Dutch Energy Efficient Mortgage Framework

On the application of the
Minimum Safeguards
of the EU Taxonomy

December 2024

ENERGY
EFFICIENT
MORTGAGES
Netherlands

Energy Efficient Mortgages Hub – The Netherlands

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DEEMF is available to all parties directly or indirectly involved in financing Dutch (residential) properties, be it by granting mortgage loans to consumers or investing therein, or otherwise. Applying the framework is voluntary, and the framework is intended to work on a 'comply or explain' basis[1]. DEEMF has been composed based on the input from the members and affiliated members of the

EEM NL Hub as collected feedback during working group sessions. This document is therefore a summary as composed by the EEM NL Hub but is not necessarily the official position of any of the individual institutions participating in the Energy Efficient Mortgages NL Hub.

The EEM NL Hub is an association set up with the aim of supporting and promoting the acceleration and adaptation of energy efficient housing in the Netherlands and the financing thereof. The EEM NL Hub therefore has no formal capacity when it comes to interpreting (EU or other) legislation. The interpretation of the EU Taxonomy as presented in this document is only that: an interpretation, specific to the Dutch residential real estate market.

Great care has gone into compiling this document. However, it could contain mistakes. We welcome any observations and recommendations for improvement. Please feel free to submit them to the Energy Efficient Mortgages NL Hub at: info@eemnl.com.

[1] The option for an institution to "not comply and explain" on individual line-items are intended to leave sufficient flexibility to accommodate those institutions that look to apply stricter criteria than included in the DEEMF and to those institutions that are still in the process of working towards a full application of the DEEMF.

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Executive Summary

The 2024 update of DEEMF MS incorporates the latest regulatory guidance on Minimum Safeguards (MS) under the EU Taxonomy and expands the previous scope to include economic activities: 3.1, 3.5, 7.1, 7.3, and 7.6. This document examines the EU Taxonomy's provisions, related regulations, reports, guidance, and national implementations relevant to MS applicability. The analysis reconfirms that MS are not applicable to households, as they are not considered undertakings. Specifically, MS do not apply to economic activities 7.1, 7.2, or 7.7.

However, for renovation activities 7.3 and 7.6, financial institutions must evaluate MS compliance for the manufacturers of the individual products or measures that are financed and are listed in sections 3.1 and 3.5 of the Climate Delegated Act. If only the installation, maintenance, or repair service is financed, and not the acquisition of the measure or product, no MS check is required for homeowners.

What is new in this update of DEEMF MS

This document serves as an update to our 2023 publication on Minimum Safeguard (MS) under the EU Taxonomy (DEEMF MS), integrating recent guidance from EU Commission Notices. While the updates are relatively minor and do not alter the core conclusion regarding the inapplicability of MS to activity 7.1, 7.2 and 7.7, this version provides additional context and addresses key developments for economic activities 3.1, 3.5, 7.1, 7.2, 7.3, and 7.6 in terms of MS applicability.

The document incorporates the following:

- COMMISSION NOTICE on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of the EU Taxonomy Regulation regarding taxonomy-eligible and taxonomy-aligned economic activities.
- DRAFT COMMISSION NOTICE on the interpretation and implementation of provisions within the EU Taxonomy Environmental Delegated Act, the EU Taxonomy Climate Delegated Act, and the EU Taxonomy Disclosures Delegated Act.

These developments, alongside other relevant updates, are detailed in Section 4 and integrated into the guidance and conclusion sections. Additionally, minor refinements have been made throughout the document to enhance clarity and precision, ensuring it reflects the latest regulatory interpretations.

1 Introduction

1.1 2024 update

This document ("DEEMF MS 2024") serves as an update to our 2023 publication on the application of the Minimum Safeguards under the EU Taxonomy. Through this update, we aim to provide the most current context on the topic of Minimum Safeguards, reflecting the latest regulatory guidance, interpretative developments, and analytical insights in this area.

The updates presented herein are relatively minor and do not alter the core conclusions of the original publication. The main message of the 2023 document remains valid. This update is intended primarily to offer additional insights into the evolving context and highlight nuanced adjustments based on recent developments, particularly those arising from new insights provided in the EU Commission Notices that have been published.

Additionally, in this publication, we extend the scope to include economic activities 3.1, 3.5, 7.1, 7.2, 7.3, and 7.6. This broader scope aligns with the coverage presented in DEEMF SCC 2024, allowing for a more comprehensive analysis of Minimum Safeguards within these activities.

1.2 Background of the Minimum Safeguards

The concept of "Minimum safeguards" was introduced by the "EU Technical Expert Group on Sustainable Finance" ("TEG", the predecessor of the Platform on Sustainable Finance), in its report[2] published in March 2020, in relation to the development of the EU Taxonomy Regulation. This final report of the TEG played an important role in shaping this concept.

In their conclusive report, titled "Taxonomy: Final Report of the Technical Expert Group on Sustainable Finance", the TEG outlined guidelines and recommendations for the establishment of the EU Taxonomy framework. As part of these recommendations, the TEG recognised the importance of ensuring that entities engaged in environmentally sustainable activities adhere to certain *foundational* governance standards and ethical considerations.

During the later phases of the TEG's deliberations, the concept of "Minimum safeguards" emerged as a response to a request from the European Parliament. This request intended to address concerns related to the social and ethical dimensions of sustainable finance: the Minimum safeguards are designed to guarantee that entities labelled as Taxonomy-aligned not only meet environmental sustainability criteria[3] but also uphold essential social norms.

The TEG introduced the concept of "Minimum safeguards" as an integral component of the EU Taxonomy, acknowledging the need to harmonise economic, environmental, and social considerations within the realm of sustainable finance. The concept is the basis for a comprehensive framework where responsible financial activities encompass both environmental integrity and the preservation of basic human rights and ethical standards.

EU Taxonomy
The advice of the TEG has been incorporated in the EU Taxonomy Regulation in Articles 3 and 18. Article 3 of the EU Taxonomy specifies as one out of three criteria for environmentally sustainable economic activities that they are to be "carried out in compliance with the minimum safeguards". Subsequently, Article 18 describes the criteria for adhering to these minimum safeguards ("Minimum Safeguards").

[2] EU Technical Export Group on Sustainable Finance. Taxonomy: Final report of the Technical Export Group on Sustainable Finance. March 2020.
[3] The focus point of the Climate Delegated Act and Environmental Delegated Act.

Platform on Sustainable Finance

As described in Article 20 of the EU Taxonomy, in October 2022 the Platform on Sustainable Finance (the "Platform") was established as the successor to the TEG. Its main purpose is to advise the European Commission on the implementation and usability of the EU Taxonomy and the sustainable finance framework more broadly. The Platform will also work on the development and possible revisions of taxonomy criteria and on monitoring of capital flows.

In October 2022, the Platform published a report[4] on the Minimum Safeguards, ("Platform Report 2022). The objective of the report is to create guidance "*where the distinction between mandatory and voluntary approaches to human rights including labour rights and governance aspects by businesses is dissolving*".

One of the key paragraphs of the Platform Report 2022 (from the perspective of the EEM NL Hub) is where the Platform expresses its views on the applicability of Article 18 in respect of lending to households (as can be the case for the economic activities described in Section 7 of the EU Taxonomy and is the main perspective of the EEM NL Hub):

"Households are not considered to be covered by the Article 18 standards, which are explicitly focusing on businesses or (sub) sovereigns. Banks do not have to enquire households on minimum safeguards when providing mortgages or other types of financing. This does not, however, exempt construction or renovation companies from their duties with respect to minimum safeguards when conducting their activities."

Although this recommendation from the Platform appears straightforward, little substantiation is provided in the Platform Report 2022. In addition, in recently published guidance documents (such as Q&A's), this (Platform) advice has not been explicitly adopted by the EC. Therefore, we perform a fundamental analysis of the content and references of Article 18.

In the absence of this explicit clarification and considering the requirement to report on Taxonomy Alignment, the members of the EEM NL Hub have performed an analysis of the Minimum Safeguards ("MS") as contained in the EU Taxonomy and the applicability to our context.

Context
In this document we analyse the application of the Minimum Safeguards in the context of (mortgage) lending for residential properties to homeowners - more concretely for the economic activities described in Sections 3.1, 3.5, 7.1, 7.2, 7.3 7.6, 7.7 of the Climate Delegated Act – Annex I.

In the analysis, we have applied the same approach as in the other DEEMF documents where three perspectives are considered. In Figure 1 we have the depicted this approach for MS in the context of mortgage lending. In this document we focus on the first perspective – the analysis of the (theoretical) interpretation and application. This is done by extensive analysis in this document of relevant references to treaties, regulations, laws, covenants and guidelines that could be relevant at different levels (state, government, business, etc.). However, given the outcome of this analysis under the first perspective we did not include the availability and collection of data in the analysis as a separate step, but as part of Perspective 1. Although considered, we will come to the conclusion in this document that Perspective 3 (the application to mortgage loans) is currently not applicable. In section 6 we present the guidance based on the analysis of Perspective 1.

[4] Final Report on Minimum Safeguards, (Platform on Sustainable Finance), October 2022.

Figure 1: *DEEMF Analysis Approach*

1.3 Composition of this document

This document contains the analysis of the Minimum Safeguards as included in Article 3 and Article 18 of the EU Taxonomy Regulation[5]. Section 2 presents the wording of the relevant articles and recitals[6] in respect of Minimum Safeguards and contains an initial analysis of the i) the sub-components of the relevant articles and referenced regulations, such as the SFDR, and ii) its potential relevance for the economic activities of Sections 7.1 – 7.7 ("Construction and Real Estate") of the Climate Delegated Act and corresponding economic activities such as 3.1 and 3.5.

Section 3 contains a summary of relevant publications om MS. Section 4 discusses the recent development and Section 5 expands on the Standards included in Article 18.1. Article 18.2 is discussed in Section 6. The *guidance* on how to interpret and apply the Minimum Safeguards in respect of the economic activity 'Construction & Real Estate' is presented in Section 7. Section 8 contains a brief conclusion and discussion.

[5] (EU) 2020/852

[6] "recitals" are introductory statements that provide explanations or justifications for the main provisions of a regulation.

2 EU Taxonomy Wording

In this section we present and review the relevant articles and recitals in relation to the concept of Minimum Safeguards. Article 3, (see Box 1) mentions the three conditions that have to be met to be able to designate an economic activity as sustainable, irrespective of the environmental objective. Article 18 (see Box 2), describes the Minimum Safeguards referred to in Article 3. Note that MS are not mentioned in the definitions (Article 2) of the EU Taxonomy Regulation.

Box 1: Article 3 of the EU Taxonomy Regulation

Article	Regulation Wording
Article 3	**Criteria for environmentally sustainable economic activities** For the purposes of establishing the degree to which an investment is environmentally sustainable, an economic activity shall qualify as environmentally sustainable where that economic activity: (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 in Article 9 in accordance with Article 17; (c) is carried out in compliance with the minimum safeguards laid down in Article 18; and (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).

Box 2: Article 18 of the EU Taxonomy Regulation

Article	Regulation Wording
Article 18	Minimum safeguards 1.The minimum safeguards referred to in point (c) of Article 3 shall be procedures implemented by an undertaking that is carrying out an economic activity to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights. 2.When implementing the procedures referred to in paragraph 1 of this Article, undertakings shall adhere to the principle of 'do no significant harm' referred to in point (17) of Article 2 of Regulation (EU) 2019/2088.

Note that compliance with the Minimum Safeguards is not subject to Technical Screening Criteria for which additional requirements are created in 1) the Climate Delegated Act and 2) the Environmental Delegated Act. This is also made clear in Article 3 which lists the *Criteria for environmentally sustainable economic activities* and clearly refers to additional provisions for the categories: substantial contribution[7] (SCC) and do not significantly harm[8] (DNSH).

In addition to the wording in Articles 3 and 18, recitals 35 and 52 (see Box 3 and Box 4 respectively below) of the EU Taxonomy Regulation also contain context and references to the Minimum Safeguards.

[7] See Article 10.3.a (EU) 2020/852
[8] See Article 10.3.b (EU) 2020/852

Box 3: Recital 35 of the EU Taxonomy Regulation

Recital	Regulation Wording
35	Recalling the joint commitment of the European Parliament, the Council and the Commission to pursuing the principles enshrined in the European Pillar of Social Rights in support of sustainable and inclusive growth and recognising the relevance of international minimum human and labour rights and standards, compliance with minimum safeguards should be a condition for economic activities to qualify as environmentally sustainable. For that reason, economic activities should only qualify as environmentally sustainable where they are carried out in alignment with the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights, including the declaration on Fundamental Principles and Rights at Work of the International Labour Organisation (ILO), the eight fundamental conventions of the ILO and the International Bill of Human Rights. The fundamental conventions of the ILO define human and labour rights that undertakings should respect. Several of those international standards are enshrined the Charter of Fundamental Rights of the European Union, in particular the prohibition of slavery and forced labour and the principle of non-discrimination. Those minimum safeguards are without prejudice to the application of more stringent requirements related to the environment, health, safety and social sustainability set out in Union law, where applicable. When complying with those minimum safeguards, undertakings should adhere to the principle of 'do no significant harm' referred to in Regulation (EU) 2019/2088, and take into account the regulatory technical standards adopted pursuant to that Regulation that further specify that principle.

