Do you have any comments on point 17) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes
☐ No

Are the scope and formulation of point 17) and its exemptions clear?

- ☐ 1 – not at all
☒ 2 – to a limited extent
☐ 3 – to some extent
☐ 4 – to a great extent
☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

We strongly support adding investments to irrigation to the list of activities, but the following improvements:

1. The condition to put in place water metering enabling the measurement of water use is insufficient: It focuses on measurement capabilities rather than on actual monitoring, reporting or management of water use. It is unclear whether the data will be collected, how it will be verified and then used in water management. As currently drafted, it is not a real safeguard against unsustainable water abstraction.
2. Under b) and e) water quantity and water quality seem to be treated as separate considerations. In practice, these issues are interconnected: they affect each other. For example, increased water abstraction may alter flow regimes and contribute to the deterioration of water quality and ecological status. The assessment criteria should better reflect the relationship between water quantity and quality - for example, simply by removing the phrase "for reasons related to water quantity".
3. Clarification is needed regarding investments involving the creation or expansion of reservoirs for irrigation purposes. It does not distinguish between different types of reservoirs. More detailed criteria would improve legal certainty. In particular, large reservoirs associated with dams are frequently linked to significant environmental impacts, including impacts on biodiversity, river ecosystems and climate (GHG). Moreover, increased water losses from evaporation and gradual sediment accumulation may affect the sustainability and functionality of such investments over their lifetime. We suggest either removing the 'creation' of reservoirs from the exemption list or introducing additional safeguards and assessment criteria.
4. "potential water savings" under e) needs to be clarified: Additional consideration should be given to linking this condition for exemption with demonstrable reductions in water use rather than with estimated saving potential only.

Do you expect any challenges in the implementation and verification of point 17) and its exemptions?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☐ 3 – to some extent
- ☐ 4 – to a great extent
- ☒ Do not know

Do you have any comments on point 18) and/or its related exemptions in section 2.A of the concept paper?

- ☒ Yes
- ☐ No

Are the scope and formulation of point 18) and its exemptions clear?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☒ 3 – to some extent
- ☐ 4 – to a great extent
- ☐ Do not know

Which element(s) need(s) to be further clarified? Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

We strongly support adding the perspective of harmful chemicals to the DNSH criteria. To ensure effectiveness and consistency with the DNSH framework under the Taxonomy Regulation (Appendix C), we urge the Commission to clarify and adapt the scope of the criterion:

- 1) Include use phase: The wording of the proposal covers the manufacture or placing on the market of REACH SVHCs, but not their use. While the terms substance and manufacture are not defined, applying the respective definitions provided in REACH would result in a situation where the manufacture of an SVHC would be excluded from funding while, for example, the manufacture of a mixture of substances (=use), including that same SVHC, would not. This loophole risks compromising the very health protection intent of the provision, as exposure of humans and the environment to a harmful chemical often can be traced back to the use of that chemical in a product or notably an industrial process (e.g. human exposure to PFAS via environmental emissions due to industrial processing). It is furthermore not consistent with the DNSH approach taken under the Taxonomy Regulation that applies to the manufacture, placing on the market and use of certain substances.
- 2) Expand the list of chemicals: To align and thereby strengthen market signals, the list of chemicals in scope should be expanded to cover the same groups of chemicals in scope of the Taxonomy Regulation, i.e. besides SVHCs those that are restricted under REACH, RoHS and the Regulations on mercury, ozone depleting substances and POPs.
- 3) Revise the derogation: See next question

Do you expect any challenges in the implementation and verification of point 18) and its exemptions?

- ☐ 1 – not at all
- ☐ 2 – to a limited extent
- ☐ 3 – to some extent
- ☒ 4 – to a great extent
- ☐ Do not know

Please justify your answer, providing examples where possible, and drafting suggestions if relevant

2,000 character(s) maximum

The derogation provided for in the draft text lacks precision and could amount to a general free pass. Notably, the wording "approaches to minimise the relevant concern" is useless as those applying the provision are to determine what the "concern" at stake is. It is also weak as it may be easily feasible to technically "minimise" a concern without effectively increasing the level of protection for health and the environment. Instead, also considering the broad scope of Article 5(3), the derogation should be as narrow and clear as possible. Accordingly, the derogation should only apply where based on verifiable and objective criteria and evidence it can be shown that no safer alternatives exist and subject to the condition that risk management measures are implemented which minimize exposures and emissions to as low a level as is technically and practically possible, for example by using closed systems.

Do you have experience in setting approaches that mitigate SVHC environmental and health risks during their manufacturing?

- ☒ Yes
- ☐ No

Which approaches? How could these be proven and evidenced?

1,000 character(s) maximum

Substitution/elimination: Replace the SVHC with a less hazardous substance or technology. Evidence: substitution assessments, reformulation records, procurement data, updated SDSs, and analytical confirmation of SVHC removal.

Closed systems and containment: Use enclosed reactors, closed transfer systems, automated dosing, ventilation, and leak prevention. Evidence: engineering documentation, SOPs, maintenance records, emissions data, and workplace exposure measurements.

Emission controls: Apply air-abatement technologies, wastewater treatment, and waste/spill containment. Evidence: emission and effluent monitoring, permits, mass-balance calculations, and compliance inspections.

Worker protection: Implement PPE, restricted access, training, hygiene measures, and exposure-minimisation programmes. Evidence: exposure and biomonitoring data, training records, PPE audits, and health surveillance.

Exposure minimisation: Reduce quantities handled, concentrations, batch sizes, and duration.

Final questions

Do you consider that any of the criteria included in the concept paper are not necessary?

- ☐ Yes, one or more are not necessary
- ☒ No, they are all necessary

Do you see the need to include any additional criteria or areas not covered in the concept paper?

- ☒ Yes
- ☐ No

Please explain your reply. Which additional criterion or area should the proposed approach cover?

2,000 character(s) maximum

1. Drainage or conversion of peatlands and wetlands more widely, including for agriculture, forestry or extraction purposes: peatlands are a major carbon sink and play a crucial role in the water cycle through filtering and storing, which plays a key role in mitigating droughts and floods, and are host to unique biodiversity. Drainage and deforestation constitute significant threats to the ecosystem services delivered by peatlands. They further worsen climate change through the release of GHG emissions and increase adaptation challenges. The significant harm caused by the degradation of peatlands is acknowledged by the Nature Restoration Regulation, which sets obligations for Member States to put in place measures to restore organic soil in agricultural use constituting drained peatlands (Article 11(4)). Moreover, Article 19(3) of the Taxonomy Regulation disqualified solid fossil fuels as environmentally sustainable economic activities.
2. Investments aimed at restoring agricultural potential following adverse climatic events, that are not demonstrated to be suited to building the resilience of agricultural activities and of the area in their specific environmental context, should be added as an exclusion criteria.
3. New monoculture plantations of highly flammable species in areas identified as being at high wildfire risk should form part of the exclusion list.
4. Point 8 should incorporate a ban on funding fishing in marine protected areas. The verification of the implementation of such a measure would not be difficult: the gear type is already recorded through fishing licenses and logbooks while the boundaries of marine protected areas are publicly available. Therefore, ex ante and ex post compliance of this environmental requirement can be verified using Vessel Monitoring System (VMS) and Automatic Identification System (AIS) data, tools which are already used by fisheries authorities.

Background Documents

DNSH Concept paper 15.7.2026 - for publication.pdf

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