

FEEDBACK ON SUSTAINABLE INVESTMENT– REVIEW OF THE EU TAXONOMY ENVIRONMENTAL DELEGATED ACT AND CLIMATE DELEGATED ACT

The Japan Business Council in Europe (JBCE) welcomes the opportunity to submit its opinion in support of the review of the EU Taxonomy Environmental Delegated Act and Climate Delegated Act. Having previously submitted our opinions on the ‘Do No Significant Harm’ (DNSH) criteria during the EU Taxonomy Stakeholder consultation in 2023¹ and 2025², we are eager to continue supporting the European Commission’s efforts for sustainable finance in the EU.

JBCE very much welcomes the adoption of the Delegated Act on 4th July 2025, which aligns the DNSH requirement in paragraph (d) with the RoHS Directive requirement. Furthermore, the deletion of the requirement in paragraph (g) will help avoid market confusion caused by differences in CLP classification among manufacturers. Our understanding is that this Delegated Act reflects the situation within the industry.

With this review, the European Commission has the opportunity to resolve additional persisting complexities and alignment gaps across related EU legislation. In this context, JBCE would like to bring to the European Commission’s attention the following outstanding points:

Key Recommendations

- Thoroughly and explicitly define “*assessment*” and “*documentation*” requirements under Appendix C point 7 in terms of scope, methodology, evidentiary thresholds, and responsibility within the supply chain to prevent legal uncertainty and significant operational challenges.
- Prevent the DNSH obligation to ensure the absence of SVHCs from going beyond the legal framework and regulatory intent of REACH: as it stands, the requirement risks

¹ JBCE’s feedback on the Taxonomy Environmental Delegated Act

https://www.jbce.org/images/JBCE_Feedback-Taxonomy_Environmental_Delegated_Act.pdf

² JBCE’s position paper on the simplification of the DNSH Technical Screening Criteria under the EU Taxonomy position

<https://www.jbce.org/en/?view=article&id=981:jbce-has-published-its-position-paper-on-the-simplification-of-the-dnsh-technical-screening-criteria-under-the-eu-taxonomy&catid=30>

- functioning as a de facto prohibition, and is not practically implementable given the dynamic nature of the SVHC list and the complexity of global supply chains.
- Recognise as taxonomy-aligned all the exemptions granted under Annex III and Annex IV of the RoHS Directive, including future exemptions, as they are all subject to the same scientific and technical assessment criteria under Article 5 of the Directive.

1. Appendix C: Clarification of process - Requirements related to assessment and documentation

The revised version of EU Taxonomy Appendix C states that:

*“The activity does not consist in the manufacture, placing on the market or use of substances, whether on their own or in mixtures or in an article in a concentration above 0,1 % weight by weight, that were identified in accordance with Article 59(1) of Regulation (EC) No 1907/2006 for a period of at least 18 months and are not covered by paragraph 6, **except if it is assessed and documented by the operator that they are manufactured or respectively used under the controlled conditions that are prescribed in the EU chemicals legislation acquis that is applicable to the use of the substances and that ensures that measures are in place to minimise exposures and emissions as far as practically possible.**”*

In our view, the “assessment” and “documentation” required for compliance with paragraph 7 are not sufficiently defined in terms of scope, methodology, and level of evidence needed.

Moreover, there is no clear indication of which operator within the supply chain is responsible for conducting such assessment or providing such documentation, leading to uncertainty and operational confusion.

2. Appendix C: Harmonisation with REACH obligations - Requirement for SVHCs (Substances of Very High Concern)

On a general note, JBCE understands that the proposed approach under the EU Taxonomy, including the DNSH criteria, is aligned with the objective of achieving “a zero-pollution ambition for a toxic-free environment” as set out in the Chemicals Strategy for Sustainability – Towards a Toxic-Free Environment (CSS). JBCE agrees with and supports the overall concept and purpose of protecting human health and the environment. However, we would like to point out that the current interpretation of the DNSH criteria with regard to Substances of Very High Concern raises a number of issues that should be addressed from both a

regulatory coherence and practical implementation perspective, as highlighted by various companies across different industrial sectors represented by JBCE.

