15 July 2026

Commission concept paper on the 'Do No Significant Harm' (DNSH) guidance for the Multiannual Financial Framework 2028-2034

Disclaimer: This concept paper sets out the approach envisaged by the Commission for developing the DNSH guidance, in order to collect feedback through a targeted consultation. The information contained in this document does not prejudge the Commission's final position.

Article 33(2)(d) of the Financial Regulation[1] sets out that the "programmes and activities shall, **where feasible and appropriate** in accordance with the relevant sector-specific rules, be implemented to achieve their set objectives without doing significant harm to the environmental objectives […] as set out in Article 9 of the Taxonomy Regulation[2][3]. This requirement is part of the overarching principle of **sound financial management** and performance, and subject to the principles of **economy, efficiency and effectiveness**, set out in Article 33(1).

Article 33(2)(d) is operationalised by the proposed Performance Regulation[4]. Article 5 of the proposed 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[5]. Recital (5) further specifies that the Commission should provide this guidance by 1 January 2027.

The DNSH principle should also take into account the need to **achieve the objectives of the relevant programmes or instruments**, avoiding duplication with requirements under existing EU law, and **consider the administrative and reporting burden** on authorities and beneficiaries, as also outlined in the same Article.

The above provisions task the Commission with delivering a single and simple technical guidance. **This concept paper aims to provide clarity on the Commission's envisaged approach, including the envisaged scope of the DNSH guidance**. The feedback received from this targeted consultation will be used to prepare the final guidance[6].

The Commission aims to coherently apply the DNSH principle, while at the same time achieving significant simplification compared to the previous programming period as follows:

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[1] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast).

[2] Those environmental objectives are: climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems.

[3] 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 (Text with EEA relevance).

[4] Proposal for a Regulation of the European Parliament and of the Council establishing a budget expenditure tracking and performance framework and other horizontal rules for the Union programmes and activities.

[5] In line with Article 3 of the Commission's proposal for a Common Agriculture Policy Regulation for 2028-2034, support subject to the farm stewardship conditions shall be considered compliant with the DNSH principle.

[6] The Commission carried out a call for evidence from 4 March to 1 April 2026 and two technical workshops with Member States' experts on 5 March and 18-19 May 2026 to get feedback on the experience in applying DNSH under the current MFF.

- By providing *a single set of DNSH criteria applicable to the entire EU budget*. This unicity, mandated by Article 5 of the proposed Performance Regulation, will result in significant simplification. It will consolidate the multiple approaches followed so far, which frequently applied different criteria for similar activities – in particular under the Recovery and Resilience Facility[7], the Social Climate Fund[8], InvestEU[9] and the Cohesion policy funds[10].
- By applying the criteria of *feasibility and appropriateness* set out in Article 33(2)(d) of the Financial Regulation and Article 5(3) of the proposed Performance Regulation.
- By applying the *other principles and criteria set out in Article 5* of the proposed Performance Regulation: the need to achieve the objectives of the relevant programmes in line with the Union's policy priorities, the high levels of environmental protection under existing EU law, the need to avoid duplication with existing requirements under Union law, the administrative and reporting burden on authorities and beneficiaries and the principle of proportionality.

Section 1 presents how the Commission intends to apply the general principles and criteria referred to in the Financial Regulation and in Article 5 of the proposed Performance Regulation. Section 2 presents the limited number of assessment criteria in specific sectors ('specific criteria' as referred to in Article 5(2)) that the Commission envisages to set out in the single guidance, considering also the above general principles and criteria. Finally, Section 3 refers to how DNSH criteria may be operationalised depending on the management mode of each fund.

1. General principles applicable to the DNSH approach

A. Reduced administrative burden and proportionality

As stated in Article 5 of the proposed Performance Regulation, **the DNSH guidance shall take into account**:

- *"The need to achieve the set* ***objectives of the relevant programmes or instruments*** *in line with the* ***Union's policy priorities****":* The DNSH criteria (set out in Section 2 below) have been developed to ensure that they are compatible with achieving the objectives of the relevant programmes or instruments, and that EU funding supports the Union's strategic objectives,

[7] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.
[8] 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.
[9] 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.
[10] Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund.

such as supporting a highly competitive social market economy, making a success of the green and digital transitions, and promoting an innovative environment.