Box 4: Recital 52 of the EU Taxonomy Regulation

Recital	Regulation Wording
52	The Platform should advise the Commission on the development, analysis and review of technical screening criteria, including the potential impact of such criteria on the valuation of assets that qualify as environmentally sustainable assets under existing market practices. The Platform should also advise the Commission on whether the technical screening criteria are suitable for use in future Union policy initiatives aimed at facilitating sustainable investment and on the possible role of sustainability accounting and reporting standards in supporting the application of the technical screening criteria. The Platform should advise the Commission on developing further measures to improve data availability and quality, taking into account the objective of avoiding undue administrative burden, on addressing other sustainability objectives, including social objectives, and on the functioning of minimum safeguards and the possible need to supplement them.

In Box 5 and Box 6 below, we look closer into the wording and provide some initial observations in respect of Article 18 (paragraphs 18.1 and 18.2 respectively). Some observations in respect of the wording in the recitals are presented in Box 7, Box 8, Box 9, Box 10.

Box 5: Analysis of Article 18.1

<table>
<tr><th colspan="2">Article 18.1</th></tr>
<tr><th>Wording</th><th>Observations</th></tr>
<tr><td>1. The minimum safeguards referred to in point (c) of Article 3 shall be procedures implemented by an undertaking that is carrying out an economic activity to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.</td><td>This article describes the "Minimum Safeguards", as introduced in section (c) of Article 3 of the EU Taxonomy Regulation.

These safeguards encompass operational protocols that undertakings engaged in economic activities are required to adopt to ensure their practices align with established international frameworks governing responsible business conduct.

In practice, this means that undertakings whose economic activities are to be considered as Taxonomy-aligned have to meet the standards for responsible business conduct mentioned in:
• The OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines);
• The UN Guiding Principles on Business and Human Rights (UNGPs), including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work;
• The International Bill of Human Rights.

Three of the four Article 18 standards contain explicit expectations in respect of businesses. These are the UNGPs, the ILO core labour standards and rights at work, and the OECD MNE guidelines.

The fourth, the International Bill of Human Rights, lists our human rights. It is legally binding on ratifying states rather than companies. The UNGPs clarify that the responsibility of businesses in relation to the International Bill of Human Rights is to avoid and address negative impacts on the rights contained therein.

It is worth noting that the article refers to “undertakings”. This term is not defined in the regulation[9]. The article further states “shall be procedures implemented by an undertaking that is carrying out an economic activity”.

A question that could be raised in the context of lending to consumers (under the economic activity ‘Construction and real estate’ as considered in Sections 7.1 – 7.7 of the Climate Delegated Act), is if the economic activity is performed by an undertaking. When assessing who is undertaking the economic activity, do we have to consider the lender, the borrower or both?</td></tr>
<tr><td colspan="2"><u>Resources</u>

These international standards include:
1. OECD Guidelines for Multinational Enterprises
2. UN Guiding Principles on Business and Human Rights
3. ILO Declaration on Fundamental Principles and Rights at Work
4. The International Bill of Human Rights</td></tr>
</table>

[9] The only reference to be found is in recital 22 of the EU Taxonomy Regulation.

Box 6: Analysis of Article 18.2

Article 18.2	
Wording	**Observations**
2. When implementing the procedures referred to in paragraph 1 of this Article, undertakings shall adhere to the principle of 'do no significant harm' referred to in point (17) of Article 2 of Regulation (EU) 2019/2088.	Article 18.2 prescribes that undertakings should adhere to the *principles* of article 2.17 of the Sustainable Finance Disclosure Regulation (SFDR): *(2.17) 'sustainable investment' means an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance;* The key phrase is: ***provided that such investments do not significantly harm any of those <u>objectives</u>*** and the ***<u>objectives</u>*** refer to the first part of that phrase: *'sustainable investment' means an investment in an economic activity that contributes to an environmental objective, as measured, for example* by key resource efficiency indicators on the use of o energy, renewable energy o raw materials, o water and land, o on the production of waste, o and greenhouse gas emissions, o or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities. Similar to Article 18.1, Article 18.2 also refers to "undertakings". This term is not defined in the regulation[10] and the same question can be posed as in the observation in Box 5. Observations: - The first part of article 18.2 potentially provides some guidance to the pragmatic use of Article 18.1 as it states "*when implementing the procedures referred to in paragraph 1…*" - "undertakings" are not defined in the Taxonomy Regulation. - Undertaking should adhere to the do no significant harm principle of Regulation (EU) 2019/2088.
<u>*Resources*</u>	

[10] The only reference to be found is in recital 22 of the EU Taxonomy Regulation.

Regulation (EU) 2019/2088[11]

Box 7: Analysis of Recital 35 – Part I

R(35)	
Wording	**Commentary**
*Recalling the joint commitment of the European Parliament, the Council and the Commission to pursuing the **principles enshrined in the European Pillar of Social Rights** in support of sustainable and inclusive growth, and **recognising the relevance of international minimum human and labour rights and standards**, compliance with minimum safeguards should be a condition for economic activities to qualify as environmentally sustainable.*	The European Pillar of Social Rights is a European Union initiative that outlines a set of principles and rights aimed at promoting and ensuring fair and decent working conditions and social protection across the EU member states. It is not a legally binding treaty or regulation, but rather a framework that establishes a common set of social rights and goals for the EU.
<u>Resources</u> European Pillar of Social Rights	

Box 8: Analysis of Recital 35 – Part II

R(35)	
Wording	**Commentary**
*For that reason, **economic activities should only qualify as environmentally sustainable where they are carried out in alignment with the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business** and **Human Rights, including the declaration on Fundamental Principles and Rights at Work of the International Labour Organisation (ILO), the eight fundamental conventions of the ILO** and the **International Bill of Human Rights**. The fundamental conventions of the ILO define human and labour rights **that undertakings should respect.*** *Several of those international standards are enshrined the Charter of Fundamental Rights of the European Union, in particular the prohibition of slavery and forced labour and the principle of non-discrimination*	This recital lists the standards that are referred to in Article 18.1. The recital states that this obligation is put upon the economic activity as a condition (to qualify as sustainable). Upon whom this obligation rests, is not mentioned. In addition, the term 'undertaking' is not used.
<u>Resources</u> N/A	

[11] https://eur-lex.europa.eu/eli/reg/2019/2088/oj

Box 9: Analysis of Recital 35 – Part III

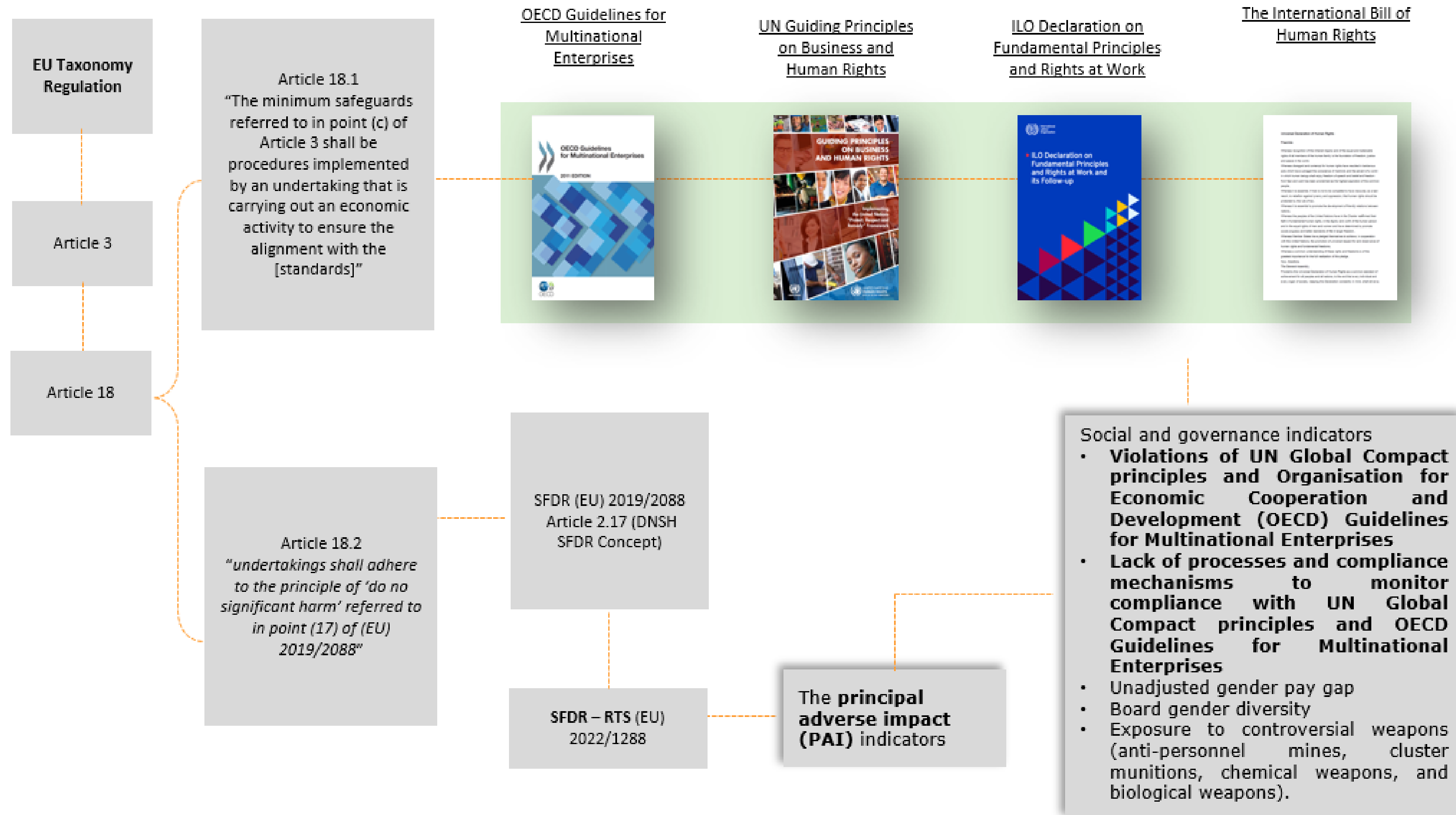
R(35)	
Wording	**Observations**
Those minimum safeguards are without prejudice to the application of more stringent requirements related to the environment, health, safety and social sustainability set out in Union law, where applicable. *Complying with those minimum safeguards, undertakings should adhere to the principle of 'do no significant harm' referred to in Regulation (EU) 2019/2088, and take into account the regulatory technical standards adopted pursuant to that Regulation that further specify that principle.*	**"Are without Prejudice to":** This phrase means that the existence of minimum safeguards does not interfere with or undermine another principle or requirement. In this case, it's saying that the presence of these basic safeguards does not conflict with or negate other rules or regulations. **"More Stringent Requirements":** "Stringent" means strict or demanding. "More stringent requirements" are regulations, standards, or rules that are tougher or more demanding in terms of their criteria. These could relate to environment, health, safety, and social sustainability. **"Union Law":** In this context, "Union law" refers to the legal framework established by the European Union itself. It includes regulations, directives, and other legal instruments issued by the EU institutions. **"Where Applicable":** This phrase indicates that the more demanding requirements set out in Union law are relevant or applicable to certain situations. In other words, these more stringent requirements come into play when they are relevant to the specific case. In this last sentence of Recital 35, the regulation points towards the 'do no significant harm' principle, not of Regulation (EU) 2020/825 (the EU Taxonomy Regulation) but of Regulation (EU) 2019/2088. Putting it all together, Recital 35 is clarifying that the basic minimum safeguards that need to be met for an activity to be considered environmentally sustainable under the EU Taxonomy Regulation do not override or replace stricter rules related to the environment, health, safety, and social sustainability that might already be established in EU law, such as the 'Do No Significant Harm' principle of (EU) 2019/2088. If there are more demanding requirements set out in existing EU regulations for these areas, those requirements still apply alongside the minimum safeguards.
<u>Resources</u> N/A	

Box 10: Analysis of Recital 52

R(52)	
Wording	Observations
The Platform should advise the Commission on the development, analysis and review of technical screening criteria, including the potential impact of such criteria on the valuation of assets that qualify as environmentally sustainable assets under existing market practices. *The Platform should also advise the Commission on whether the technical screening criteria are suitable for use in future Union policy initiatives aimed at facilitating sustainable investment and on the possible role of sustainability accounting and reporting standards in supporting the application of the technical screening criteria.* *The Platform should advise the Commission on developing further measures to improve data availability and quality, taking into account the objective of avoiding undue administrative burden, on addressing other sustainability objectives, including social objectives, and on the functioning of minimum safeguards and the possible need to supplement them.*	The Platform on Sustainable Finance is to advise the commission on the development analysis and review of the Technical Screening criteria. It is important to note that the MS are not subject to Technical Screening Criteria. The last sentence states that The Platform should also play a role in advising on topics such as the functioning of the minimum safeguards and the possible need to amend these. Article 20 lists additional provisions for The Platform.
Resources N/A	

Figure 2 below provides an overview of the Minimum Safeguards articles, references and Standards. In green we highlighted standards that are related.

