

Draft ‘Do No Significant Harm’ Technical Guidance for the Social Climate Fund for Consultation

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INTRODUCTION

This Technical Guidance on the application of the Do No Significant Harm (“DNSH”) principle in the context of the Social Climate Fund (SCF) aims to assist national authorities to comply with the DNSH principle in the preparation of their national Social Climate Plans and communicate the application of the DNSH principle in an understandable and transparent way.

In line with the [call for evidence](#) on the guidance on applying the ‘do no significant harm’ principle to the Social Climate Fund that ran between 30 April and 28 May 2024, the final DNSH Technical Guidance for the SCF will be accompanied by policy reflections on the application, where feasible and appropriate, of the DNSH principle in the future under other Union programmes and instruments.

TECHNICAL GUIDANCE ON THE APPLICATION OF THE DNSH PRINCIPLE UNDER THE SOCIAL CLIMATE FUND (SCF)

Article 7 of Regulation (EU) 2023/955 of the European Parliament and of the Council¹ (SCF Regulation) provides that the Fund shall only support measures and investments which comply with the DNSH principle within the meaning of Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council² (Taxonomy Regulation) (‘Significant harm to environmental objectives’). While the SCF Regulation explicitly refers to Article 17 of the Taxonomy Regulation, the subsequent delegated acts and technical screening criteria set out for the purpose of the Taxonomy Regulation are not mentioned in the SCF Regulation. Rather, the SCF Regulation states that the Commission should issue technical guidance tailored to the scope of the Fund to guide Member States and explain how the measures and investments are to comply with the DNSH principle³.

The present document sets out the conditions under which the Commission considers that the measures and investments financing activities and assets eligible for support under the SCF comply with the DNSH principle. This technical guidance is without prejudice to the application of the DNSH principle under the Taxonomy Regulation and the Recovery and the Resilience Facility, Cohesion Policy and other Union programmes and instruments. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

For measures constituting State aid under Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), Member States must ensure compliance with the compatibility conditions of the applicable State aid instrument⁴. Many, but not all, of the State aid instruments contain a reference to the DNSH principle. It is important to note that the present guidance does not pre-empt the assessment of measures under State aid rules and is without prejudice to State aid rules. This entails in particular that an activity or asset can be considered non-compliant with the DNSH principle under this guidance, while State aid for the same or similar activity or asset can be found compatible with the internal market, subject to fulfilling the conditions of the applicable State aid rules. Similarly, it can be the case that State aid rules include more

¹ Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, OJ L 130, 16.5.2023, p. 1.

² Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, p. 13.

³ Article 6(5) of the SCF Regulation.

⁴ As indicated in recital (40) of the Social Climate Fund Regulation, Member States should ensure that such support is granted in compliance with the Union State aid rules, where applicable.

stringent compatibility conditions for the same/similar activity. This could be the case, for instance, where State aid is granted to contribute to an environmental protection objective.

This guidance sets out common foundations, under the SCF, in the form of guiding principles to define the DNSH principle (1.); and tools and assessment approaches on how to apply the common foundations in practice (2.). Sector-specific annexes targeted to the activities that are eligible under the SCF complement this guidance, with the objective of providing ex-ante clarity for its application. This guidance takes into account the aim of the SCF to provide financial support to Member States for measures and investments for the benefit of vulnerable households, micro-enterprises and transport users particularly affected by the inclusion of greenhouse gas emissions from buildings and road transport within the scope of Directive 2003/87/EC of the European Parliament and of the Council⁵ (ETS Directive).

1. COMMON FOUNDATIONS

1.1 Definition of the DNSH principle under the SCF

For the purpose of this guidance, DNSH is to be interpreted within the meaning of Article 17 of the Taxonomy Regulation. This article defines what constitutes ‘significant harm’ for the six environmental objectives listed under Article 9 of the Taxonomy Regulation:

- An activity or asset⁶ is considered to do significant harm to climate change mitigation if it leads to significant greenhouse gas (GHG) emissions;
- An activity is considered to do significant harm to climate change adaptation if it 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;
- An activity or asset is considered to do significant harm to the sustainable use and protection of water and marine resources if it is detrimental to the good status or the good ecological potential of bodies of water, including surface water and groundwater, or to the good environmental status of marine waters;
- An activity or asset is considered to do significant harm to the circular economy, including waste prevention and recycling, if it leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources, or if it significantly increases the generation, incineration or disposal of waste, or if the long-term disposal of waste may cause significant and long-term environmental harm;
- An activity or asset is considered to do significant harm to pollution prevention and control if it leads to a significant increase in emissions of pollutants into air, water or land;
- An activity or asset is considered to do significant harm to the protection and restoration of biodiversity and ecosystems if it is significantly detrimental to the good condition and resilience of ecosystems, or detrimental to the conservation status of habitats and species, including those of Union interest.