- *"The need to **avoid duplication with requirements under existing EU legislation**,* [and] *the high levels of protection to human health and the environment provided"*: The DNSH guidance will take as starting point the high levels of protection to human health and the environment provided by existing EU legislation. To ensure sound financial management rather than replicating existing legal requirements, the DNSH guidance focuses only on areas where the use of EU funds should be subject to additional safeguards. This leads to a significantly streamlined guidance compared to the previous programming period.
- *"The administrative and reporting **burden on authorities and beneficiaries"**:* The guidance must set criteria that are easy to verify and that do not result in disproportionate burdens for implementing authorities and beneficiaries. This implies that the guidance should consist of a limited, clear and precise set of criteria allowing to identify the activities that do significant harm, accompanied by clear, pre-defined exemptions. This approach will provide greater certainty, compared to the current situation where duplicative criteria are set, typically after the programmes were designed, or complex self-assessments were required[11].

The DNSH guidance will link specific DNSH criteria directly to intervention fields. The specific criteria would only be applicable to a limited set of activities that are considered doing significant harm, while the rest are considered to not be significantly harmful.

The proposed Performance Regulation also requires that **proportionality shall be ensured**, in particular in relation to the following aspects: (1) the size of an activity, (2) its climate and environmental impacts, and (3) the territorial characteristics of where the activity takes place, (4) including third countries.

The consideration of these elements will lead to a DNSH guidance that:

- **Contains a limited number of targeted general principles and criteria** to avoid significant harm that would be detrimental to the sound financial management of the budget (1), with different approaches according to the characteristics of the activity and considering its size (2).
- **Sets out a differentiated approach for certain territories**, such as targeted exceptions for outermost regions (3) and a separate set of DNSH criteria adapted to the operation of EU funds in third countries (4).

Furthermore, in application of the proportionality principle and to limit administrative burden, **certain activities, because of their nature or scope, will be covered by a specific approach**.

[11] In the same vein, the guidance will also clarify that an activity that complies with the technical screening criteria for substantial contribution and do no significant harm under an EU Taxonomy delegated act would be considered compliant with the do no significant harm principle under the next MFF. This reflects the high environmental standard set out in the taxonomy and the aim to reduce administrative burden for companies that are already taxonomy aligned.

For instance, for financial instruments and budgetary guarantees, where the application of the DNSH principle can be operationally challenging, in particular for general purpose financing, such as equity-type products and working capital, a dedicated and simple approach to apply DNSH will be developed.

Measures providing direct income interventions, including to households and to small farmers not subject to the farm stewardship conditions, where payments are not linked to any specific project or investment, would be considered to comply with the DNSH principle in light of the relatively small amounts concerned.

B. Where feasible or appropriate

The Financial Regulation provides for the application of the DNSH principle only where feasible and appropriate. To that effect, Article 5(3) of the proposed Performance Regulation contains a non-exhaustive list of situations where the application of the DNSH principle **is not feasible or appropriate**, such as crisis situations, other reasons of overriding public interest, and defence and security.

In line with Article 5(3) of the proposed Performance Regulation, the guidance will not preclude the Commission from exceptionally considering that it is not feasible or appropriate to apply the DNSH principle to certain duly justified cases, notably because it would impede achieving the objectives of the programmes or instruments under the MFF or, more generally, the Union's policy priorities.

The DNSH guidance could define the situations in Article 5(3) as follows:

- ***Crisis situations***

  The definition of 'crisis' could follow the one in Article 2(22) of the Financial Regulation recast, which encompasses among others natural disasters, man-made crises, as well as other extraordinary circumstances. It also includes a situation of immediate or imminent danger threatening to escalate into an armed conflict or to destabilise a country or its neighbourhood, which is currently of particular relevance for the eastern border regions. This exemption from the application of the DNSH principle would be applicable to all intervention fields where there is sufficient link with the crisis situation, based on appropriate justifications.