Figure 2: Overview of EU Taxonomy, Regulation and References.



3 Relevant Publications

3.1 Platform on Sustainable Finance – MS Report 2022

3.1.1 **Platform Report 2022**

As mentioned in the previous section, recital 52 and Article 20 of the EU Taxonomy describe the creation and role of the Platform on Sustainable Finance[12] in relation to the (future) content, application and guidance of the Taxonomy Regulation. The Platform has published a report[13] on the Minimum Safeguards in October 2022, ("Platform Report 2022"). The objective of the report is to create guidance "*where the distinction between mandatory and voluntary approaches to human rights including labour rights and governance aspects by businesses is dissolving*".

The report *advises* on the application of minimum safeguards (MS) in relation to the EU Taxonomy Regulation Articles 3 and 18. It describes:

- Embedding MS in existing and forthcoming EU regulation;
- Identifying topics relating to the standards and norms referenced in Article 18 of the EU Taxonomy Regulation;
- Lists advice on compliance with MS.

Box 11 summarises the key approach that the Platform Report describes in addressing compliance with article 18. The report describes four steps. In Box 12 we highlight and summarise the most important findings of step 1: which is that the four standards of Article 18.1 are condensed to four core principles.

We do not go into step 2, MS vis-à-vis forthcoming related (EU) regulations and directives[14]. However, we summarise the Platform findings in Box 13. Item 3 is not summarised as this chapter of the Platform Report 2022 gives examples and use cases and the Platform Report 2022 itself provides an excellent overview of these. In Box 14 we summarise the (general) recommendations of the Platform Report 2022 in respect of compliance with the MS.

Box 11: Summary of Platform Report 2022 on Minimum Safeguards

The Platform Report 2022 tries to find an answer to the question of compliance with Article 18 documents and references and describes four steps:

1. Analyse and sort the Substantive Content stemming from Article 18 EUT in order to identify the topics on which advice is needed.
2. Look at the existing and emerging EU regulation related to the identified topics covered by the minimum safeguards and, where necessary, national laws on human rights due diligence.
3. The report provides a) an overview of suggestions by market participants and existing practices by ESG rating agencies with regards to ensuring and verifying compliance with the provisions in Article 18 TR and b) examples of existing practices of implementing Article 18 documents such as the OECD guidelines for MNEs and the UNGPs. Based on the regulatory landscape as well as current market practice.
4. The report makes concrete recommendations on which criteria would signal that a company is not complying with minimum safeguards, as per Article 18 of the EU Taxonomy Regulation.

[12] The Platform is the successor to the TEG.
[13] Final Report on Minimum Safeguards, (Platform on Sustainable Finance), October 2022.
[14] As we do not deem this in scope for this document.

Box 12: Summary of Platform Report 2022 on MS Item 1

Item 1: Substantive content stemming from Article 18 EUT

Through analysis of the standards referred to in Article 18.1 of the EU Taxonomy Regulation: the OECD guidelines for Multinational Enterprises (MNE), United Nations Guiding Principles on Business and Human Rights (UNGPs), the eight ILO conventions on fundamental principles and rights at work, and the international bill of human rights, the report identifies four core topics for which compliance with minimum safeguards should be defined:

- Human rights, including workers' rights;
- Bribery/corruption;
- Taxation;
- Fair competition.

The report therefore addresses these four substantive topics and gives advice as to how undertakings could ensure compliance with Article 18. The report tries to find an answer to the question of compliance with Article 18 documents and references. Three of the four Article 18 standards contain explicit expectations for businesses. These are the UNGPs, the ILO core labour standards and rights at work, and the OECD MNE guidelines. The fourth, the International Bill of Human Rights, lists our human rights. The latter is legally binding on ratifying states rather than companies.

In light of the fact that the MS are aimed at business entities, the main part of the report covers advice for investments in private and public entities incorporated as companies. For these entities, it is understood that the UNGPs, OECD MNE guidelines, International Bill of Human Rights, and ILO norms provide the framework for their responsibilities with regards to respecting human rights and labour rights, the prevention of bribery, tax evasion and unfair competition.

Box 13: Summary of Platform Report 2022 on MS Item 2

Item 2: The Platform lists advice on these topics while taking into account related (forthcoming) (EU) regulations[15].

"This advice on minimum safeguards was developed in the midst of ongoing drafting of these major legislations on due diligence and sustainability reporting." It thereby runs in parallel with other EU initiatives to harden soft law instruments such as the OECD guidelines for MNE and the UNGPs.

As regulation of human rights due diligence (CSDDD) and sustainability reporting (CSRD) is not yet fully finalised, there remains some uncertainty surrounding their implementation. In this situation, the solution developed in this report is to a) build the requirements for MS compliance on the international standards referenced in Article 18 – especially on the six steps of the UNGPs/ OECD guidelines, b) point to upcoming regulations and disclosure requirements that build on these standards, c) provide independent sources of information on particular aspects of their implementation for external performance checks and d) illustrate potential non-compliance with minimum safeguards, with the help of examples.

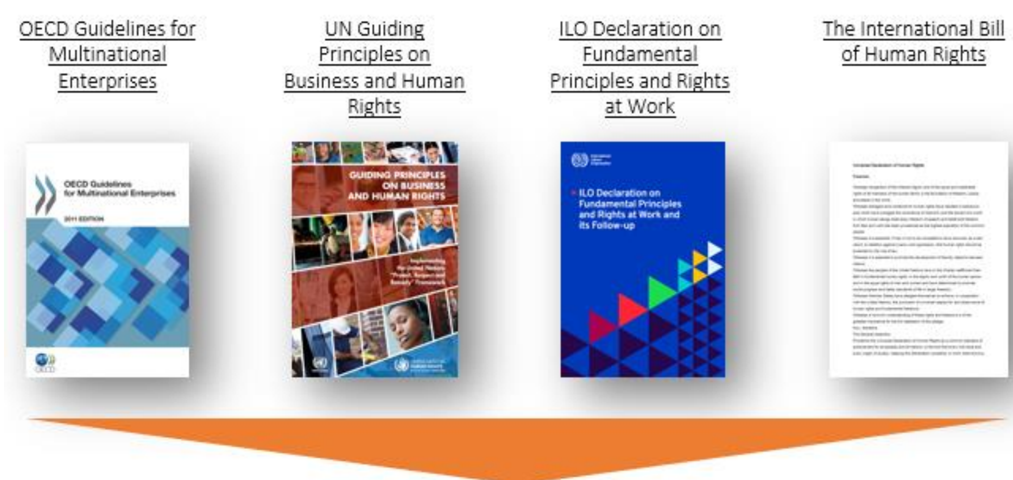
[15] Such as the: the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD)

Box 14: Summary of Platform Report 2022 on MS Item 4.

<u>Item 4: the report recommends that the following should be considered as signs of non-compliance to MS:</u>

1. inadequate or non-existent corporate due diligence processes on human rights, including labour rights, bribery, taxation, and fair competition as a sign of non-compliance with MS.
2. final liability of companies in respect for breaches of any of these topics as a sign of non-compliance with MS.
3. The lack of collaboration with a National Contact Point (NCP), and an assessment of non-compliance with OECD guidelines by an OECD NCP as a sign of non-compliance.
4. non-response to allegations by the Business and Human Rights Resource Centre as a sign of non-compliance.

Figure 3: Platform summary of the Article 18 Standards.



According to the Platform on Sustainable Finance these four Standards can be condensed to four core principles that describe minimum safeguards:

1. Human rights (including labour and consumer rights)
2. Bribery, bribe solicitation and extortion
3. Taxation
4. Fair competition

As depicted in Figure 3: Platform summary of the Article 18 Standards., the Platform Report 2022 condenses the four standards referred to in Article 18.1 into four core topics of compliance. In the analysis of the four standards referred to in Article 18.1, the Platform concludes that article 18 is not applicable to households (see Box 15). It does not (explicitly) detail how they came to this conclusion or provide direct references. We assume that their conclusion, that the Standards are not deemed to be applicable to households, are based on the conclusion that households are not considered to be *undertakings* in a general sense.

Box 15: Platform statement on Article 18.1 and households

"Households are not considered to be covered by the Article 18 standards, which are explicitly focusing on businesses or (sub) sovereigns. Banks do not have to enquire households on minimum safeguards when providing mortgages or other types of financing. This does not, however, exempt construction or renovation companies from their duties with respect to minimum safeguards when conducting their activities."

Note:

i. The section states that households are not considered to be covered by the article 18 Standards, since these are oriented towards business or (sub) sovereigns. However, notice that the statement only refers to the Standards but not refers to article 18.2 provisions.

ii. A distinction is made by the Platform between lending towards households vis-à-vis (construction or renovation) companies. As the latter category would be subject to the standards mentioned in Article 18.1 according to the Platform. This would be consistent with the guidance provided in the Q&A[16] that in the application of the Section 7 of the Climate Delegated Act a distinction should be made between homeowners and companies in the application of the DNSH criteria of that regulation.

In Section 4 of this document, we analyse the wording and references of Article 18.2.

3.1.2 **The status of the Platform and its advice**

It is important to note that the disclaimer in the report states:

"*This report is not an official Commission document, nor does it state an official Commission position. This document does not reflect the views of the European Commission or its services. Nothing in this document commits the Commission, nor does it preclude any policy outcomes.*".

It is, as stated in the introduction of the Platform Report 2022, an advice. Therefore, we can only take the content of this report as an (important) advice as the Commission has not communicated either specific formal guidance in respect of the applicability of the MS or an update on the EU Taxonomy Regulation that incorporates or implements this advice.

3.1.3 **Considerations**

In December 2022 the European Commission published[17] the 'Draft Commission notice on interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act', informally known as the Q&A document. The Q&A document describes answers to questions[18] on the application of different sections of the CDA Technical Screening Criteria. As the name of this document already suggests: the document upon analysing does not go into answers or questions related to the minimum safeguards or the advice provided by the Platform.

On the 13th of June 2023, the EU Sustainable Finance Package was published[19]. This package contains several documents:

- "COMMISSION STAFF WORKING DOCUMENT Enhancing the usability of the EU Taxonomy and the overall EU sustainable finance framework".
- Commission Notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Regulation and links to the Sustainable Finance Disclosure Regulation.

None of these documents contain a reference to the advice of the Platform or an updated guidance on the application of MS.

[16] Answer 107 of DRAFT COMMISSION NOTICE on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act establishing technical screening criteria for economic activities that contribute substantially to climate change mitigation or climate change adaptation and do no significant harm to other environmental objective.

[17] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13237-Sustainable-investment-EU-environmental-taxonomy_en

[18] In part posed by the EEM NL Hub.

[19] https://finance.ec.europa.eu/publications/sustainable-finance-package-2023_en

3.2 Use Case: Dutch State

In 2021 and 2022 the Dutch State Treasury Agency ("*Agentschap van de Generale Thesaurie*") has issued a green bond. In its corresponding (updated) Green Bond Framework[20]) the State explains that it adheres to the EU Taxonomy Regulation. In this framework an overview of compliance or adherence towards the EU Taxonomy Regulations including the provisions of the Minimum Safeguards is provided.

Section 9.1 contains an overview of the resources the Dutch State Treasury Agency refers to as we infer these might be valuable resources in the Dutch context.

Unfortunately, the references towards the EU Taxonomy – Minimum Safeguards in the State's Green Bond Framework are rather one-dimensional. The State provides (general) links and sources but does not provide more concrete references on how some of these standards have been implemented.

In addition, as described in some of these standards, the State's Green Bond Framework does not mention how it monitors some of the elements of, for instance, the standards of Article 18.1. Even though it is likely that article 18.2 does not apply to sovereign governments and its treasury activities, the framework does not state how it implements or neglects these elements.

Even though Article 18.2 is (probably) not applicable to the State, governments have an explementary role to fulfil – thereby an argument can be made that voluntary reporting or disclosure of the provisions of Article 18.2 by a government could be considered good governance.

[20] State of the Netherlands Green Bond Framework 10 May 2022 update.

4 Developments and insights of 2024

In this section, we focus on key elements that are important for the on-going analysis of Minimum Safeguards (MS). These are relevant because we aim to include the latest guidance from Commission Notices and consider political developments that could impact the practical application in 2025. Additionally, these elements are significant as we have expanded the scope of this document beyond the economic activity of 7.1.