Only activities or assets assessed as not significantly harmful to any of the mentioned environmental objective can be considered compliant with the DNSH principle.

⁵ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, *OJ L 275, 25.10.2003, p. 32*

⁶ The SCF Regulation refers to measures and investments, which eventually, support activities and assets. Therefore, the Guidance consistently refers to activities and assets.

1.2 Interlink between environmental legislation and DNSH

Compliance with relevant EU and national environmental legislation is a prerequisite for any financing or investment operation to qualify for EU funding and to prevent significant harm to EU environmental objectives. Therefore, this guidance and its annexes do not repeat the applicable EU environmental legislative requirements for the purpose of simplification and legal certainty. The guidance and the annexes provide principles and targeted criteria to build on EU environmental acquis and complement it, when necessary, in order to ensure that an activity or asset does no significant harm to any of the objectives listed in 1.1. The application of the principles set out in this guidance and the criteria set out in its annexes should be proportional to the significance of the harm caused by an asset or activity.

For projects that require an Environmental Impact Assessment (EIA) in accordance with Directive 2011/92/EU of the European Parliament and of the Council⁷ (EIA Directive), the EIA procedure and the conclusions with regard to the environmental impact of a given project can be used to support showing compliance with the DNSH principle as operationalised in section 2., at the discretion of a project promoter and a competent authority. For projects that derive from plans or programmes that require a Strategic Environmental Assessment (SEA) in accordance with Directive 2001/42/EC⁸, the procedures carried out for the purpose of the SEA might contribute to demonstrating compliance with DNSH as operationalised in section 2. Demonstrating compliance with DNSH requires that the assessment of impacts under the SEA procedure, including a meaningful public involvement in decision-making, covers all the environmental objectives of the DNSH principle in sufficient detail. Measures to prevent, reduce and mitigate any significant adverse effects provided in the environmental report should have a binding nature in the design and implementation of the projects at stake resulting from a plan. Similarly, the results of the Sustainability/Climate Proofing⁹, required under the Regulation (EU) 2021/523 of the European Parliament and of the Council¹⁰ (InvestEU Regulation), envisaged under Regulation (EU) 2021/1153 of the European Parliament and of the Council¹¹ (Connecting Europe Facility Regulation) and deemed relevant for Regulation (EU) 2021/1060 of the European Parliament and of the Council¹² (Common Provisions Regulation), might contribute to demonstrating compliance with DNSH as operationalised in section 2.

As EU environmental legislation is a prerequisite for DNSH, the Union budget cannot support activities or assets that are directly affected by a Commission decision to issue a reasoned opinion in accordance with the infringement procedure under Article 258 TFEU. In cases where an activity or asset are affected by a Commission decision to issue a reasoned opinion, the activity or asset should only be considered to comply with the DNSH principle if it complies with relevant EU legislation on its own merit. For instance, a new construction could fall under the scope of the EIA Directive, and that Directive could be improperly transposed by the Member State in which the construction takes place. In such a situation, the project

⁷ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) (OJ L 26, 28.1.2012, pp. 1-21).

⁸ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

⁹ C(2021) 5430 final Commission Notice Technical guidance on the climate proofing of infrastructure in the period 2021-2027.

¹⁰ Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017.

¹¹ Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014.

¹² Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

developer should ensure that the project complies with the provisions of the EIA Directive as a prerequisite to demonstrating DNSH compliance.

The selection of any activity or asset that are affected by preceding steps initiated under Article 258 TFEU, i.e. letter of formal notice or ongoing investigation, is without prejudice to any further steps taken by the Commission under the infringement procedure, as defined by the Treaty. The activity or asset remains subject to the DNSH criteria provided in the relevant sector-specific annexes to this guidance or, where the activity or asset is not listed in the sector-specific annexes, to the substantive DNSH assessment detailed in section 2.2 of this guidance document.

An activity or asset relying on compensatory measures under the scope of Article 6(4) of Directive 2009/147/EC of the European Parliament and of the Council¹³ (Council Habitats Directive) can be DNSH compliant, provided that the compensatory measures achieve net biodiversity gains, have a local link to the project, do not rely on monetising and include robust and transparent monitoring systems, where necessary¹⁴.