- ***Overriding public interest***

  Reasons of overriding public interest (ROPI) could be defined based on the relevant provisions regarding ROPI that exist in EU environmental legislation (e.g. Habitats Directive[12], Birds

[12] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

Directive[13], Water Framework Directive[14]) where this derogation is typically subject to clear conditions, including compensatory measures. Under these acts, provided these conditions are met, Member States can invoke ROPI to derogate from their related environmental obligations, which would then also imply a derogation from DNSH criteria applicable to the relevant intervention field.

- ***Defence and security***

  Intervention fields that are related to defence and security would be identified in the DNSH guidance and exempted from the application of the DNSH principle. This would concern for instance intervention fields *323 – supporting European integrated border management; 388 – participation in international peacekeeping operations; 399 – supporting the strengthening of Member States' capabilities in relation to preventing and combating crime, terrorism and radicalisation, as well as managing security; 404 – defence industrial scale-up and resilience, 405 – collaborative defence procurement; and 406 – military mobility.*

  In this context, dual-use (civilian and military) activities that cannot be linked to an intervention field for defence and security would be exempted from the DNSH principle if they are intended to be used for a military or defence purpose. This purpose should be present from the beginning of the programming and be credible and demonstrable. The guidance would provide adequate safeguards and concrete examples of how this purpose could be demonstrated (e.g. road infrastructure should comply with the technical requirements for military mobility enshrined in EU legislation and be part of the EU military mobility network).

Application of the 'where feasible and appropriate' principle

In line with Article 13(2) of the proposed Performance Regulation, for plans implemented by Member States, in case of an activity where the application of the 'do no significant harm' principle may not be feasible or appropriate, each **Member State shall provide a justification** in line with the DNSH guidance. Pursuant to Article 13(4) of the proposed Performance Regulation, this justification should be provided at the moment of the submission of such plans or, for measures included at a later time, when the Plan is amended.

No justification would be required when a National Regional Partnership Plan (NRPP) is amended in case of crisis situations (pursuant to the provisions under Article 34 of the proposed NRPP regulation[15]) and when support is provided under the emerging challenges and priorities cushion ('budget cushion', pursuant of Article 33 of the proposed NRPP regulation).

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[13] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.
[14] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.
[15] Proposal for a Regulation of the European Parliament and of the Council establishing the European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security for the period 2028-2034 and amending Regulation (EU) 2023/955 and Regulation (EU, Euratom) 2024/2509.

C. Climate change adaptation

The Commission will explore whether the single DNSH guidance should include additional criteria for climate change adaptation for some categories of activities in view of their exposure and size. In particular, a limited number of additional criteria could apply to large-scale infrastructure projects and/or critical infrastructure at high potential risk and for which no climate resilience analysis is required by applicable EU legislation.

2. DNSH areas and criteria

A. DNSH criteria for EU Member States

This section contains the areas that could be envisaged to be subject to DNSH specific criteria in line with Article 5(2) of the proposed Performance Regulation[16]. The list below **builds on the experience under the 2021-2027 programming period**, in particular regarding the criteria and processes applied under the Recovery and Resilience Facility, the Social Climate Fund, InvestEU and Cohesion funds. It does so while **incorporating the principles provided in Article 5** of the proposed Performance Regulation (as considered in Section 1, above), resulting in a more limited number of **clearer and more targeted DNSH criteria while still taking account of** the **climate and environmental objectives** that the DNSH aims to protect. This list is exhaustive and no additional DNSH criteria would apply.

As explained in the previous sections, the DNSH guidance would identify the intervention fields for which specific DNSH criteria would be applicable. Conversely, for intervention fields not identified in the guidance, no significant harm would be considered to occur and the DNSH principle would be automatically fulfilled. The 'where feasible and appropriate' exceptions, outlined in Section 1.B, would also derogate from this list so that the DNSH principle would not apply to those cases, irrespective of whether the activity is covered by the criteria below.