4.1 Commission Notice references

Since the publication of the EU Taxonomy Regulation in 2020, the European Commission has issued several Commission Notice documents to provide guidance on the interpretation and implementation of the Climate Delegated Act ("CDA"), the Disclosure Delegated Act ("DDA"), the Environmental Delegated Act ("EDA")[21] and other related frameworks such as the SFDR[22] and the CSRD[23]. These documents mainly pertain the Delegated Acts and to a less extend the level 1 text of the regulation. In this section we present the (most) relevant questions that have been addressed in these Commission Notice documents on the topic of MS.

For the purposes of this DEEMF MS 2024, we will primarily reference the following documents, for which we have assigned shortened names (these are not official titles but are used here for clarity and ease of reference):

- The DDA Q&A (draft version published on 21 December 2023 and final version on 8 November 2024)[24]
- The ADA Q&A (draft published on 29 November 2024)[25]

A note on Commissions Notice documents

No formal public consultation or notification was provided for submitting questions on Commissions Notice publications. However, the EEM NL Hub proactively submitted several questions, some of which have been addressed in various Commission Notice documents. These documents should not be read in isolation but considered as part of a broader context, given their overlaps and cross-references, which can sometimes create ambiguities or conflicting interpretations. Additionally, new Commission notices occasionally reinterpret or clarify earlier guidance, requiring a reassessment of prior positions to align with updated regulatory insights. Together, these notices form a significant body of work that must be evaluated alongside the original Taxonomy Regulation (Level 1) and Delegated Acts (Level 2).

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[21] The Environmental Delegated Act (Commission Delegated Regulation (EU) 2023) establishes technical screening criteria for four environmental objectives of the EU Taxonomy: sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems.

[22] Sustainable Finance Disclosure Regulation (SFDR): The SFDR (Regulation (EU) 2019/2088) requires financial market participants and advisers in the EU to disclose sustainability-related information. It aims to increase transparency on how financial products consider ESG factors and to combat greenwashing by providing standardised disclosure requirements for sustainability risks and impacts.

[23] The CSRD (Directive 2022/2464/EU) expands on the NFRD by requiring more companies to report on sustainability, standardising reporting frameworks, and aligning with EU taxonomy. It introduces mandatory assurance of reported data and detailed requirements on sustainability information, starting from financial year 2024 for certain companies.

[24] *COMMISSION NOTICE on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of the EU taxonomy Regulation on the reporting of taxonomy-eligible and Taxonomy-aligned economic activities and assets (approved in principle).*

[25] *DRAFT COMMISSION NOTICE on the interpretation and implementation of certain legal provisions of the EU Taxonomy Environmental Delegated Act, the EU Taxonomy Climate Delegated Act and the EU Taxonomy Disclosures Delegated Act.*

Reference	Excerpt
37 of the DDA Q&A	37. **Do financial undertakings have to comply with minimum safeguards in conducting their activities or is compliance with minimum safeguards only relevant at the level of the investee company?** The specific requirement to comply with the minimum safeguards under Article 18 of the Taxonomy Regulation applies to the entity that performs an economic activity and which claims that its activity is Taxonomy-aligned. For the purposes of computing in their KPIs the Taxonomy-alignment of exposures to other undertakings, financial undertakings themselves do not need to comply with the minimum safeguards given that financing activities are not as such Taxonomy-eligible. However, financial undertakings should obtain adequate documentary evidence, such as Taxonomy-disclosures by the non-financial undertakings under the Disclosures Delegated Act, ascertaining that undertakings to which they are exposed meet the minimum safeguards to be able to compute as Taxonomy-aligned the exposures to those undertakings. Compliance with minimum safeguards is an integral part of the non-financial undertakings' Taxonomy KPIs that financial undertakings apply to their exposures. As for credit institutions' GAR for known use of proceeds exposures, such as the exposures referred to in Sections 1.2.1.3. and 1.2.1.4. of Annex IV DDA regarding retail clients and public authorities, credit institutions do not need to verify compliance with minimum safeguards by those retail clients and public authorities. However, for those exposures, credit institutions should obtain adequate documentary evidence, such as Taxonomy-disclosures under the Disclosures Delegated Act by the respective producers of goods and service providers, ascertaining that undertakings producing goods and providing services that are purchased by retail clients and public authorities comply with the relevant TSC and with minimum safeguards to compute their exposures as Taxonomy-aligned. This situation concerns for instance a loan provided to a retail client or public authority for the purchase of electric cars or solar panels where the credit institution needs to ascertain the compliance with the relevant TSC and the minimum safeguards by the manufacturer of those goods to assess such a loan as Taxonomy-aligned. Financial undertakings should comply with the minimum safeguards only if the financial services they provide are Taxonomy-eligible and they claim that those services are Taxonomy-aligned. This concerns a small number of activities in Section 6 of Annex I to the Climate Delegated Act on transport, which refers to 'financing' as part of the activity description, and non-life insurance and reinsurance underwriting activities in Sections 10.1. and 10.2. of Annex II to the Climate Delegated Act. For guidance, undertakings are nonetheless invited to consult the Commission Notice of 16 June 2023 on the interpretation and implementation of certain legal provisions of the EU Taxonomy Regulation and links to the Sustainable Finance Disclosure Regulation ([44]).For further informal advice on best practices, they are invited to consult the Final Report on Minimum Safeguards of the Platform on Sustainable Finance published in October 2022 ([45]), in particular Sections 6 and 7.
Comment on answer	An example is given in this answer whereby a credit institution provides a loan to a (residential) homeowner and the homeowner uses these funds to purchase solar panels. In this case the Minimum Safeguards will not need to be assessed in respect of the residential homeowner (who is not an undertaking) but the credit institution should check the TSC and Minimum Safeguards of the manufacturer, to determine if the loan is Taxonomy-aligned. The requirement to comply with MS under Article 18 of the EU Taxonomy Regulation applies to the entity performing the economic activity that claims Taxonomy alignment. In the context of a loan for solar panels, the economic activity is the "manufacture of renewable energy technologies" or the installation process itself, not the residential homeowner. Residential homeowners are not considered undertakings. Therefore, the obligation to meet MS does not extend to them. Instead, the compliance requirements for MS and TSC focus on the entities directly involved in producing or installing the solar panels (e.g., manufacturers or service providers).

	The guidance indicates that credit institutions must ensure the Taxonomy alignment of their exposures if they wish to claim alignment in their KPIs. In practice, this means the institution would need to verify that the manufacturers of the solar panels and any related service providers comply with both the TSC and MS. Additional considerations: • **Absence of a Direct Relationship with Manufacturers:** A significant issue is the lack of an economic, financial, or legal relationship between credit institutions and the manufacturers. Without such a relationship, imposing a due diligence obligation on credit institutions to assess MS compliance of third-party manufacturers raises concerns about the feasibility and fairness. This absence of a formal connection complicates the practical implementation of the MS requirements, as credit institutions would need to rely on external verification or certification mechanisms to ensure compliance. • **Reference to Technical Screening Criteria in Renovation Activities**: ADA Q&A answer 62 explicitly refers to the criteria for manufacturers in the context of certain renovation activities. Specifically, for economic activities 7.3 ('Installation, maintenance, and repair of energy efficiency equipment') and 7.6 ('Installation, maintenance, and repair of renewable energy technologies'), the criteria of sections 3.5 ('Manufacture of energy efficiency equipment for buildings') and 3.1 ('Manufacture of renewable energy technologies') of the Climate Delegated Act (CDA) must also be assessed. This reinforces the idea that credit institutions must consider the broader supply chain, particularly when financing these activities. However, the explicit linkage provided for these activities is absent for others, such as the construction of new buildings under activity 7.1. • **(potential) Impact on New Constructions in the Netherlands**: This guidance has implications not only for renovation activities but also for newly constructed building units under activity 7.1 ('Construction of new buildings'). In the Netherlands, new buildings must meet the BENG3 indicator, which requires at least 50% of their energy demand to be supplied by renewable energy. Solar panels are a common feature of new building designs to meet this requirement. Consequently, the Commission's answer on MS may influence not only renovation activities but also the financing of new constructions, potentially requiring financial institutions to assess the compliance of manufacturers involved in supplying renewable energy technologies. • **Consistency with ADA Q&A Answer 62:** The guidance provided appears consistent with ADA Q&A answer 62, which links the assessment of renovation activities (7.3 and 7.6) to the criteria for manufacturing activities (3.5 and 3.1). This cross-referencing indicates a broader interpretation of MS that integrates supply chain considerations. However, it is important to note that such explicit cross-references are not universally applied across all activities covered by the Taxonomy Regulation, leaving room for interpretation in cases such as 7.1.1.

<table>
<tr><th>Reference</th><th>Excerpt</th></tr>
<tr><td>60 of the ADA Q&A</td><td>

62. Does the acquisition of the specific 'measure' referred to in Sections 7.3. 'Installation, maintenance and repair of energy efficiency equipment' to 7.6. 'Installation, maintenance and repair of renewable energy technologies' fall within the scope of the activities?

Operators should follow accounting rules to determine whether to report expenditures on the services of installation, maintenance, and repair referred to in Sections 7.3. to 7.6. as CapEx or OpEx.

The expenditure on the acquision of respective products and equipment, to which the installation, maintenance and repair services activities in Sections 7.3. to 7.6. refer, should be assessed against the respective criteria for the manufacturing of those products and equipment:

- expenditures on the acquisition of energy efficient equipment for buildings or instruments and devices for measuring, regulating and controlling energy performance of buildings, should be assessed against the respective criteria in Section 3.5. 'Manufacture of energy efficiency equipment for buildings';
- expenditures on renewable energy technologies should be assessed against the respective criteria in Section 3.1. 'Manufacture of renewable energy technologies';
- expenditures on the acquisition of charging stations for electric vehicles in buildings (and parking spaces attached to buildings) should be assessed against the respective criteria in Section 3.20. 'Manufacture, installation, and servicing of high, medium and low voltage electrical equipment for electrical transmission and distribution that result in or enable a substantial contribution to climate change mitigation'.

</td></tr>
<tr><td>Comment on answer</td><td>

Operators must follow accounting rules to classify expenditures on installation, maintenance, and repair services under Sections 7.3 to 7.6 as either CapEx or OpEx.

A concern arising from this guidance is the introduction of a dual-layer framework, requiring compliance with both "primary" and "secondary" criteria for certain economic activities. For example, activities under Section 7.3 ('Installation, maintenance, and repair of energy efficiency equipment') and Section 7.6 ('Installation, maintenance, and repair of renewable energy technologies') are now expected to meet not only their own Technical Screening Criteria (TSC) but also the criteria for related manufacturing activities in Section 3.1 ('Manufacture of renewable energy technologies') and Section 3.5 ('Manufacture of energy efficiency equipment for buildings').

This dual-layer approach presents practical challenges, particularly in the Netherlands, where both the acquisition and installation of technologies—such as solar panels or heat pumps—are commonly financed and implemented together. Extending compliance obligations to include manufacturing criteria significantly complicates the application of the Taxonomy framework, introducing additional layers of complexity that go beyond the primary activity requirements.

The EEM NL Hub working group had not previously understood that third-party checks, such as those relating to manufacturers, would need to be considered as part of the compliance process. This has important ramifications for Minimum Safeguards (MS) as well, as these checks would need to be performed for each individual measure or product. The practical feasibility of such an approach is questionable, particularly given the data availability and verification challenges involved.

No reference is made to economic activity 7.2, where it would be reasonable to expect the same argument to apply, although this is not explicitly addressed in the provided answer. Similarly, the same reasoning could extend to the construction of new buildings under 7.1, as these projects often involve the financing and implementation of renewable energy or energy-efficient measures. The absence of such an analogy for 7.1 and 7.2 could raise concerns about consistency in the application of these criteria in the light of the provided guidance.

</td></tr>
</table>

	The absence of explicit references in the Technical Screening Criteria (TSC) for Sections 7.3 and 7.6 to the manufacturing criteria in Sections 3.1 and 3.5 raises questions about whether this dual-layer interpretation reflects the regulator's (original) intent, especially since other sections, like SCC 3.5.k, clearly cross-reference related criteria. This guidance seems consistent with answer 37 of the DDA Q&A, which illustrates the example that for the financing of a solar panel for a residential homeowner, the credit institution should check the relevant TSC of the manufacturer of the solar panel.

4.2 Reflection on the Commission Notice answers

Third party criteria

Neither the Level 1 text (the Taxonomy Regulation) nor the Level 2 texts (Delegated Acts) explicitly impose an obligation on financial institutions to perform due diligence on third-party manufacturers, unless otherwise stated in the CDA This absence of explicit legislative wording raises significant questions about the scope and intent of the regulatory framework, particularly in relation to Minimum Safeguards.