1.3 Guiding principles under the SCF

For the purposes of this guidance, activities and assets will be considered compliant with the DNSH principle, if the following guiding principles are respected: consider life cycle impacts (1.3.1); take into account direct and indirect impacts (1.3.2); prevention of lock-in effects (1.3.3); rely on availability of technical and economically feasible alternatives with low environmental and climate impacts (1.3.4); consistency with overarching climate and environmental objectives in the EU legislation (1.3.5). Importantly, attention should be paid to ensure that the application of the DNSH criteria is proportionate in the sense that only significant harm is avoided.

These principles are the basis for the criteria set out in the sector-specific annexes to this guidance (section 2.1.), they also apply to activities and assets not covered by these annexes (section 2.2) and are consistent with the requirements of the EU Taxonomy (section 2.3.) and the specific conditions explained in section 2.4.).

1.3.1 Life Cycle Impacts

The environmental impacts throughout the life cycle of the activity or asset should be considered. Based on Article 17 of the Taxonomy Regulation, ‘significant harm’ in the context of this guidance should be assessed by taking into account the environmental impacts of the activity or asset itself and the environmental impacts of the products and services provided by that activity throughout their life cycle in particular by considering the production, use and end of life of those products and services.

Applying life cycle considerations rather than carrying out a full life cycle assessment suffices for the purposes of this guidance. In practice, this means that full scale (attributional or consequential) life cycle analyses (e.g. including the indirect environmental impacts of technological, economic or social changes due to the activity or asset) are not required. However, evidence from existing life cycle analyses could be used, if needed and applicable. The scope of the DNSH assessment should encompass all the phases of the life cycle, such as the production/construction, use or end-of-life phases – wherever most harm is to be expected.

¹³ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, pp. 7-25).

¹⁴ These requirements are aligned with the EU Taxonomy Environmental Delegated Act (Commission Delegated Regulation (EU) 2023/2486).

1.3.2 *Direct and indirect impacts*

The *direct* and *indirect* impacts of an activity or asset should be taken into account¹⁵. Direct impacts may reflect effects of the activities or assets at project-level (e.g. construction of a building) or at system-level (e.g. railway network, public transport system), that occur at the time of implementation. Indirect impacts may reflect effects that occur outside of those projects or systems and may materialise after implementation but are to be reasonably foreseeable and relevant.

1.3.3 *No lock-in effects*

Measures compliant with the DNSH principle should not lead to lock-in effects inconsistent with the EU climate objectives (e.g., carbon lock-in relating to the use of fossil fuels) or effects that undermine long-term environmental goals, considering the economic lifetime of those activities or assets.

1.3.4 *Best available levels of environmental and climate performance*

For economic activities or assets for which there is a technologically and economically feasible alternative with low environmental and/or climate impact, the assessment of the negative environmental and/or climate impact of each activity or asset should be carried out by assessing if it is doing significant harm in absolute terms. This approach consists of considering the environmental and/or climate impact of the activity or asset, compared to a situation with no negative environmental and/or climate impact. The impact of an activity or asset is not assessed in comparison to the impact of another existing or envisaged activity that the activity or asset in question may be replacing.

For activities and assets where there is no technologically and economically feasible alternative with low environmental and/or climate impact, DNSH compliance should be demonstrated by adopting the best available levels of environmental and/or climate performance within a sector¹⁶.

1.3.5 *Consistency with overarching climate and environmental objectives in the EU legislation*

The activities or assets supported should be consistent with the overarching climate and environmental objectives laid down in the EU legislation. This entails being consistent with the EU climate-neutrality objective¹⁷ and the EU environmental sustainability objectives, including those listed in the 8th Environment Action Programme¹⁸.

2. APPLYING THE COMMON FOUNDATIONS

Compliance with the DNSH principle can be ensured in different alternative ways:

- For activities and assets included under the sector-specific annexes (2.1.), they should comply with the description and the DNSH criteria.

¹⁵ This approach follows Article 17 (*‘Significant harm to environmental objectives’*) of the Taxonomy Regulation, which requires taking into account the environmental impacts of the activity and of the products and services provided by that activity throughout their life cycle.

¹⁶ Where appropriate, the specific situation of small islands and outermost regions may be considered when identifying the best available levels of environmental and/or climate performance within a sector.

¹⁷ As laid down by Regulation (EU) 2021/1119 of the European Parliament and of the Council (the ‘European Climate Law’, 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, in the case of DNSH to the climate change mitigation objective.

¹⁸ 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.