List of activities that could be considered to do significant harm to one or several environmental objectives, *unless they satisfy the targeted 'carve-out' criteria set out in the list*[17]*, or the application of the DNSH principle would not be proportionate, feasible or appropriate as outlined in Sections 1.A and 1.B:*

[16] "The guidance referred to in paragraph 1 shall set out general principles and criteria and, where necessary, specific criteria at the level of relevant policy areas. It shall distinguish, in particular, between policy areas or activities that are always deemed to be in line with the do no significant harm principle, and policy areas or activities that are considered to do significant harm to one or several environmental objectives and can therefore not be financed from the EU budget".

[17] Meeting the requirement in one 'carve-out' criterion (i.e one indent under each item of the list) is sufficient to comply with the DNSH principle, unless expressly stated otherwise.

1) ***The mining, extraction or production of fossil fuels[18] and the transport, transmission[19], distribution[20] and storage of fossil fuels***. The following areas are proposed to be carved out:

    a) the decommissioning of fossil fuel infrastructure and rehabilitation of sites, where the competent national authority has confirmed that either: i) no entity or undertaking has been identified as legally required to conduct the decommissioning and rehabilitation under applicable EU and national law, or ii) that the identified polluter cannot be held legally liable for financing the decommissioning and rehabilitation;

    b) repurposing of energy infrastructure to enable the exclusive use, storage or transport of pure hydrogen without the need for any further adaptation works, as defined in the TEN-E Regulation;

    c) back-up storage for the continuous provision of essential services in health, drinking water and wastewater, nuclear safety, district heating and cooling;

    d) low-carbon fuels in line with Renewable Energy Directive[21] and with Directive for renewable gas, natural gas and hydrogen[22];

    e) transport, transmission, distribution and storage infrastructure intended for testing and launching of space launch vehicles and spacecraft;

    f) transport infrastructure[23] and transport mobile assets (e.g., trucks, rolling stock, vessels), capable of transporting renewable, low-carbon or non-energy products (e.g., construction material) and transport, transmission, distribution and storage infrastructure for renewable and low-carbon fuels within transport-related sites (ports, airports, refuelling and recharging stations).

2) ***Generation of electricity, heat or cold from fossil fuels[18]*****.** The following areas are proposed to be carved out:

    a) generation of electricity, heat and cold for efficient district heating or cooling systems in accordance with Article 26 of the Energy Efficiency Directive[24], provided that EU funding does not support generation assets based on fossil fuels;

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[18] 'Fossil fuels' means solid fossil fuels (including peat), liquid fossil fuels (including shale oil) and natural gas.

[19] 'Transmission' means the transport of an energy carrier on the interconnected system with a view to its delivery to final customers or to distributors, but does not include supply.

[20] 'Distribution' means the transport of an energy carrier on the distribution systems with a view to its delivery to customers, but does not include supply.

[21] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast).

[22] Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (recast).

[23] Rail, road and inland waterways infrastructure, maritime and air transport infrastructure and infrastructure for multimodal freight terminals.

[24] Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast).

b) back-up assets (e.g. diesel generators) for the continuous provision of essential services in health, drinking water and wastewater, nuclear safety, district heating and cooling. Such assets cannot be connected to electricity, heat or cold grids – except for district heating and cooling – and must run less than 300 hours per year[25] except in the case of nuclear safety;

c) generation of electricity with low-carbon fuels, which are in line with the Renewable Energy Directive[26] and with Directive for renewable gas, natural gas and hydrogen[27];

d) on-site heat or cold generation for Net-Zero Industry Act (NZIA) technologies as defined in Annex of NZIA Regulation[28], other net-zero technologies as defined in relevant Union legislation, or for strategic projects for critical medicinal products as recognised in the proposed Commission's Regulation for a Critical Medicines Act[29];

e) generation of electricity, heat or cold in agriculture and forestry activities in rural areas[30].

3) ***Industrial activities in stationary installations, as covered by Annex 1 of the Emissions Trading System [31], and only insofar as the industrial process[32] is concerned.*** The following areas are <u>proposed to be carved out</u>:

a) investments in decarbonisation or other net-zero technologies as defined in relevant Union legislation, including the Net-Zero Industrial Act (Annex of NZIA Regulation[33])[34].

b) investments that lead to projected GHG avoidance of at least [30-40%] including where such reductions will be achieved in stages due to technological, infrastructure or local constraints, provided that a credible decarbonisation plan is presented[35];

c) all exemptions covered in point 2 above.

