

## II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN COMMISSION

## COMMISSION NOTICE

**on the interpretation and implementation of certain legal provisions of the EU Taxonomy Regulation  
and links to the Sustainable Finance Disclosure Regulation**

(2023/C 211/01)

This Frequently Asked Questions document (FAQ) aims to provide some clarifications on how operators should consider the requirements for compliance with minimum safeguards under the Article 18 of Regulation (EU) 2020/852 of the European Parliament and of the Council <sup>(1)</sup> (hereafter 'Taxonomy Regulation'). This document also aims to clarify the status of investments in Taxonomy-aligned economic activities and assets under Regulation (EU) 2019/2088, i.e. the Sustainable Finance Disclosure Regulation (hereafter 'SFDR') <sup>(2)</sup>.

The frequently asked questions contained in this document clarify existing provisions in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation, nor do they introduce any additional requirements for the concerned operators and competent authorities. The FAQ is merely intended to assist financial and non-financial undertakings in implementing the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret EU law. The views expressed in this Notice cannot prejudice the position that the European Commission might take before the EU and national courts.

## Table of Contents

	<i>Page</i>
Minimum safeguards under the EU Taxonomy Regulation .....	2
1. What role do the minimum safeguards play in the EU Taxonomy Regulation? .....	2
2. How are the minimum safeguards defined under the Article 18 of the EU Taxonomy? .....	2
3. What are the key expectations for undertakings under Article 18 of the Taxonomy Regulation? .....	3
Interactions with the SFDR .....	5
4. Do Taxonomy-aligned investments qualify as 'sustainable investment' under the SFDR? .....	5

<sup>(1)</sup> 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).

<sup>(2)</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

## Minimum safeguards under the EU Taxonomy Regulation

### 1. What role do the minimum safeguards play in the EU Taxonomy Regulation?

The Taxonomy Regulation provides that an economic activity can only qualify as environmentally sustainable if, in addition to meeting the other requirements of Article 3 <sup>(3)</sup>, it is carried out in compliance with the minimum safeguards laid down in Article 18<sup>7</sup>. This is in line with the principles enshrined in the European Pillar of Social Rights in support of a sustainable and inclusive growth, as well as with the relevant international minimum human and labour rights standards.

The minimum safeguards are therefore an integral part of the Taxonomy and are one of the four criteria laid down in Article 3 which must be met for economic activities to be considered environmentally sustainable. The inclusion of minimum safeguards in the Taxonomy framework aims to ensure that entities carrying out economic activities considered as Taxonomy-aligned meet certain minimum social and governance standards.

In other words, the purpose of the minimum safeguards under the Taxonomy Regulation is to prevent activities and investments from being regarded as 'sustainable' if they involve breaches of key social principles and human and labour rights or do not align with minimum standards for responsible business conduct.

### 2. How are the minimum safeguards defined under the Article 18 of the EU Taxonomy?

Article 18 of the Taxonomy Regulation lays down specific requirements for minimum safeguards referring both to international standards of responsible business conduct under Article 18(1) and to the principle of 'do no significant harm' of the SFDR <sup>(4)</sup> under Article 18(2).

Under **Article 18(1)**, minimum safeguards are to be understood as due diligence and remedy procedures implemented by a company that is carrying out an economic activity in order to ensure alignment with the *Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises (OECD MNEs)* and the *UN Guiding Principles on Business and Human Rights (UNGPR)*. The latter includes the principles and rights set out in eight of the ten fundamental conventions identified in the International Labour Organization (ILO) Declaration of the on Fundamental Principles and Rights at Work <sup>(5)</sup> and the International Bill of Human Rights <sup>(6)</sup>.

The *OECD Guidelines for Multinational Enterprises* bring together all thematic areas of responsible business conduct and responsible supply chain management. It also recommends that enterprises apply good corporate governance practices, including due diligence <sup>(7)</sup> as set out in the *OECD Principles of Corporate Governance*.

The *UN Guiding Principles on Business and Human Rights* (i) specify a standard of conduct for businesses to prevent human-rights violations; and (ii) address any potential risks resulting from the economic activities that businesses conduct. The responsibility of business entities to respect human rights refers to internationally recognised rights understood, as a minimum, as those expressed in eight of the ten fundamental ILO conventions and in the International Bill of Human Rights

<sup>(3)</sup> The four criteria laid down in the Article 3 of the Taxonomy Regulation specify that an economic activity shall: (a) contributes substantially to one or more of the environmental objectives set out in Article 9 in accordance with Articles 10 to 16; (b) does not significantly harm any of the environmental objectives set out Article 9 in accordance with Article 17; (c) is carried out in compliance with the minimum safeguards laid down in Article 18; (d) complies with technical screening criteria that have been established by the Commission in accordance with Article 10 (3), 11(3), 12(2), 13(2), 14(2) or 15(2).