Under the REACH Regulation, SVHCs are designated as substances that may, in the future, become subject to authorisation. Economic operators are encouraged to consider alternatives on a voluntary basis. However, SVHCs does not imply that designated substances are prohibited from being used or placed on the EU market. The fundamental purpose of the SVHCs framework is to enhance information sharing, transparency, and risk awareness throughout the supply chain, rather than to impose immediate market removal. In contrast, the DNSH criteria under the EU Taxonomy appears to require the absence of SVHCs, effectively resulting in a restriction that goes beyond both the framework and the intention of the REACH Regulation. This creates a situation in which the DNSH criteria may function as a de facto prohibition mechanism, despite the fact that SVHCs remain legally permitted under EU chemicals legislation.

Currently, 251 substances are listed as SVHCs, with new substances being added to the Candidate List every six months. Each update requires companies to conduct additional screening exercises and initiate renewed supply-chain surveys. In complex and international supply chains, responding to such additions within a timeframe of 18 months is often impractical, and can impose an excessive administrative and operational burden, particularly on small and medium-sized enterprises (SMEs). Furthermore, the complete elimination of SVHCs is often not technically feasible under current supply-chain conditions, especially for complex articles.

Although Regulation (EU) 2026/73 has simplified the criteria for determining what constitutes Do No Significant Harm (DNSH), the intention of DNSH is not yet fully understood at the operational level and has led to some confusion in communication. In particular, it is not uncommon in practice to see cases where discussions revolve solely around the term 'DNSH' without clearly distinguishing between business activities and product levels. Products are subject to various regulations depending on their specific applications and the substances. The term 'DNSH' applies to both the regulations governing these products and the business activities. While we recognize the effort to apply the concept of 'DNSH' as a new term introduced in the EU taxonomy to sustainable business practices, it is essential to understand hazard-based and risk-based approaches for products and acknowledge the considerable challenge of ensuring consistency between product level and business activities for the manufacturing sector.

3. Alignment of all exemptions of the RoHS Directive including future exemptions

i. No priority for two RoHS exemptions

The draft proposed amendments in Annex II to point 2.6.3 state:

“Exemptions to restriction of the use of certain hazardous substances in electrical and electronic equipment set out in Directive 2011/65/EU of the European Parliament and of the Council are limited to the following cases:

- a) lead in high melting temperature type solders covered by the exemption entry 7(a) in Annex III to Directive 2011/65/EU;*
- b) electrical and electronic components containing lead in a glass or ceramic covered by the exemption entries under 7(c) in Annex III to Directive 2011/65/EU.*

This requirement allowing only the application of two specific RoHS exemptions does not align with the RoHS Directive and is in several ways problematic. Exemptions in Annex III and IV of the RoHS Directive are evaluated according to scientific and technical progress defined in Article 5 of the Directive and are granted when there is no substitution available. Therefore, all the exemptions in Annex III and Annex IV including future exemptions should be taxonomy-aligned. Designating only exemptions in Annex III-7(a) and III-7(c) as taxonomy-aligned while excluding all the other exemptions lacks justification, since the same conditions of Article 5 are applied to all the exemptions in Annex III and IV.

Especially, the exemptions in Annex IV are for medical devices and monitoring and control devices which contribute to human health, safety, environment and social infrastructure. Under current Taxonomy, the activities such as treatment in hospitals, safety monitoring and research in laboratories are not classified as taxonomy-aligned.

It must also be considered that RoHS exemptions will change over time. For example, exemptions entry 7(a) are now split into several sub-entries. All these changes should be also taxonomy-aligned.

ii. Exemptions in Annex III and Annex IV including future exemptions should be taxonomy-aligned

In the following clauses no RoHS exemptions are allowed. These should be amended so that exemptions in Annex III and Annex IV including future exemptions are taxonomy-aligned:

- Draft Commission Delegated Regulation amending Delegated Regulation (EU) 2023/2486 as regards enhancing the usability of the technical screening criteria Annex II

4.1 Provision of IT/OT data-driven solutions: DNSH (5) Pollution prevention and control:

The equipment used meets the requirements laid down in Directive 2009/125/EC of the European Parliament and of the Council for servers and data storage products.

The electric and electronic equipment used does not contain the restricted substances above the concentration values listed in Annex II to Directive 2011/65/EU of the European Parliament and of the Council.

4.1 (a) DNSH:

The equipment used to operate the software meets the requirements laid down in Directive 2009/125/EC for servers and data storage products.

The electrical and electronic equipment used does not contain the restricted substances above the concentration values listed in Annex II to Directive 2011/65/EU.