Under EU law, obligations imposed on private parties, such as financial institutions, must be clear, precise, and predictable to ensure legal certainty. Article 5 of the Treaty on European Union (TEU) explicitly states that the exercise of EU competences must respect the principles of subsidiarity and proportionality. Requiring financial institutions to conduct due diligence on unrelated third-party manufacturers—entities with which they have no economic, financial, or legal relationship—would significantly expand the scope of their regulatory obligations. Such an expansion would arguably breach the principle of proportionality unless it is explicitly mandated and justified by the legislation.

Additionally, the Taxonomy Regulation's primary purpose, as outlined in Article 1, is to establish criteria for determining environmentally sustainable economic activities[26]. The responsibility for meeting these criteria primarily lies with the economic actor undertaking the activity. Imposing due diligence obligations on financial institutions for third-party compliance could be inconsistent with this legislative intent, shifting the regulatory burden without clear legal foundation.

Given these challenges, it is worth considering whether other regulatory frameworks, such as the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), might provide a more appropriate legal basis for addressing such issues. These directives are specifically designed to embed due diligence and reporting requirements for social and governance aspects across entire value chains. Unlike the Taxonomy Regulation, their frameworks explicitly account for broader ESG considerations, making them better suited to addressing supply chain compliance and corporate accountability without imposing undue obligations on financial institutions.

In practice: A binary check on each manufacturer

Article 18 of the Taxonomy Regulation defines Minimum Safeguards (MS) as compliance with international standards on governance, human rights, and labour practices, applying to companies as a whole rather than to specific products, their manufacturing, or activities. Consequently, MS compliance is binary—a company is either aligned or not—with no provision for assessment at the product level.

For activities such as 7.3 ('Installation, maintenance, and repair of energy efficiency equipment') and 7.6 ('Installation, maintenance, and repair of renewable energy technologies'), answer 37 of the DDA Q&A and answer 62 of the ADA Q&A state that manufacturing criteria must be assessed. Accordingly, reliance is placed on the disclosures, if available, of the manufacturer of each individual product or measure.

It is assumed that any company reporting Taxonomy alignment—even with a Green Asset Ratio as low as 1%—adheres to the MS requirements at the company level, as mandated under Article 18.

[26] Article 1.1 states: 'This Regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable'.

In practice, however, many manufacturers do not report on Taxonomy alignment, either due to their size or because they fall outside the reporting scope. Identifying the actual manufacturer of specific products is often challenging, particularly in globalised supply chains where components may be sourced from multiple entities. These challenges are further compounded when manufacturers operate outside the EU, where reporting obligations and adherence to international standards can vary significantly.

Moreover, financial institutions would require a comprehensive list of products or measures linked to activities 3.1, 3.2, 7.3, or 7.6. For each individual item, they would need to assess whether the manufacturer complies with both the MS (and the TSC). Such a granular assessment poses significant data availability challenges, as the detailed information on products and who the manufactures are, is generally not available in (current) mortgage loan servicing systems. This creates practical barriers to compliance, highlighting the limitations of applying MS at the individual manufacturer level when providing a loan to a residential homeowner.

4.3 Potential political development:

In November 2024, Commission President Ursula von der Leyen introduced the political idea of potentially merging the EU Taxonomy Regulation with the Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD) into a single 'omnibus' regulation.

The EU Taxonomy Regulation is primarily designed to establish criteria for determining when economic activities are environmentally sustainable, focusing on the *environmental* dimension of ESG. Lacking technical screening criteria (TSC) for *social* or *governance* elements. Its current framework is literally based on (only) the six environmental objectives and does not naturally extend to the intricate *social* and *governance* element, apart from the reference in article 18 of the TR.

By contrast, the CSDDD and CSRD adopt a broader and more integrated approach, embedding social and governance standards directly into corporate operations and reporting requirements. The CSDDD, for example, obliges companies to actively identify, prevent, and address adverse human rights and environmental impacts throughout their supply chains. This aligns more closely with the practical implications outlined in Answer 37 of the DDA Q&A and Answer 62 of the (ADA Q&A. While an analysis of the individual articles of the CSDDD and CSRD falls outside the scope of this document, it is essential to acknowledge their relevance, particularly in light of the Commission's potential proposal for an omnibus regulation.

For instance, Articles 6 and 7 of the CSDDD establish explicit obligations for undertakings to conduct due diligence, assess risks, and implement mitigation measures. Article 8 of the CSDDD further requires companies to remedy any harm that has already occurred. These provisions resonate more closely with the intent of Article 18 of the EU Taxonomy Regulation but go further in explicitly addressing these elements with criteria and disclosure elements.

The CSRD mandates companies to provide transparent and standardised reporting on social and human rights issues. Article 19a(2) of the amended Accounting Directive under the CSRD requires undertakings to disclose their management and mitigation strategies for risks related to their workforce, supply chains, and broader societal impacts. These reporting obligations are detailed in the European Sustainability Reporting Standards (ESRS), which enhance accountability across key social and governance areas. For instance, ESRS S1 and S2 focus on working conditions and respect for human rights in both direct operations and supply chains, while ESRS G1 specifies governance disclosures, including anti-corruption measures, whistleblower protection, and legal compliance.

From the Commission's proposed omnibus regulation, it is evident that the CSDDD and CSRD potentially provide a more appropriate legal framework for integrating Minimum Safeguards elements in both criteria and disclosure. The comprehensive scope of these directives allows them to address aspects—such as supply chain—that the EU Taxonomy Regulation, with its primary focus on environmental sustainability, is not designed to cover.

The Commission Notice answers further underscore the need for a framework that integrates social considerations into due diligence and reporting requirements. As such, the CSDDD and CSRD emerge as more logical directives for embedding Minimum Safeguards.

A revision of the Level 1 and Level 2 texts of the EU Taxonomy is scheduled for 2025. It would be prudent for this revision to clarify the obligations regarding Minimum Safeguards (MS) for residential homeowners, including the extent to which third-party obligations, such as those related to manufacturers, apply. However, simplifying or excluding such obligations for homeowners who are not undertakings should be considered, as imposing them indirectly via third parties is often impractical due to supply chain complexity and data limitations.

Frameworks such as the CSDDD, CSRD, or national implementations of OECD Guidelines might provide a more practical or suitable framework to embed MS provisions.

5 Article 18.1 Standards

In this section we provide an overview of the four Standards referred to in Article 18.1 of the EU Taxonomy and an analysis of their applicability. We approach this applicability analysis by posing three sub-questions:

A. Is the standard applicable in the Netherlands?

B. Is the standard applicable to businesses (such as lending institutions)?

C. Does the standard have (in)direct references or criteria in respect of lending to households?

5.1 OECD Guidelines for Multinational Enterprises

The OECD Guidelines are primarily targeted at multinational enterprises (MNEs). They provide recommendations for responsible business conduct in various areas, including human rights, labour, environment, and corruption. While the guidelines are directed at businesses, they also encourage governments to create an enabling environment for responsible business conduct and provide mechanisms for addressing complaints.

The Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. Matters covered by the Guidelines may be the subject of national domestic law and international commitments. The Guidelines outline recommendations on responsible business conduct that may go beyond what enterprises are legally required to comply with. The recommendation from governments that enterprises observe the Guidelines is distinct from matters of legal liability and enforcement.

To the best of the knowledge of the EEM NL Hub the OECD guidelines provide more overall provision on the conduct of doing business responsibly and stakeholder engagement. No particular or direct references have been found with respect to lending to households or the activities of section 7 of the Climate Delegated Act.

Recently the OECD Guidelines have been updated[27]. The guidelines update increasingly prescribes a focus on Climate Change Adaptation and Mitigation, GHG impact and Adverse Impacts. In Section 9.2 we have cited these references and worth considering, specifically with the focus on further future updates of the OECD guidelines and the EU Taxonomy regulation. In Box 16 we highlight one of the elements of the 2023 update:

Box 16: On the topic of OECD alignment with other standards.

The 2023 update of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct lists a Q&A section. The answer to the alignment is particularly interesting:

- "Q: *Are the (OECD Guidelines for Multinational Enterprises on Responsible Business Conduct) Guidelines still aligned with other international instruments?*
- A: *Yes. As before the updated Guidelines remain fully aligned with and complimentary to the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration*."

[27] 2023 update of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

- **Target group**: Companies (Multinational Enterprises).
- **Applicability**:
    A. **Is the standard applicable in the Netherlands?** Based on the OECD Guidelines, so-called National Contact Points ("NCPs") are established in adhering countries to promote and implement the guidelines' principles. The Dutch NCP provides guidance and advice to businesses on how to align their operations with the MNE Guidelines. The guidelines have been endorsed by the Dutch government and provide a reference point for Dutch MNEs.
    B. **Is the standard applicable to businesses?** The guidelines are designed to provide recommendations for responsible business conduct to all types of multinational enterprises (MNEs), including those operating in the financial sector. These recommendations are not legally binding, but they serve as a framework for promoting ethical behaviour and aligning business practices with international standards.
    C. **Does the standard have direct references or criteria in respect of lending to households?** While they do not directly apply to banks or lending institutions nor do the guidelines prescribe lending criteria, they indirectly influence responsible business conduct in the financial sector by emphasizing ethical behaviour, human rights considerations, and adherence to international standards.
- **Reference**: OECD. (2011). OECD Guidelines for Multinational Enterprises. Retrieved from https://mneguidelines.oecd.org/

5.2 UN Guiding Principles on Business and Human Rights

The UN Guiding Principles apply to all businesses, regardless of size, sector, or location. They emphasize the responsibility of businesses to respect human rights and provide guidance on due diligence, impact assessment, and grievance mechanisms. Governments have a role in protecting human rights from business abuses and ensuring access to remedies for victims.

The UN Guiding Principles outline a framework for preventing, addressing, and remedying human rights abuses linked to business activities. The principles are based on three pillars: the State duty to protect against human rights abuses by third parties, the corporate responsibility to respect human rights and the access to remedy for victims of business-related human rights abuses. The Dutch National Action Plan on Business and Human Rights aligns with these principles and serves as a roadmap for promoting responsible business practices in the Netherlands[28]. Furthermore, the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) also plays a role in promoting the UNGPs. While the NCP primarily handles cases related to the OECD Guidelines, it can also address cases that involve alleged violations of the UNGPs by Dutch companies.

- **Target group**: Companies (all Businesses), Governments
- **Applicability**:
    A. **Is the standard applicable in the Netherlands?** UN Guiding Principles on Business and Human Rights" (UNGPs) are applicable in the Netherlands. The UNGPs are a set of global standards that provide guidance to businesses operating in all countries, including the Netherlands. They are designed to ensure that businesses respect human rights in their operations, regardless of their location.
    B. **Is the standard applicable to businesses?** Yes. Dutch businesses are expected to adhere to the UNGPs, and the Dutch government plays a role in ensuring that businesses operating within its jurisdiction respect human rights as outlined in the UNGPs. Dutch businesses are expected to respect human rights throughout their operations, both domestically and internationally. This includes conducting human rights due diligence to identify and address potential human rights impacts associated with their activities.

[28] See: https://www.government.nl/topics/responsible-business-conduct-rbc/national-action-plan-on-business-and-human-rights

C. **Does the standard have direct references or criteria in respect of lending to households?** The UNGPs do not explicitly address lending towards households, they do emphasize the importance of human rights due diligence throughout the business operations, including financial activities. While the UNGPs provide a broad framework for addressing human rights in the context of business, more specific guidance on responsible lending practices may be found in other international standards, codes of conduct, or national regulations related to the financial sector.

- **Reference**: United Nations Human Rights Office of the High Commissioner. (2011). Guiding Principles on Business and Human Rights. Retrieved from https://www.ohchr.org/en/professionalinterest/pages/ruggieguidingprinciplesindex.aspx

5.3 ILO Declaration on Fundamental Principles and Rights at Work

The ILO Declaration on Fundamental Principles and Rights at Work applies to all businesses, governments, and workers. It emphasizes core labour standards such as freedom of association, the elimination of forced labour and child labour, and the eradication of discrimination. Governments are responsible for upholding and promoting these principles, businesses are expected to respect them, and workers benefit from their implementation.

Dutch laws safeguard freedom of association and collective bargaining, prohibit forced labour and child labour, and ensure protection against discrimination in employment. These principles are upheld through a combination of legislation, judicial systems, government agencies, and robust mechanisms for labour representation and social dialogue. In Section 9.3 we have provided a non-exhaustive overview of how these principles are implemented in Dutch law.

- **Target Group**: Companies (All Businesses), Governments, Workers
- **Applicability**:

A. **Is the standard applicable in the Netherlands?** Yes, see Section 8.3

B. **Is the standard applicable to businesses?** Yes, the "ILO Declaration on Fundamental Principles and Rights at Work" does apply to Dutch companies and thus financial institutions. The International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work outlines core labour standards that should be upheld by all member states, including the Netherlands. These principles are relevant to all sectors, including the financial services industry. The ILO's fundamental principles encompass the following areas:

- Freedom of association and the effective recognition of the right to collective bargaining.
- Elimination of all forms of forced or compulsory labour.
- Effective abolition of child labour.
- Elimination of discrimination in respect of employment and occupation.