<sup>(4)</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

<sup>(5)</sup> The core conventions of the International Labour Organisation are: *Freedom of Association and Protection of the Right to Organise Convention*, 1948 (No 87); *Right to Organise and Collective Bargaining Convention*, 1949 (No 98); *Forced Labour Convention*, 1930 (No 29) (and its 2014 protocol); *Abolition of Forced Labour Convention*, 1957 (No 105); *Minimum Age Convention*, 1973 (No 138); *Worst Forms of Child Labour Convention*, 1999 (No 182); *Equal Remuneration Convention*, 1951 (No 100); *Discrimination (Employment and Occupation) Convention*, 1958 (No 111).

<sup>(6)</sup> This includes: *Universal Declaration of Human Rights* (1948); *International Covenant on Civil and Political Rights* (1966); and *International Covenant on Economic, Social and Cultural Rights* (1966).

<sup>(7)</sup> See also specific OECD Due Diligence Guidance for Responsible Business Conduct (2018) and OECD sectoral guidance, available at: <https://mneguidelines.oecd.org/mneguidelines/>, which provides practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises.

**Article 18(2)** introduces a direct link with the principle of ‘do no significant harm’ (DNSH) referred to in Article 2(17) of the SFDR. This ensures that minimum social standards are defined at European level, and that there is consistency in European legislation.

The details of the SFDR’s principle of ‘do no significant harm’ are specified in Delegated Regulation (EU) 2022/1288 adopted by the European Commission in April 2022. According to this regulation, in addition to disclosing whether the sustainable investment is aligned with the OECD MNEs and UN GP, implementing the SFDR principle of do no significant harm requires the consideration of a list of principal adverse indicators. The European Commission considers that, in the context of the Article 18(2) of the Taxonomy Regulation, the link between the minimum safeguards and the principle of DNSH of the SFDR is to be understood, as a minimum, through the SFDR principal adverse impact indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters listed in the table 1 of Annex I of the SDFDR Delegated Regulation <sup>(8)</sup>.

Adverse sustainability indicator of Table 1	Metric
Violations of UN Global Compact principles and Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises	Share of investments in investee companies that have been involved in violations of the UNGC principles or OECD Guidelines for Multinational Enterprises
Lack of processes and compliance mechanisms to monitor compliance with UN Global Compact principles and OECD Guidelines for Multinational Enterprises	Share of investments in investee companies without policies to monitor compliance with the UNGC principles or OECD Guidelines for Multinational Enterprises or grievance/complaints handling mechanisms to address violations of the UNGC principles or OECD Guidelines for Multinational Enterprises
Unadjusted gender pay gap	Average unadjusted gender pay gap of investee companies
Board gender diversity	Average ratio of female to male board members in investee companies, expressed as a percentage of all board members
Exposure to controversial weapons (anti-personnel mines, cluster munitions, chemical weapons and biological weapons)	Share of investments in investee companies involved in the manufacture or selling of controversial weapons

### 3. What are the key expectations for undertakings under Article 18 of the Taxonomy Regulation?

Undertakings disclosing their alignment with the Taxonomy will need to assess their compliance with the Taxonomy’s minimum safeguards requirements under both Article 18(1) and Article 18(2).

Under Article 18(1), undertakings whose economic activities are to be considered as Taxonomy-aligned must have implemented due diligence and remedy procedures to ensure the alignment with the standards for responsible business conduct mentioned in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights (see question 2). Both these texts extensively outline how the principles and conduct of due diligence can be implemented.

The central requirement under Article 18(1) is that an undertaking must implement appropriate procedures, including procedures to continuously identify, prevent, mitigate or remediate the relevant actual and potential adverse impacts connected with their own operations, value chains and business relationships in order to ensure their activities are carried out in line with these standards.

<sup>(8)</sup> The methodology for the calculation of these indicators can be found in Annex I of the Delegated Regulation (EU) 2022/1288. The term ‘investee companies’ in table 1 of Annex I of the Delegated Regulation (EU) 2022/1288 corresponds to references to ‘undertakings’ in the Taxonomy Regulation.

Sometimes, despite implementing all appropriate procedures, an undertaking cannot address certain risks or eliminate certain negative impacts. This does not necessarily mean that the undertaking does not comply with the minimum safeguards, provided that the undertaking has clearly disclosed these potential impacts and explained what it did to identify, prevent, mitigate or remediate them and why it could not eliminate certain impacts. In fact, it is recognised that there can be instances where, despite reasonable due diligence measures, undertakings may still not be able to prevent, cease or mitigate adverse impacts when it comes to the adverse impacts in the undertaking's value chain.

As part of those due diligence and remedy procedures, companies are required under Article 18(2) to consider the SFDR principal adverse impact indicators related to social and employee matters, respect for human rights, anti-corruption and anti-bribery matters referred to under question 2 <sup>(9)</sup>.

The only issue covered by Article 18(2) as of today which is not explicitly covered by Article 18(1) is the principal adverse impact relating to the exposure to controversial weapons as defined under the SFDR Delegated Regulation <sup>(10)</sup> (anti-personnel mines, cluster munitions, chemical weapons and biological weapons). Therefore, by virtue of Article 18(2), undertakings are to ensure that their due diligence and remedy procedures allow for the identification, prevention, mitigation or remediation of any actual or potential exposure to the manufacture or selling of controversial weapons.