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[25] As referred to in Article 27a, paragraph 3, of Directive 2003/87/EC.
[26] Ibid., footnote 21.
[27] Ibid., footnote 22
[28] Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724.
[29] COM/2025/102 Proposal for a Regulation of the European Parliament and of the Council laying a framework for strengthening the availability and security of supply of critical medicinal products as well as the availability of, and accessibility of, medicinal products of common interest, and amending Regulation (EU) 2024/795.
[30] Rural areas are local administrative units with a degree of urbanisation equal to 3, where the "degree of urbanisation" indicator is developed by the European Commission, as specified in <u>Degree of urbanisation - GISCO - Eurostat</u>.
[31] 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.
[32] Industrial processes as per the activities which have an effect on emissions in line with Annex I of Directive 2003/87/EC of the European Parliament and of the Council (EU ETS).
[33] Ibid., footnote 28.
[34] This includes, among others, all renewable sources under Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 and nuclear technologies.
[35] A detailed decarbonisation plan should outline how the targeted emission reductions will be achieved within a defined timeframe and how the investment avoids the lock-in of carbon-intensive technologies. When assessing the plan, the Commission will take account of reasonable and demonstrable investments already undertaken to decarbonise.

4) ***Manufacturing, acquisition and leasing of road vehicles[36] (M1 and N1) capable of using fossil fuels, and of other types of road vehicles which are not at least considered low-emission by the Heavy Duty Vehicles Regulation[37].***

   The following is proposed to be carved out: special purpose vehicles as defined by the Motor Vehicles Regulation[38] (e.g. ambulances, firefighting trucks, police/patrolling vehicles, waste collection trucks).

5) ***Construction and expansion of roads***, unless accompanied by proportionate flanking measures in the proximity of a project or in other relevant locations. Those measures include, as regards all types of roads, measures ensuring appropriate capacity for electric charging is in place; and, for motorways or primary roads as defined in Road Safety Infrastructure Management Directive[39], also another measure promoting clean mobility.

   The following is proposed to be carved out: agricultural and forest roads, road safety, public transport infrastructures and small-scale interventions (< 2 km).

6) ***Manufacturing, acquisition and leasing of rail rolling stock which are not zero tailpipe emissions or bimodal rail rolling stock.***

7) ***Manufacturing, acquisition and leasing of vessels equipped with propulsion systems capable of operating on conventional[40] fossil fuels.*** The following areas are proposed to be carved out:

   a) passenger and cargo vessels operating public scheduled-service obligations in outermost regions, and islands with less than 200 000 permanent residents;

   b) hybrid vessels – including electric and wind propulsion vessels, and dual-fuel vessels[41] for maritime navigation;

   c) vessels capable of running on at least 30 % renewable or low carbon fuel for inland navigation;

[36] Regulation (EU) 2018/858 defines as road vehicles all vehicles of categories M, N and O. Agricultural and forestry tractors and their trailers (Category T), as defined by Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013, are not defined as road vehicles.
[37] Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO2 emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC.
[38] Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (Text with EEA relevance).
[39] Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management.
[40] Conventional fossil fuels means any fossil fuel not listed as an alternative fuel in Article 2(4) of Regulation (EU) 2023/1804 (AFIR).
[41] Vessels equipped with propulsion systems comprising two or more separate fuel systems and allowing operation on low-carbon or renewable fuels.

d) vessels necessary for development, operation and maintenance of ports, services supporting maritime activities, waterways (maritime and inland) or for providing services and duties in the public interest[42] and experimental vessels, vessel prototypes or vessels that are equipped to perform research.

8) ***Investment in fishing vessels and fishing gear, including in the replacement or modification of engines capable of operating on conventional fossil fuels.*** The following areas are proposed to be carved out:

a) investments in fishing vessels that contribute to reducing the environmental impact of fishing activity (e.g. selective fishing gear reducing bycatch and discards), of achieving energy transition and/or improving health and safety on board and which comply with the following: (i) they belong to a fleet segment, in compliance with the Common Fisheries Policy Regulation[43]; (ii) they target stocks that are under fisheries management measures, and (iii) they have an electronic catch logbook and a Vessel Monitoring System in place;

b) investments in the replacement or modification of engines for hybrid fishing vessels or dual-fuel fishing vessels.