C. **Does the standard have direct references or criteria in respect of lending to households?** While the declaration's principles are not directly aimed at financial transactions between a bank and a consumer, there are indirect considerations that could be related to lending practices and the broader societal impact of financial activities. Here are some indirect examples:

- Principle of Non-Discrimination: banks should ensure that their mortgage lending practices do not discriminate against borrowers based on protected characteristics such as gender, race, religion, or disability. For instance, a bank should not offer different terms or interest rates to borrowers solely based on their gender or ethnicity.
- Principle of Societal Impact and Decent Work: banks can engage in open communication with borrowers about mortgage terms, potential risks, and the bank's policies.

- Principle of Access to Remedy and Consumer Rights: If borrowers face challenges related to their mortgages, such as unfair terms or practices, responsible banks should have mechanisms in place to address these concerns and provide effective remedies. This aligns with principles of access to remedy outlined in the ILO Declaration.

- **Reference**: International Labour Organization. (1998). Declaration on Fundamental Principles and Rights at Work. Retrieved from https://www.ilo.org/declaration/lang--en/index.htm

5.4 The International Bill of Human Rights

The International Bill of Human Rights consists of the Universal Declaration of Human Rights and the International Covenants. While these documents are primarily directed at governments, they also influence the legal and regulatory environment within which businesses operate. Companies are expected to respect human rights within the jurisdictions where they conduct business.

- **Target Group**: Governments, Companies (when operating within a country's jurisdiction)
- **Applicability**:
  A. **Is the standard applicable in the Netherlands?** The Netherlands, a signatory to these covenants, integrates their provisions into its legal framework, reinforcing human rights protections within its borders.
  B. **Is the standard applicable to businesses?** While these covenants primarily address the responsibilities of states to protect and uphold human rights, they also have implications for non-state actors, including businesses.
  C. **Does the standard have direct references or criteria in respect of lending to households?** indirectly applicable to both the bank and the household. The International Bill of Human Rights, which includes the Universal Declaration of Human Rights, emphasizes fundamental human rights that apply to all individuals. While it is not specifically tailored to the financial sector or lending activities, it indirectly ensures that lending practices respect the rights of borrowers, including fair treatment and protection against discrimination. Additionally, governments are responsible for creating a legal and regulatory environment that upholds human rights, which indirectly influences the relationship between the bank and the household.
- **Reference**:
  - United Nations. (1948). Universal Declaration of Human Rights. Retrieved from https://www.un.org/en/universal-declaration-human-rights/
  - United Nations. (1966). International Covenant on Civil and Political Rights. Retrieved from https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
  - United Nations. (1966) and entered into force in 1976. International Covenant on Economic, Social and Cultural Rights. Retrieved from https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

5.5 Overview

The Dutch government plays a key role in implementing the above standards by incorporating their principles into national laws and policies. The Netherlands' commitment to responsible business conduct is visible through its establishment of a National Contact Point for the OECD Guidelines, the development of a National Action Plan on Business and Human Rights, and its alignment with international human rights standards.

The described standards collectively contribute to the harmonisation of business practices with human rights principles in the Netherlands. They serve as guides for businesses, governments, and civil society in fostering ethical, responsible, and sustainable business conduct.

In Table 1 we have provided a summary of the standards and their applicability in the Netherlands. We infer that these standards are clearly directed towards businesses and governments. An argument can be made that some elements are indirectly relevant for lending activities in a generic sense.

Table 1: Overview of Article 18 Standards and Dutch references.

Standards	Applicability	Key Features and Principles	Example of Compliance	Implementation / Applicability in the Netherlands
OECD Guidelines for Multinational Enterprises	Companies and Governments	Guidelines for responsible business conduct by multinational enterprises. Covers areas such as employment, environment, human rights, and bribery prevention.	Company establishes mechanisms to address environmental impact in its global supply chain.	OECD Guidelines for Multinational Enterprises, Dutch National Contact Point (NCP) Companies: Implemented through national contact points. Government: Framework for policy coherence.
UN Guiding Principles on Business and Human Rights	Companies	Framework for businesses to prevent and address adverse human rights impacts. Comprises the "Protect, Respect, and Remedy" framework.	Company conducts human rights due diligence to identify and mitigate potential negative impacts in their operations.	Companies: Increasing awareness and integrating human rights due diligence.
ILO Declaration on Fundamental Principles and Rights at Work	Governments and Employers' and Workers' Organizations	Sets out fundamental labour rights, including freedom of association, elimination of forced labour, and prohibition of child labour.	Government implements laws protecting the right of workers to join trade unions.	Implemented through national labour laws and regulations, see section [9.3]. Dutch Ministry of Social Affairs and Employment
The International Bill of Human Rights	Governments	Collective term for the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights.	Government adopts laws ensuring freedom of speech and access to education for all citizens.	Implemented through Dutch Constitution and laws aligned with international human rights treaties.

6 Article 18.2 References

The SFDR plays a special role in the context of MS because it is explicitly mentioned in Article 18.2 of the EU Taxonomy Regulation. The Platform Report 2022 on MS interprets this link by incorporating the five mandatory social principal adverse impacts (PAI) of the SFDR in its advice. In this section we discuss the references of the EU Taxonomy Regulation to the Sustainable Finance and Disclosure Regulation and its Regulatory Technical Standards (RTS). In this document we do not discuss for whom or when the SFDR is applicable.

6.1 The SFDR and the (SFDR) Concept of Do No Significant Harm

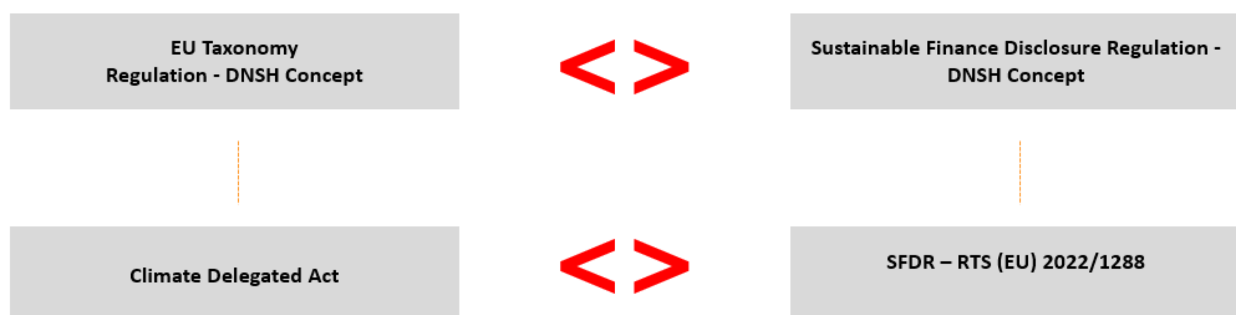
The EU Taxonomy refers to the SFDR and its corresponding concept of Do No Significant Harm. As described in Box 2 Article 18.2 contains a direct reference to Article 2.17 (of the SFDR) that states:

'sustainable investment' means an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.

Recital 17 of the SFDR states in: *"To ensure the coherent and consistent application of this Regulation (*the SFDR sic*), it is necessary to lay down a harmonised definition of 'sustainable investment' which provides that the investee companies follow good governance practices and the precautionary principle of 'do no significant harm' is ensured, so that neither the environmental nor the social objective is significantly harmed.".*

It refers to the Do No Significant Harm concept as a "*precautionary principle*" for which a "*harmonised definition*" should *"be laid down"*. As we shall see in this document, this is "laid down" in the SFDR Regulatory Technical Standards (RTS)[29].

It is important to note that the concept of Do No Significant Harm in the context of the SFDR ((EU) 2019/2088) differs from the context in the Taxonomy Regulation ((EU) 2020 / 852), even though the two are interlinked[30].



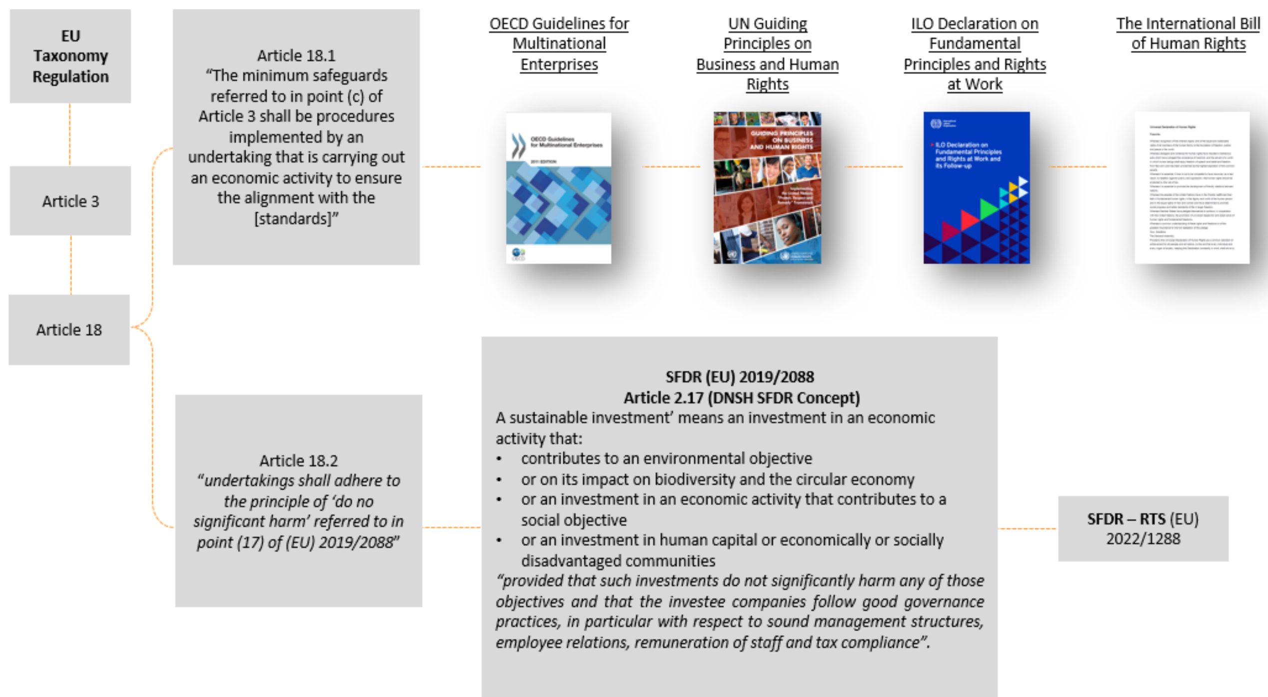
Article 18.2 refers towards the DNSH of the SFDR, more specifically the SFDR refers towards the SFDR RTS

[29] COMMISSION DELEGATED REGULATION (EU) 2022/1288 of 6 April 2022
[30] Therefore, the authors of this document try to explicitly refer to DNSH (in the SFDR) context or DNSH (in the EUT) context.

Figure 4 is a visual representation of the SFDR definition of a sustainable investment and the 'Do No Significant Harm' concept. There is no direct definition of Do No Significant Harm in regulation (EU) 2019/2088 other than the reference provided in the definition of a 'Sustainable Investment' in article 2.17[31]. The SFDR introduces disclosure requirements, via Article 4(6) and (7) for certain financial products: *those which have a sustainable investment as its objective* (Article 9) and *those which promote environmental or social characteristics* (Article 8).

Moreover, Article 4(6) describes the development and application of the Regulatory Technical Standards (RTS) which specify the details of the content of the information of the DNSH criterium.

Figure 4: Simplified representation of The EU Taxonomy Regulation and the SFDR (RTS).



6.2 The SFDR Regulatory Technical Standards and the reference to the (SFDR) concept of Do No Significant Harm

The RTS is a Commission Delegated Regulation, supplementing the SFDR and its title is: "*supplement 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"*. As the name suggests, it prescribes how the DNSH concept (from a SFDR perspective) should be identified, applied and monitored.

Recital 10 of (EU) 2022/1288, commonly known as the SFDR RTS Commission Delegated Regulations, states: *"One way in which financial products can promote environmental or social characteristics is to take into account principal adverse impacts of investment decisions.* ***Financial products that have sustainable investment as their objective must, as part of the disclosures made with regard to the 'do no significant harm' principle, also consider sustainability indicators in relation to the adverse impacts referred to in Article 4(6) and (7) of Regulation (EU) 2019/2088.***

31 Article 2.17.

For those reasons, financial market participants should indicate, as part of their sustainability disclosures, how they consider, for those financial products, the principal adverse impacts of their investment decisions on sustainability factors.”.