Beyond the provisions of Article 18(2) described above, the Taxonomy Regulation does not contain further considerations relating to weapons or defence-related equipment and technologies in the assessment of minimum safeguards. As stated in the Draft Commission notice on interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act <sup>(11)</sup>, the Commission acknowledges the need to ensure access to finance and investment including from the private sector for all strategic sectors, including the defence industry. The defence industry is recognised as a crucial contributor to the resilience and security of the Union, and therefore to peace and social sustainability <sup>(12)</sup>.

The list of SFDR indicators related to social and employee matters, respect for human rights, anti-corruption and anti-bribery might change with potential future revisions of the SFDR delegated act. That is why any issue that may be addressed in the future by the adverse indicators of the SFDR will also need to be considered by undertakings according to Article 18(2).

Reporting in line with the Corporate Sustainability Reporting Directive <sup>(13)</sup> (CSRD) will help companies to assess their compliance with Article 18 requirements and will help investors to get the necessary information from investee companies <sup>(14)</sup>. Article 18 of the EU Taxonomy Regulation does not require additional disclosures, there is therefore no duplication with the CSRD reporting requirements.

<sup>(9)</sup> The methodology for the calculation of these indicators can be found in Tables 1 and 3 of Annex I of the Delegated Regulation (EU) 2022/1288 (OJ L 196, 25.7.2022, p. 1).

<sup>(10)</sup> Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports (OJ L 196, 25.7.2022, p. 1).

<sup>(11)</sup> Question 11 'How does the sustainable finance framework apply to access to private funding for the defence industry?', p. 16.

<sup>(12)</sup> See Commission's proposal for Proposal for an Act in Support of Ammunition Production (ASAP), COM(2023) 237 final.

<sup>(13)</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OJ L 322, 16.12.2022, p. 15).

<sup>(14)</sup> The CSRD requires that the sustainability reporting standards that undertakings are required to use to meet their disclosure obligations contain the information that financial market participants need in order to comply with their disclosure obligations under the SFDR. In practice this means that undertakings will be required to report the mirroring information for the principal adverse impact indicators required under the delegated regulation of the SFDR. Article 29b(5)(b) of Directive 2013/34/EU '5. When adopting delegated acts pursuant to paragraph 1, the Commission shall, to the greatest extent possible, take account of: [...] b) the information that financial market participants need in order to comply with their disclosure obligations laid down in Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation'.

For further informal advice on best practices, users are invited to consult the Final Report on Minimum Safeguards of the Platform on Sustainable Finance published in October 2022.

### **Interactions with the SFDR**

#### *4. Do Taxonomy-aligned investments qualify as 'sustainable investment' under the SFDR?*

Recital 19 of the Taxonomy Regulation clarifies that 'sustainable investments' under the SFDR include investments into 'environmentally sustainable economic activities' within the meaning of the Taxonomy Regulation.

In setting out what is required for an activity to be considered as 'environmentally sustainable', Article 18(2) makes a link between the Taxonomy Regulation and the SFDR via one of the required steps of the Taxonomy Regulation: the compliance with minimum safeguards. According to the guidance given under question 1 and 2 above, the social elements of the 'do no significant harm' principle are considered to be adhered to at entity level for an undertaking that discloses activities as 'environmentally sustainable' under the EU Taxonomy.

Furthermore, according to the guidance provided in questions 1 and 2 above, the SFDR do no significant harm principle and the requirement to ensure that an investee company follows good governance practices are deemed to be fulfilled for investments in Taxonomy-aligned economic activities as these comply with the Taxonomy's minimum safeguards. The four aspects of good governance referred to in point 17 of Article 2 of the SFDR (namely sound management structures, employee relations, remuneration of staff and tax compliance<sup>(15)</sup>) can be considered to be satisfied by the provisions referred to in Article 18 of Regulation (EU) 2020/852.

Therefore, such investments in Taxonomy-aligned 'environmentally sustainable' economic activities can be automatically qualified as 'sustainable investments' in the context of the product level disclosure requirements under the SFDR. This means that investments in specific economic activities can be considered to be sustainable investments.

However, if a financial market participant (FMP) invests in an undertaking with some degree of taxonomy-alignment through a funding instrument that does not specify the use of proceeds, such as a general equity or debt, the FMP would still need to check additional elements under the SFDR in order to consider the whole investment in that undertaking as sustainable investment. This means that the FMP would still need to: (i) check whether the rest of the economic activities of the undertaking comply with the environmental elements of the SFDR DNSH principle; and (ii) assess whether she/he considers the contribution to the environmental objective sufficient.

---

---

<sup>(15)</sup> The EU list of non-cooperative jurisdictions for tax purposes was updated in February 2023. It provides useful guidance to identify countries which have failed to fulfil their commitments to comply with tax good governance criteria within a specific timeframe, and countries which have refused to do so.