- For activities and assets not included under the sector-specific annexes (2.2.), compliance with the DNSH principle can be ensured by demonstrating compliance with the guiding principles. In this context, the list of excluded activities and assets set out in the sector-specific annexes should be applied where relevant.
- Whether there is a sector-specific annex or not, compliance with the DNSH principle can be demonstrated by showing alignment with the taxonomy technical screening criteria, if applicable (2.3.).
- Specific conditions apply to financial products implemented under InvestEU Member State compartment (2.4.).

2.1. When an activity or asset is included in a sector-specific annex

The sector-specific annexes to this guidance provide a description of the activities or assets and, when relevant, list DNSH criteria that should be applied to comply with the DNSH principle. In case an activity/asset does not require DNSH criteria and/or evidence, it is marked as “not applicable (N/A)”. These annexes also include the illustrative evidence to be provided to demonstrate compliance¹⁹. These annexes contain three categories of activities.

- Activities and assets with no additional DNSH requirement: For such activities or assets which are considered compliant by nature, or which have low or negligible impact on the six environmental objectives of the Taxonomy Regulation, complying with the activity or asset description in the annex would be sufficient to comply with the DNSH principle. No additional DNSH criteria are defined in the sector-specific annexes for those activities or assets. This category includes activities or assets for which compliance with EU acquis guarantees compliance with the DNSH principle for the six environmental objectives. This also encompasses activities or assets with no foreseeable significant harm. Finally, it includes activities or assets with a very low or negligible environmental impact, which by nature, put a low risk on the environment, such as some social and education activities. In the case where specific criteria from the activities and assets with conditions or from excluded activities and assets (see categories below) are applicable to an activity or asset listed with a low or negligible impact, the former criteria should prevail (for instance the purchase of a vehicle for awareness campaigns).
- Activities and assets with DNSH conditions: This category encompasses assets or activities for which significant harm can be foreseen in the absence of DNSH criteria for one or several environmental objectives of the Taxonomy Regulation. To ensure that those activities and assets are compliant with the common foundations (1.), accompanying actions may be required. The DNSH criteria and relevant possible accompanying actions can be found in the sector-specific annexes to this guidance.
- Excluded activities and assets: The assets or activities which are considered to do significant harm to any of the six environmental objectives of the Taxonomy Regulation, should not be deemed compliant with the DNSH principle. These activities or assets are considered to generate lock-in

¹⁹ The annexes offer illustrative evidence that can be used to demonstrate compliance with the DNSH principle. If similar or equivalent evidence to the examples provided in the guidance is available, it may also be accepted as long as it effectively demonstrates compliance with the DNSH principle.

effects or an impact which is inconsistent with the EU climate and environmental objectives (see section 1.3.3).

The sector-specific annexes, where deemed necessary, also provide for each DNSH criterion an indicative list of evidence that can demonstrate compliance. This list helps simplifying the way DNSH compliance is verified. However, it is not mandatory, as the beneficiary can demonstrate DNSH compliance by providing other pieces of evidence, including the results of an EIA, SEA or the climate/sustainability proofing (see section 1.2.).

2.2. Activities and assets not included under any sector-specific annex

Activities not listed in the sector-specific annexes should comply with the general guiding principles defined above in subsection 1.3. In this case, the activity or asset should not be in the list of excluded activities listed in the sector-specific annexes.

In practice, this should be demonstrated by providing a substantive DNSH assessment, following the structure of Table 1. Firstly, the assessment should confirm that the activities or assets are not in the list of excluded activities and assets from the sector-specific annexes. Secondly, the assessment should lead to the conclusion that ‘no’ significant harm is done to any of the environmental objectives in the central column and should provide a substantive explanation and justification of the reasoning in the third column. Where necessary, further analysis and/or supporting documents must be provided to substantiate the replies to the list of questions in the table²⁰. If the absence of significant harm cannot be justified and verified by the Commission, the activities or assets cannot be deemed compliant with the DNSH principle.

Table 1. Checklist for substantive DNSH assessment

Question	Yes/No	Substantive justification/why no significant impact
<i>Excluded activities and assets:</i> Is the activity or asset in the list of excluded activities and assets of any sector-specific annex?		<i>If the answer is yes, this measure would be considered not compliant with the DNSH principle under the SCF.</i>
<i>Climate change mitigation:</i> Is the activity or asset expected to lead to significant GHG emissions?		
<i>Climate change adaptation:</i> Is the activity or asset expected to lead to an increased adverse impact of the current climate and the expected future climate, on the measure itself or on people, nature or assets?		