- Draft Commission Delegated Regulation amending Delegated Regulation (EU) 2023/2486 as regards enhancing the usability of the technical screening criteria Annex II

5.6 Marketplace for the trade of second-hand goods for reuse: DNSH:

(b) the equipment used does not contain the restricted substances listed in Annex II to Directive 2011/65/EU, except where the concentration values by weight in homogeneous materials do not exceed those listed in that Annex;

- Draft Commission Delegated Regulation amending Delegated Regulation (EU) 2021/2139 as regards enhancing the usability of the technical screening criteria Annex I

7.6 Installation, maintenance and repair of renewable energy technologies (c) DNSH (4) Transition to a circular economy:

The equipment used meets the requirements laid down in Directive 2009/125/EC for servers and data storage products.

The electrical and electronic equipment used does not contain the restricted substances above the concentration values listed in Annex II to Directive 2011/65/EU of the European Parliament and of the Council.

A waste management plan is in place and ensures maximal waste avoidance and reduction (including through reuse), remanufacturing or recycling at end of life of electrical and electronic equipment, including through contractual agreements with recycling partners, reflection in financial projections or official project documentation.

At its end of life, the equipment undergoes preparation for reuse, recovery or recycling operations, or proper treatment, including the removal of all fluids and a selective treatment in accordance with Annex VII to Directive 2012/19/EU of the European Parliament and of the Council.

- Draft Commission Delegated Regulation amending Delegated Regulation (EU) 2021/2139 as regards enhancing the usability of the technical screening criteria Annex I

7.7 Acquisition and ownership of buildings: DNSH (4) Transition to a circular economy:

The equipment used meets the requirements laid down in Directive 2009/125/EC for servers and data storage products.

The electrical and electronic equipment used does not contain the restricted substances above the concentration values listed in Annex II to Directive 2011/65/EU of the European Parliament and of the Council.

A waste management plan is in place and ensures maximal waste avoidance and reduction (including through reuse), remanufacturing or recycling at end of life of electrical and electronic equipment, including through contractual agreements with recycling partners, reflection in financial projections or official project documentation.

At its end of life, the equipment undergoes preparation for reuse, recovery or recycling operations, or proper treatment, including the removal of all fluids and a selective treatment in accordance with Annex VII to Directive 2012/19/EU of the European Parliament and of the Council.

These requirements do not allow any RoHS exemptions, diverging from the RoHS Directive and are in several ways problematic. Exemptions under the RoHS Directive are evaluated according to scientific and technical progress defined in Article 5 of the Directive and are granted when there is no substitution available. Therefore, all the exemptions in Annex III and Annex IV including future exemptions should be taxonomy-aligned.

Especially, “Draft Commission Delegated Regulation amending Delegated Regulation (EU) 2023/2486 as regards enhancing the usability of the technical screening criteria Annex II 5.6 Marketplace for the trade of second-hand goods for reuse” is critical. According to this clause, the reuse of second-hand goods – which are placed on the market in compliance with the RoHS Directive using exemptions in Annex III and IV – is not taxonomy-aligned. It hinders the reuse of Electro and Electric Equipment (EEE) and promotes the purchase of new equipment. As a result, the amount of EEE waste will increase and consequently hinder the Circular Economy. This clause does not align with the RoHS Directive which allows for the reuse of EEE.

4. Conclusion

As a starting point, the DNSH concept was originally conceived as a high-level classification tool to support the identification of environmentally sustainable economic activities and to prevent greenwashing. However, in practice, the DNSH concept has increasingly been interpreted and applied in a misleading manner at the operational level, particularly when extended to detailed product and substance-specific requirements.

Applying DNSH at the product level requires careful alignment with existing EU legislation governing products and chemical substances, notably the REACH Regulation and the RoHS Directive. Ensuring consistent taxonomy alignment with these frameworks is essential to maintain legal coherence, support circularity, and provide regulatory predictability for economic operators. A taxonomy framework that does not appropriately recognise legally granted exemptions or the risk-based logic underpinning EU product legislation risks excluding environmentally beneficial and fully compliant activities from sustainable finance on purely formalistic grounds. Such an outcome would undermine the core objective of the EU Taxonomy, which is to facilitate and scale up investment in activities that make a meaningful contribution to environmental protection, while ensuring proportionality, practical implementation, and coherence across the EU regulatory framework.

ABOUT JBCE

Founded in 1999, the Japan Business Council in Europe (JBCE) is a leading European organisation representing the interests of over 110 multinational companies of Japanese parentage active in Europe. Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceuticals, textiles, and glass products.

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