9) ***Assembly, acquisition and leasing of aircrafts not meeting the best-in-class aircraft[44] ICAO CO_2 standards.*** The following areas are proposed to be carved out:

a) aircraft equipped to fulfil emergency services as described in Section 14.1 of Annex II of the Climate Delegated Regulation[45] (e.g. for humanitarian, civil protection and emergency response purposes) and for border control;

b) experimental aircraft, aircraft prototypes or aircraft that are equipped to perform research.

10) ***Construction of new airports*** unless this is accompanied by the permanent decommissioning of an existing airport.

11) ***Landfill facilities[46]***. The following areas are proposed to be carved out:

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[42] For example, tug, pilot, mooring, salvage vessels, dredgers, crane vessel, patrol vessels, icebreakers, cable layers, cable repair vessels, offshore vessels, pollution control vessels, search-and-rescue vessels, fire-fighting vessels, medical vessels, vessels used for security and border control.

[43] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC.

[44] Where "best-in-class" is defined vis-à-vis the thresholds of tolerable CO2 emissions per volume of aircraft as defined by the International Civil Aviation Organization (ICAO).

[45] Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.

[46] As defined in Article 2(g) Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

a) the capture and utilisation of landfill gas;

b) the remediation of non-conforming landfills and abandoned/illegal waste dumps (observing the polluter pays principle[47]);

c) landfills dedicated to the disposal of inert waste and excavated material from projects on the Trans-European Transport Network[48];

d) facilities in the outermost regions provided that a separate waste collection scheme is in place.

12) ***Mechanical biological treatment plants for municipal waste[49].***

13) ***Waste incineration plants.*** The following areas are <u>proposed to be carved out</u>:

a) plants dedicated exclusively to treating non-recyclable hazardous waste;

b) carbon capture for storage or use;

c) recycling of materials from incineration ashes;

d) heat recovery whereby an investment in an existing plant must not result in an increase of its waste processing capacity;

e) plants in the outermost regions provided that an effective separate waste collection scheme is in place.

14) ***Extraction of minerals in the deep sea ("deep-sea mining") and marine geoengineering activities[50]*** <u>until</u> sufficient scientific evidence is available to confirm that deep-sea mining poses no threat to marine ecosystems.

[47] Where the competent national authority has confirmed that: i) no entity or undertaking has been identified as legally required to conduct the decommissioning and rehabilitation under applicable EU and national law, or ii) that the identified polluter cannot be held legally liable for financing the decommissioning and rehabilitation.

[48] Regulation (EU) 2024/1679 of the European Parliament and of the Council of 13 June 2024 on Union guidelines for the development of the trans-European transport network, amending Regulations (EU) 2021/1153 and (EU) No 913/2010 and repealing Regulation (EU) No 1315/2013.

[49] Mechanical biological treatment plants (MTBs) are residual waste treatment facilities combining some form of mechanical sorting/physical treatment with biological treatment, possibly complemented with preparation of an energy rich waste fraction. They are usually operating in the absence of an effective sorting and separate collection system.

[50] A deliberate intervention in the marine environment to manipulate natural processes, including to counteract anthropogenic climate change and/or its impacts, and that has the potential to result in deleterious effects, especially where those effects may be widespread, long lasting or severe.

15) ***New artificial barriers[51] which disrupt river continuity in free-flowing river stretches*** *as mapped under relevant legislation*[52], unless part of investments on the Trans-European Transport Network[53].

16) ***Desalination plants***, unless there are no other viable supply or water-saving measures, brine discharge follows relevant brine discharge criteria, and the plant runs on onsite renewable energy or is connected to the electricity grid.

