

LEGAL ALERT

THE EUROPEAN COMMISSION'S INTERPRETATION OF THE TAXONOMY REGULATION AND THE SFDR

[Communication 2023/C 211/01 of the European Commission](#) (EC) was published in the *Official Journal of the European Union* on 16 June 2023, clarifying some of the interpretative issues on the application of the Taxonomy Regulation ([Regulation \(EU\) 2020/852](#)) and clarifying the status of investments in taxonomy-aligned economic activities and assets under the Sustainable Finance Disclosure Regulation (SFDR) ([Regulation \(EU\) 2019/2088](#)).

The Taxonomy Regulation entered into force on 12 July 2020 and introduced the Taxonomy – at the European Union (EU) level – of environmentally sustainable activities, thus establishing a classification system to facilitate the identification of investments that could be considered sustainable from an environmental perspective. This Regulation *(i)* amended the SFDR, *(ii)* established the sustainability objectives and conditions that a company must comply with to be considered environmentally sustainable, and *(iii)* imposed new disclosure obligations regarding environmentally sustainable economic activities.

Among these conditions, the Taxonomy Regulation has established that an economic activity can only be considered environmentally sustainable if it is carried out in accordance with the minimum safeguards set out in its Article 18, ensuring, as the EC now explains, that entities carrying out such activities comply with certain fundamental social, human rights and labour principles and minimum governance standards.

Indeed, companies assess the compliance of their activities with the specific requirements for minimum safeguards set out in Article 18, which refer both (i) to international standards¹ of responsible business conduct, which define these minimum safeguards, and (ii) to the principle of “no significant harm” referred to in Article 2(17) of the SFDR and specified in the [Delegated Regulation \(EU\) 2022/1288](#) (Delegated Regulation). This Delegated Regulation requires that, in addition to the mandatory disclosure of the alignment of sustainable investment with international standards, several indicators of key negative impacts should be taken into account.

Regarding the **first requirement of compliance with the minimum safeguards (international standards)**, the EC clarifies that the procedures to be applied by companies to ensure alignment with international standards include good corporate governance practices (*i.e.*, responsible business conduct and responsible supply chain management) described therein, including due diligence and redress procedures that are considered appropriate and procedures that prevent human rights violations.

On the **second requirement of compliance with minimum safeguards (principle of no significant harm)**, the EC considers that, as part of the due diligence and redress procedures, indicators of the main negative impacts of SFDR related to social and labour issues, respect for human rights, the fight against corruption and bribery, and the exposure, sale or manufacture of controversial weapons, currently listed in Table 1 of Annex I to the Delegated Regulation, should be addressed, in order to identify, prevent, mitigate or remedy relevant actual and potential negative impacts related to companies’ operations, value chains and business relationships.

¹ 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 Organization on Fundamental Principles and Rights at Work (Freedom of Association and Protection of the Right to Organise Convention, 1948; Right to Organise and Collective Bargaining Convention, 1949; Forced Labour Convention, 1930 and its 2014 Protocol; Abolition of Forced Labour Convention, 1957; Minimum Age Convention, 1973; Worst Forms of Child Labour Convention, 1999; Equal Remuneration Convention, 1951; Discrimination (Employment and Occupation) Convention, 1958); and in the International Bill of Human Rights (which includes the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966)).

In this context, the EC explains that a company may comply with minimum safeguards even if it proves unable to mitigate or eliminate certain negative impacts, consequently, it will be relevant to apply the appropriate procedures, disclose the identified impacts and explain the reasonable due diligence measures adopted.

Finally, the EC clarifies that investments in economic activities and assets that are environmentally sustainable and aligned with the Taxonomy are considered sustainable investments” under the SFDR, since the criteria for fulfilling that concept referred to in the SFDR are deemed to be met by compliance with the requirements set out in the aforementioned Article 18.

That said, when alignment with the Taxonomy is not fully verified, it will be necessary to check whether the remaining economic activities of the company comply with the environmental elements of the SFDR principle of “no significant harm”, and determine whether the contribution to the environmental objective is deemed sufficient for the investments to be considered sustainable. Our team is at your disposal for any clarification regarding this communication, in particular regarding the interaction between the Taxonomy Regulation and the SFDR.

Neste contexto, a CE explica que uma empresa pode cumprir as salvaguardas mínimas, ainda que se mostre incapaz de atenuar ou eliminar determinados impactos negativos, conseqüentemente, será relevante a aplicação dos procedimentos adequados, a divulgação dos impactos identificados e a explicação das medidas razoáveis de devida diligência adotadas.

Por fim, a CE clarifica que investimentos em atividades económicas e ativos sustentáveis do ponto de vista ambiental e alinhados pela Taxonomia são considerados «investimentos sustentáveis» ao abrigo do SFDR, uma vez que os critérios para o preenchimento desse conceito referidos no SFDR consideram-se satisfeitos pelo cumprimento dos requisitos dispostos no já referido artigo 18.º. Dito isto, quando o alinhamento pela Taxonomia não se verificar na totalidade, será necessário verificar se as restantes atividades económicas da empresa cumprem os elementos ambientais do princípio do SFDR de «não prejudicar significativamente», e determinar se a contribuição para o objetivo ambiental é considerada suficiente para que os investimentos sejam considerados sustentáveis.

A nossa equipa fica ao inteiro dispor para qualquer esclarecimento relativo a esta comunicação, em particular quanto à interação entre o Regulamento da Taxonomia e o SFDR.

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