In addition, recital 22 of the RTS notes: “*Article 2, point (17), of Regulation (EU) 2019/2088 defines a sustainable investment as an investment in an economic activity that contributes to an environmental or social objective, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices.* ***The ‘do not significant harm’ principle is particularly important for financial products that have sustainable investment as their objective as compliance with that principle is a necessary criterion to assess whether an investment delivers the sustainable investment objective****.* ***That principle is, however, also relevant for financial products that promote environmental or social characteristics where those financial products make sustainable investments****, as financial market participants should disclose the proportion of sustainable investments made.* ***Financial market participants that make available financial products that promote environmental or social characteristics which partly make sustainable investments or financial products that have sustainable investment as their objective should thus provide information relating to the ‘do not significant harm’ principle****.* ***The principle of ‘do not significant harm’ is linked to the disclosures of principal adverse impacts of investment decisions on sustainability factors. For that reason, financial product disclosures about the ‘do not significant harm’ principle should explain how the indicators for adverse impacts have been taken into account****. Furthermore, as those disclosures are closely linked to Regulation (EU) 2020/852 of the European Parliament and of the Council(4), it is appropriate to require additional information on the alignment of the investments with the minimum safeguards set out in that Regulation.”* .

In this recital we see the references to the SFDR (EU) 2019/2088 Articles 8 and 9 and the Taxonomy Regulation and it clearly states that the DNSH concept from an SFDR RTS perspective is to be interpreted as ‘indicators for adverse impact’.

6.3 The SFDR and the concept of Principle Adverse Impact

The SFDR regulation describes the existence of a principal-agent problem and therefore aims to: “*reduce information asymmetries in principal-agent relationships with regard to the integration of sustainability risks, the consideration of adverse sustainability impacts, the promotion of environmental or social characteristics, and sustainable investment, by requiring financial market participants and financial advisers to make pre-contractual and ongoing disclosures to end investors when they act as agents of those end investors (principals).” [32]*.

Therefore, the concept of Principle Adverse Impact (PAI) is introduced in recital 18: “*Where financial market participants, taking due account of their size, the nature and scale of their activities and the types of financial products they make available, consider* ***principal adverse impacts****, whether material or likely to be material, of investment decisions on sustainability factors, they should integrate in their processes, including in their due diligence processes, the procedures for considering the principal adverse impacts alongside the relevant financial risks and relevant sustainability risks. The information on such procedures might describe how financial market participants discharge their sustainability-related stewardship responsibilities or other shareholder engagements. Financial market participants should include information on their websites on those procedures and descriptions of the principal adverse impacts.*”.

Moreover, recital (20) of (EU) 2019/2088 states: *“Financial market participants which consider the principal adverse impacts of investment decisions on sustainability factors should disclose in the pre-contractual information for each financial product, concisely in qualitative or quantitative terms, how such impacts are considered as well as a statement that information on the principal adverse impacts on sustainability factors is available in the ongoing reporting. Principal adverse impacts should be understood as those impacts of investment decisions and advice that result in negative effects on sustainability factors*.”

[32] Recital 10 of (EU) 2019/2088

6.4 The Principle Adverse Indicators in the SFDR RTS

The SFDR Delegated Regulation mandates financial market participants and financial advisers to share a Principal Adverse Impact (PAI) statement on their website and include PAI details in pre-contractual information. The PAI concept describes adverse effects on sustainability, both at the entity and product levels. The disclosure of PAIs is required through the following levels:

1. On an entity level (as per Article 4 of SFDR): This involves the annual publication of a PAI statement on the website. Both financial market participants and financial advisers are bound by this obligation.
2. On a product level (under Article 7 of SFDR): This encompasses the inclusion of PAI information within pre-contractual financial product documents, such as fund information memoranda or prospectuses. This requirement is applicable only to financial market participants.

Table 2 below lists the PAI's for social and employee aspects, respect for human rights, anti-corruption, and anti-bribery matters of the SFDR RTS are depicted.

Table 2: SFDR RTS PAI's

PAI #	Adverse sustainability indicator	Metric
10	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***
11	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*
12	Unadjusted gender pay gap	*Average unadjusted gender pay-gap of investee companies*
13	Board gender diversity	*Average ratio of female to male board members in investee companies, expressed as a percentage of all board members*
14	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*

Note that the first two PAI indicators list Standards (1) and (2) of Article 18.1 of the EU Taxonomy. It is noteworthy that these indicators address both violations of these principles and guidelines, as well as the implementation of processes to monitor compliance with them. This can be interpreted to imply that they cover the performance of a company (its impacts), as well as processes implemented to avoid and address human rights and governance risks and impacts (for example, corruption, taxation, and fair competition).

Note that the Platform states that it covers all the topics identified in article 18. We assume this statement is based op on the Platform's four core topic condensation as depicted in Figure 3 the Platform does not state that the PAI (literally) cover all four standards referred in Article 18.1 of the EU Taxonomy.

Therefore, we draw the intermediate conclusion that the social PAI's of the SFDR RTS largely refer to the same Standards as Article 18.1. However, PAI indicators 12, 13 and 14 are additional metrics. PAI indicators 12 and 13 overlap with the

first three standards of Article 18.1 but mandate an explicit disclosure metric. PAI 14 ("controversial weapons") is not covered by the Article 18.1 standards.

The "International Bill of Human Rights" itself does not specifically address the use of controversial weapons such as anti-personnel mines, cluster munitions, chemical weapons, and biological weapons. The International Bill of Human Rights primarily focuses on fundamental human rights and freedoms, as well as civil and political rights and economic, social, and cultural rights. However, international law includes a range of treaties and conventions[33] that address the use of such controversial weapons and their impact on human rights, humanitarian concerns, and the environment. We deem the exposure to controversial weapons not relevant to the economic activity of lending to households.

[33] Such as the Ottawa Convention and the Convention on Cluster Munitions is another international treaty that addresses the use, production, transfer, and stockpiling of cluster munitions. These treaties have been signed and ratified by the Dutch State.

7 DEEMF – MS Guidance

7.1 MS Applicability for section 7.7

To arrive at guidance on the interpretation of Minimum Safeguards, we have to answer a number of key questions:

a) What is the economy activity (under consideration)?

b) Who undertakes this economic activity?

c) Is this economic activity undertaken by an "undertaking"?

d) If it is undertaken by an "undertaking" how should implemented procedures be regarded as sufficient adherence?

e) What guidance do we want to incorporate on the above for MS (w.r.t. residential mortgage loans) in DEEMF?

In this section we address these questions.

a) What is the economy activity (under consideration)?

As stated in section 1.3 of this document, we analyse the application of the Minimum Safeguards in the context of (mortgage) lending for residential properties to homeowners - specifically for the economic activity 7.7 of the Climate Delegated Act – Annex I.

b) Who undertakes this economic activity?

Article 18.1 states that the standards (procedures) "*shall be implemented by an undertaking that is carrying out an economic activity*". In addition, Article 18.2 states: "*undertakings shall adhere to…*". As stated in section 2 of this document the term "undertaking" is not defined in the Taxonomy Regulation. The Disclosure Delegated Act defines financial undertakings and non-financial undertakings, not *undertakings* solely.

Minimum safeguards

1. The minimum safeguards referred to in point (c) of Article 3 shall be procedures implemented by an undertaking that is carrying out an economic activity to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.

Who is carrying out this economic activity?

When addressing the question who undertakes this economic activity, we arrive at the conclusion that in our specific context, it is the (prospective) homeowner. We illustrate this with an example: For instance, the economic activity of Section 7.7 "Acquisition and ownership of buildings". What is the activity?

7.7. Acquisition and ownership of buildings

Description of the activity

Buying real estate and exercising ownership of that real estate.

As illustrated above: the activity is the "buying of real estate and exercising ownership of real estate". We came to the following conclusion: The (prospective) building owner is exercising ownership – and thus carrying out the economic activity. A financial institution is facilitating this via a mortgage loan – financing the economic activity of buying real estate.

The (prospective) building owner *is exercising ownership* – and thus carrying out the economic activity. A financial institution is facilitating this via a mortgage loan – financing the economic activity of buying real estate.

c) **Is this economic activity undertaken by an "undertaking"?**

As stated in addressing question a) the term undertaking is not defined in the context of the Taxonomy Regulation. Is a (residential) building owner (consumer) an undertaking?

In common parlance and within the context of regulatory language, the term "undertaking" is commonly understood to refer to a corporation, business entity, or an organised enterprise, rather than an individual consumer (homeowner). The use of "undertaking" typically connotes an organised and structured endeavour, implying a collective entity with defined legal and operational attributes. This understanding stems from established linguistic conventions and customary legal understanding, where "undertaking" conveys the concept of a formalized enterprise or business entity, in general. We deem the (prospective) homeowner not to be an undertaking.

d) **If it is undertaken by an "undertaking" how should implemented procedures be regarded as sufficient adherence?**

As we come the conclusion that the economic activity is not caried by an undertaking we do not deem article 18 applicable for financing residential homeownership.

e) **What guidance do we want to incorporate on the above for MS in DEEMF EUT alignment?**

We deem the Minimum Safeguards of the Taxonomy Regulation in the context of (mortgage) lending for residential properties to homeowners - more concretely for the economic activity 7.7 of the Climate Delegated Act – Annex I, not to be applicable to households as we do not consider these to be undertakings.

The term 'undertaking' is not defined in the context of the Taxonomy Regulation. In common parlance and within the context of general regulatory language, the term "undertaking" is commonly understood to refer to a corporation, business entity, or an organized enterprise, rather than an individual, a homeowner in our context. We deem the (prospective) homeowner not to be an undertaking.

The (prospective) building owner is exercising ownership – and thus carrying out the economic activity. A financial institution is facilitating this via a mortgage loan – financing the economic activity - of buying real estate. As there can be laid no burden of proof upon the (prospective) homeowner as he / she is not an undertaking we deem the Minimum Safeguards not to be applicable.

7.2 MS applicable for economic activities 3.1, 3.5, 7.1, 7.2, 7.3 and 7.6

Based on the considerations outlined and incorporating the suggested observations, we present the following refined conclusions regarding the applicability of Minimum Safeguards (MS) to the relevant economic activities under the Climate Delegated Act (CDA). These conclusions are grounded in the regulatory texts and the practical implications outlined in the Commission Notice documents, with specific reference to Q&A Answer 37 of the Disclosures Delegated Act (DDA) and Q&A Answer 62 of the Climate Delegated Act (ADA), as discussed in Section 4 of this report.

7.2.1 <u>**Section 7.1 – Construction of new buildings**</u>

The Commission Notice does not explicitly address MS requirements or additional criteria for financing the construction of new buildings. While it could be argued, by analogy with Answer 37 of the DDA and Answer 62 of the ADA, that secondary criteria related to manufacturing activities might apply, neither the Level 1 nor Level 2 texts, nor the Commission Notice, establish such a requirement for Section 7.1. Imposing such obligations would exceed the legislative

scope of the Taxonomy Regulation and conflict with the principles of legal certainty and proportionality. Accordingly, we conclude that MS are not applicable to this activity, as prospective residential homeowners do not qualify as undertakings under the Taxonomy framework.

Section 7.2 – Renovation of existing buildings

Although Answer 62 of the ADA provides guidance for linked manufacturing criteria in Sections 7.3 and 7.6, this reasoning has not been extended to Section 7.2. While it may appear consistent to require such an assessment for renovation activities, the Commission Notice does not explicitly mandate it, nor does the CDA. Consequently, we conclude that MS are not applicable to this activity, as prospective residential homeowners do not meet the definition of an undertaking.

Section 7.3 – Installation, maintenance, and repair of energy efficiency equipment

In the Netherlands, the installation and acquisition of measures—such as energy-efficient equipment—are typically financed and implemented together. In such cases, compliance with Section 3.5 must be assessed to ensure that both the installation and the manufactured product adhere to Taxonomy requirements. In this case, answer 62 of the ADA Q&A explicitly requires an assessment of secondary economic activity 3.5 ('Manufacture of energy efficiency equipment for buildings') and its associated criteria. This necessitates a binary MS check at the company level for each individual measure or product, relying on manufacturer disclosures, where available. This interpretation aligns with the reasoning provided in Answer 37 of the DDA, which highlights the responsibility of financial institutions to check the relevant TSC and MS of the manufacturer.

However, in the theoretical scenario where only the installation, maintenance, or repair service is financed without financing the product itself, no additional MS check is applicable, as the homeowner is not considered an undertaking under Article 18 of the Taxonomy Regulation.

Section 7.6 – Installation, maintenance, and repair of renewable energy technologies

In the Netherlands, the installation and acquisition of measures—such as energy-efficient equipment—are typically financed and implemented together. In such cases, compliance with Section 3.1 ('Manufacture of renewable energy technologies') must be assessed to ensure that both the installation activity and the manufactured product meet the Taxonomy requirements. Answer 62 of the ADA Q&A explicitly mandates this assessment of secondary economic activity 3.1, requiring a binary MS check at the company level for each individual measure or product, relying on manufacturer disclosures where available. This interpretation aligns with the reasoning provided in Answer 37 of the DDA, which underscores the responsibility of financial institutions to verify both the relevant TSC and MS compliance of the manufacturer.