²⁰ This process builds on the one applied under the Recovery and Resilience Facility as described in the Commission Notice Technical guidance on the application of “do no significant harm” under the Recovery and Resilience Facility Regulation. C(2023) 6454 final.

Question	Yes/No	Substantive justification/ or justification why no significant impact
<i>The sustainable use and protection of water and marine resources:</i> Is the activity or asset expected to be 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?		
<i>The transition to a circular economy, including waste prevention and recycling:</i> Is the activity or asset expected to: (i) lead to a significant increase in the generation, incineration or disposal of waste, with the exception of the incineration of non-recyclable hazardous waste; or (ii) lead to significant inefficiencies in the direct or indirect use of any natural resource ²¹ at any stage of its life cycle which are not minimised by adequate measures; or (iii) cause significant and long-term harm to the environment in respect to the circular economy ²² ?		
<i>Pollution prevention and control:</i> Is the activity or asset expected to lead to a significant increase in the emissions of pollutants ²³ into air, water or land?		
<i>The protection and restoration of biodiversity and ecosystems:</i> Is the activity or asset expected to be: (i) significantly detrimental to the good condition ²⁴ and resilience of ecosystems; or (ii) detrimental to the conservation status of habitats and species, including those of Union interest?		

²¹ Natural resources comprise energy, materials, metals, water, biomass, air and land.

²² Please refer to Recital 27 of the Taxonomy Regulation for more information on the circular economy objective.

²³ Pollutant means a substance, vibration, heat, noise, light or other contaminant present in air, water or land which may be harmful to human health or the environment.

²⁴ In line with Article 2(16) of the Taxonomy Regulation, “‘good condition’ means, in relation to an ecosystem, that the ecosystem is in good physical, chemical and biological condition or of a good physical, chemical and biological quality with self-reproduction or self- restoration capability, in which species composition, ecosystem structure and ecological functions are not impaired”.

The substantive justification can for instance rely on any of the following references:

- a) The activity or asset has no or an insignificant foreseeable harmful impact on the environmental objective related to the guiding principles listed in subsection 1.3., and as such is considered compliant with DNSH for the relevant objective;
- b) The activity or asset is tracked, as supporting a climate change or environmental objective with a coefficient of 100 %²⁵ and as such is considered compliant with DNSH for the relevant objective;
- c) The activity fulfils the technical screening criteria laid down in the delegated acts supplementing the Taxonomy Regulation for ‘substantial contribution’ to one of the six environmental objectives, and as such is considered compliant with DNSH for the relevant objective; or
- d) The EIA, SEA, Sustainability/Climate Proofing as specified in section 1.2..

2.3. Activities aligned with the EU Taxonomy substantial contribution and DNSH technical screening criteria

Where an activity complies with the substantial contribution and the do no significant harm technical screening criteria under an EU Taxonomy delegated act established pursuant to Article 10(3) of the Taxonomy Regulation²⁶, it is considered compliant with the DNSH principle. As a consequence, for the purpose of this guidance, if an activity is taxonomy aligned, it is considered compliant with the DNSH principle under the SCF.

2.4. Financial products implemented under InvestEU Member State compartment

For the purpose of financial products implemented under the Member State compartment pursuant to the relevant provisions of the InvestEU Regulation as referred to in Article 11(4) of the SCF Regulation, the Commission considers the application of the Technical guidance on sustainability proofing for the InvestEU Fund (2021/C 280/01) in combination with the application of the relevant implementing partner’s policies related to implementing the InvestEU Fund (notably the EIB Group’s ‘Climate Bank Roadmap 2021-2025’ and the EBRD’s ‘2019 Environmental and Social Policy’ and ‘Methodology to determine the Paris Agreement alignment of EBRD’) sufficient to prove the absence of significant harm as per Article 7(3) of SCF Regulation. Guarantee agreements for implementing partners, other than the EIB Group and the EBRD, will have to align with the standards set out in the Taxonomy Delegated Acts for the relevant environmental objective or have similar criteria to the EIB Group policy above mentioned or rely on the sector-specific annexes included in this Guidance.

²⁵ The methodology set out in Annex I to Regulation (EU) 2021/1060 of the European Parliament and of the Council should be used to track the expenditures of the Social Climate Fund (Recital 23 of the SCF Regulation).

²⁶ Delegated Regulation (EU) 2023/2486 of 27 June 2023 (Environmental Delegated Act) and Delegated Regulation (EU) 2023/2485 of 27 June 2023 amending Delegated Regulation (EU) 2021/2139 of 4 June 2021 (Climate Delegated Act).