17) ***Investments in irrigation***, unless they fulfil condition a) as well as one or more of the following conditions b) to e), depending on the type of investment:

   a) water metering enabling measurement of water use at the level of the supported investment is in place or will be put in place as part of the investment;

   b) investments resulting in a net increase of the irrigated area affecting a given body of groundwater or surface water, provided that: (i) the status of the water body is known and has not been classified as less than good, or at risk of deteriorating to below good status, in the relevant river basin management plan for reasons related to water quantity ; and (ii) an environmental impact analysis shows that there will be no significant negative environmental impact from the investments;

   c) investments in the use of reclaimed water as an alternative water supply, provided that the provision and use of such water is compliant with Regulation (EU) 2020/741 and does not result in deterioration of the status of the water bodies concerned;

   d) investments in the creation or expansion of a reservoir for the purpose of irrigation, provided that it does not lead to significant negative environmental impact, including the deterioration of the status of the water bodies concerned;

   e) improvement to an existing irrigation installation or element of irrigation infrastructure if it is assessed ex ante as offering potential water savings. Where such installation or infrastructure affects bodies of groundwater or surface water whose status has been identified as less than good or at risk of deteriorating to below good status in the relevant river basin management plan for reasons related to water quantity, the improvement should ensure that water use is effectively reduced and that this reduction contributes to the achievement of good status of those water bodies, as laid down in Article 4(1) of Water Framework Directive[54]. This condition shall not apply to an investment in an existing installation which affects only energy efficiency.

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[51] Namely 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.
[52] Regulation (EU) 2024/1991 of the European Parliament and of the Council.
[53] Ibid., footnote 48.
[54] Ibid., footnote 14.

18) ***Activities which manufacture or place on the market identified substances of very high concern*** *as referred to* ***in Article 59 of REACH Regulation***[55], unless accompanied by approaches to minimise the relevant concern at the design or redesign stage of their manufacturing.

B. DNSH approach for third countries

Article 5 of the proposed Performance Regulation sets out that "proportionality shall be ensured notably by taking into account the (…) fact that [the activity] may take place in third countries". A differentiated **approach for third countries**, as appropriate, is the simplest way to capture the diversity of third countries, the specificities of external action and the lack of common environmental acquis.

A two-stage approach is envisaged to balance the flexibility required for funding projects in third countries with sufficient levels of environmental responsibility, so that the **Union can continue to pursue its strategic interests abroad without conferring unfair advantages to foreign actors**.

The approach would consist of:

- A **targeted set of DNSH criteria**, inspired by existing practices from key multilateral financial institutions and implementing partners while ensuring high environmental standards.
- For activities that do not fall under the set of DNSH criteria but which may nevertheless create significant environmental harm, a **case-by-case screening** would be required. Where such screening identifies a risk of significant harm, an in-depth environmental assessment should be carried out and appropriate mitigation measures should be considered.

3. Application of DNSH to different management modes and programmes

While providing for a single set of DNSH criteria and a single guidance document, the proposed Performance Regulation also provides for the tailored application of the DNSH principle according to the type of management mode:

- **Article 13** of the proposed Performance Regulation provides that plans implemented by Member States or third countries have to integrate a **DNSH assessment at the level of the activities** in their plans in line with Article 5. Also, the proposed NRRP Regulation foresees that Member States explain the control and monitoring mechanisms in place to comply with the principle across the lifetime of the plan, in line with Table 2.2. of Annex V of the proposed

[55] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

NRPP Regulation. Managing authorities should be responsible for ensuring compliance with the principle throughout the implementation phase.

- **Article 16** of the proposed Performance Regulation mandates the Commission to ensure compliance with DNSH in directly managed programmes.
- **Article 17** of the proposed Performance Regulation mandates the Commission to ensure that actions financed through indirect management comply with DNSH.

These elements will be considered in the DNSH guidance, which will also include **examples** to illustrate the practical application of the DNSH criteria across different types of spending programmes. Those include in particular the NRPP, and the application of existing screening methodologies in the **evaluation process of research and innovation** actions under Horizon Europe to ensure compliance with the DNSH guidance. The guidance will also take account of **specificities of SMEs**, including through possible additional facilitations. It will also recall that the DNSH assessment does not pre-empt the Commission's assessment of the compatibility of State aid measures and is without prejudice to the **State aid rules**.