However, if only the service of installation, maintenance, or repair is financed, no additional MS check is required, as the homeowner does not qualify as an undertaking under the Taxonomy Regulation.

Economic activities 3.1 and 3.5

For the economic activities 3.1 ('Manufacture of renewable energy technologies') and 3.5 ('Manufacture of energy efficiency equipment for buildings'), the Minimum Safeguards (MS) obligation is logically applicable, as it pertains directly to the manufacturer, which qualifies as an undertaking. However, pursuant to Answer 62 of the ADA Q&A, the criteria for these manufacturing activities must also be assessed in the context of renovation loans. Furthermore, as clarified in Answer 37 of the DDA Q&A, the credit institution is required to ascertain the MS compliance of the manufacturer when financing such activities.

7.2.2 Summary

Economic Activity	MS Applicability
7.1 – Construction of new buildings	MS not applicable; no explicit requirement in Level 1, Level 2, or Commission Notice. Homeowners are not undertakings.
7.2 – Renovation of existing buildings	MS not applicable; no mandate for linked manufacturing criteria. Homeowners are not undertakings.
7.3 – Installation, maintenance, and repair of energy efficiency equipment	MS check required for secondary activity 3.5 ('Manufacture of energy efficiency equipment for buildings') if both installation and product are financed. No MS check needed if only installation is financed, as homeowners are not undertakings.
7.6 – Installation, maintenance, and repair of renewable energy technologies	MS check required for secondary activity 3.1 ('Manufacture of renewable energy technologies') if both installation and product are financed. No MS check needed if only installation is financed, as homeowners are not undertakings.
3.1 and 3.5 – Manufacturing activities	MS are applicable, as manufacturers qualify as undertakings under the Taxonomy Regulation. Financial institutions must verify compliance with MS, as outlined in answer 37 of the DDA Q&A. The criteria for these manufacturing activities must be assessed in the context of renovation loans provided to residential homeowners, according to answer 37 of the DDA Q&A.

8 Conclusion

8.1 Conclusion

In the preceding sections of this document, we have provided an overview of Article 18 and the corresponding Standards and references to the SFDR. We have analysed the Standards mentioned in Article 18.1 and assessed their applicability in the Netherlands, in respect of business and (in)direct references in respect of lending, if any. In addition, we have referenced the Platform Report 2022 as a relevant source to consider.

Subsequently we have analysed the relation to the SFDR. To comply with the DNSH criteria under the SFDR, the RTS PAI have to be considered, when applicable. The latter indicators are partially based un the standards of Article 18.1. The other indicators (12, 13 and 14) we deem not applicable to lending to households[34].

We arrive at the guidance and corresponding substantiation as described in Section 7. This corresponds to the guidance provided by the Platform on Sustainable Finance albeit in our document with substantiation. Based on the commission notice documents published in 2024 we have included guidance for the economic activities 3.1, 3.5, 7.1, 7.2, 7.3 and 7.6 in Section 7 as well.

8.2 Further discussion

Some final considerations:

- An alternative viewpoint[35] is that it is the perspective of the lender (i.e. not the household that is being lent to but the institution lending to the household) that should be considered as the undertaking. We would then have to conclude that the above line of reasoning cannot be sustained as the lender is a (regulated) entity – and thus an undertaking and Article 18 provisions are relevant. If the activities are carried out by an undertaking, one would have to define the level of substantiation needed to prove that the procedures have been implemented.
- To which lengths does an undertaking need to go to prove that MS are adhered to in terms of ‘proof’? We have concluded that the (article 18) Standards are applicable in the Netherlands (all of them) and that the Standards apply to business (conducts) as well, as described in the previous section.
- For the application of MS towards undertakings (i.e. for economic activity 7.1) we would advise to describe how:
    1. The jurisdiction (the Netherlands) has implemented or facilitated these standards; and
    2. The business entity acknowledges and implements these standards in general for its overall business conduct(s).
- In addition, if article 18.2 applies, the PAI must be reported on as well.

[34] Further substantiation could be useful.
[35] Although not the (consensus) viewpoint of the EEM NL Working Group nor of the Platform on Sustainable Finance.

9 Annexes

9.1 Dutch State Treasury Agency – Green Bond Framework – Minimum Safeguards references

Category	Item	Reference	Source
Human rights in the Netherlands	The Netherlands adheres to the UN Guiding Principles on Business and Human Rights.		
	The National Action Plan on Business and Human Rights (NAP) describes how the government expects companies to conduct business with respect for human rights both in the Netherlands and abroad. The action plan also specifies what the government can do to support businesses and encourage them to observe human rights, for example by combating child labour.	Ministry of Foreign Affairs - Revision of the National Action Plan on Business and Human Rights	Link
International human rights agreements: The Netherlands is a party to international human rights agreements, having signed and ratified the following human rights agreements	the International Covenant on Civil and Political Rights;	The International Covenant on Civil and Political Rights;	link
	the International Covenant on Economic, Social and Cultural Rights	Office of the United Nations High Commissioner for Human Rights – International Covenant on Economic, Social and Cultural Rights, 16 December 1966	link
	the International Convention on the Elimination of All Forms of Racial Discrimination	Office of the United Nations High Commissioner for Human Rights – International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 195	link
	the Convention on the Elimination of All Forms of Discrimination against Women	Office of the United Nations High Commissioner for Human Rights – Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979	link
	the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Office of the United Nations High Commissioner for Human Rights – Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002	Link
	the Convention on the Rights of the Child	Office of the United Nations High Commissioner for Human Rights – Convention on the Rights of the Child, 20 November 1989	link
	the International Convention for the Protection of All Persons from Enforced Disappearance	Office of the United Nations High Commissioner for Human Rights – International Convention for the Protection of All Persons from Enforced Disappearance, 18 December 1922	link
	the Convention for the Protection of Human Rights and Fundamental Freedoms	Council of Europe – The European Convention on Human Rights, 4 November 1950	link
	the European Social Charter	Council of Europe – The European Social Charter, 18 October 1961	link

9.2 Annex OECD Guidelines 2023 references to environmental impact and climate change

The text below is integrally copied from the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct[36]:

Environmental impacts and due diligence

a. Clarifying that enterprises should carry out **risk-based due diligence to assess and address adverse environmental impacts**, and adding a **non-exhaustive list of environmental impacts** that may be associated with their activities including a) climate change; b) biodiversity loss; c) degradation of land, marine and freshwater ecosystems; d) deforestation; e) air, water and soil pollution; f) mismanagement of waste, including hazardous substances;
b. Clarifying that under the Guidelines, **environmental impacts** are understood as significant changes in the environment or biota which have harmful effects on the composition, resilience, productivity or carrying capacity of natural and managed ecosystems, or on the operation of socio-economic systems or on people;
c. Clarifying how, under the Guidelines, an enterprise can be involved with adverse environmental impacts:
    - an enterprise **"causes" an adverse environmental impact** if its activities on their own are sufficient to result in the adverse impact;
    - an enterprise **"contributes to" an adverse environmental impact** if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact;
    - adverse environmental impacts can also be **directly linked** to an enterprise's business operations, products or services by a business relationship, even if it does not contribute to those impacts.
d. Recognising that while in some instances it will be possible to assess, based on available science and information, to what extent an enterprise is **contributing to an adverse environmental impact**, in other instances such an assessment may be based on the **extent to which its activities are consistent with relevant standards and benchmarks**;
e. Recognising that limitations to carrying out environmental due diligence may include lack of availability of environmental data or technologies, as well as the importance of providing **support to small- and medium-sized enterprises** and small holders;
f. Recognising that adverse **environmental impacts are often closely interlinked with other matters covered by the Guidelines** such as health and safety, impacts to workers and communities, access to livelihoods or land tenure rights, and that environmental due diligence will often involve taking into account multiple environmental, social and developmental priorities.
g. Recalling the imperatives of a **just transition** and that it is important for enterprises to assess and address social impacts, including on the workforce, both in their transition away from environmentally harmful practices, as well as towards greener industries or practices, such as the use of renewable energy.

Climate change mitigation and adaptation

a. Emphasising that enterprises should **ensure that their greenhouse gas emissions and impact on carbon sinks are consistent with internationally agreed global temperature goals** based on best available science, including as assessed by the Intergovernmental Panel on Climate Change (IPCC);
b. Emphasising that enterprises should **introduce and implement science-based policies, strategies and transition plans on climate change mitigation and adaptation**, including adopting, implementing, monitoring and reporting on **mitigation targets** that are:
    - short, medium and long-term;
    - science-based;
    - include absolute and also, where relevant, intensity-based GHG reduction targets; and
    - that take into account scope 1, 2, and, to the extent possible based on best available information, scope 3 GHG emissions.

[36] 2023 update of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. Source: https://mneguidelines.oecd.org/mneguidelines/OECD-MNE-Guidelines-2023-Presentation.pptx

c. Noting the importance of reporting against, reviewing and **updating targets regularly** based on the **latest available scientific evidence** and as different national or industry specific **transition pathways** are developed and updated;
d. Emphasising that enterprises should **prioritise eliminating or reducing sources of emissions** over offsetting, compensation, or neutralization measures, noting that **carbon credits or offsets** may be considered as a means to address unabated emissions as a last resort, should be of high environmental integrity, and should not draw attention away from the need to reduce emissions or contribute to locking in greenhouse gas intensive processes and infrastructures;
e. Emphasising that enterprises should avoid activities, which undermine climate **adaption** for, and **resilience** of, communities, workers and ecosystems.

Biodiversity

a. Emphasising that enterprises should contribute to the **conservation of biological diversity**, the sustainable use of their components, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources and avoid and address land, marine and freshwater degradation, including deforestation;
b. Emphasising that enterprises' efforts to **prevent or mitigate adverse impacts on biodiversity** should be guided by the **biodiversity mitigation hierarchy**, which recommends first seeking to avoid damage to biodiversity, reducing or minimising it where avoidance is not possible, and using offsets and restoration as a last resort for adverse impacts that cannot be avoided;
c. Noting that, where appropriate, enterprises should also contribute to sustainable land and forest management, including **restoration, afforestation, reforestation including reduction of land, marine and freshwater degradation**.

Sustainable consumption and production

a. Emphasising that enterprises should:
    - adopt technologies, where feasible **best available technologies**, to improve environmental performance;
    - develop and provide products or services that have no undue environmental impacts; are safe in their intended use; are **durable, reparable and can be reused, recycled, or disposed of safely** and that are produced in an environmentally sound manner that **uses natural resources sustainably**, minimises as far as possible energy and material input as well as generation of pollution, greenhouse gas emissions and waste, in particular hazardous waste;
    - promote higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including by providing **relevant and accurate information on their environmental impacts** (for example, on greenhouse gas emissions, impacts on biodiversity, resource efficiency, reparability and recyclability or other environmental issues).

9.3 Annex: ILO incorporation into Dutch Law

ILO Principle	Applicable Dutch Laws and Regulations	Relevant Articles
Freedom of Association and Collective Bargaining	Dutch Labor Act ("*Wet op de cao*")	Article 4 (Collective Agreements)
	Dutch Trade Union Act ("*Wet op de vakverenigingen*")	
Elimination of Forced Labor	Dutch Criminal Code ("*Wetboek van Strafrecht*")	Article 273f (Human Trafficking)
Elimination of Child Labor	Dutch Labor Act (*"Wet arbeid en zorg"*)	Article 2.2 (Minimum Age for Work)
Elimination of Discrimination	Dutch Equal Treatment Act ("*Algemene Wet Gelijke Behandeling*")	Article 1 (Equal Treatment)
	Dutch Work and Care Act ("*Wet Arbeid en Zorg*")	Article 4:1 (Protection Against Discrimination)
Employment Rights and Working Conditions	Dutch Working Conditions Act ("*Arbeidsomstandighedenwet*")	Various provisions related to health and safety
	Dutch Minimum Wage and Minimum Holiday Allowance Act ("*Wet minimumloon en minimumvakantiebijslag"*)	Article 5 (Minimum Wage)
		Article 17 (Holiday Allowance)
Social Dialogue and Cooperation	Dutch Social and Economic Council Act ("*Wet op de Sociaal-Economische Raad*")	Article 2 (Objectives of the Council)
	Dutch Works Councils Act ("*Wet op de ondernemingsraden*")	Various provisions related to employee representation
Human Rights and Equal Treatment	Dutch Constitution ("*Grondwet*")	Various articles related to fundamental rights
	Dutch Human Rights Act *("Algemene wet gelijke behandeling")*	Article 1 (Prohibition of Discrimination)

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