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postmottak@oed.dep.no; 'postmottak@kld.dep.no' postmottak@kld.dep.no  
**Emne:** Request to clarify interpretation of Taxonomy DNSH-criteria for hydropower

Dear Madam/Sir,

We urgently request clarification on how to interpret the Taxonomy Regulations and delegated Acts concerning the **Do No Significant Harm**-criteria for hydropower. The reason for this request is that the Norwegian hydropower sector is promoting what we believe to be an incorrect interpretation of the Water Framework Directive (2000/60/EC) and the Do No Significant Harm (DNSH) criteria of the Taxonomy Regulation (EU 2020/852).

### **To whom this is addressed**

Sabima is a Norwegian environmental NGO, focusing on nature and biodiversity protection in Norway. We address this request to the Commission to and the Platform on sustainable Finance, but also copy in ESA as there is a link to the ongoing ESA case and recent meetings regarding ESA Case No 81034. This case has been opened by ESA against Norway regarding the Norwegian implementation of the Water Framework Directive (2000/60/EC) and water bodies used for hydropower production. The issue that we are now addressing is indirectly linked to the case opened by ESA as this issue affects how the Norwegian authorities interpret the objectives of the Water Framework Directive. In addition three relevant Norwegian ministries (Finance, Energy, Environment) receive a copy.

### **Context for request**

Both the Water Framework Directive and the Taxonomy Regulation are being implemented in Norway, under the European Economic Area-agreement. One important link between the Directive and the Regulation concerns the Taxonomy Regulation's DNSH criteria in article 17 (c), stating that an economic activity shall be considered to significantly harm the sustainable use and protection of water, where that activity compromises the achievement of 'good status' or 'good potential' of the bodies of water it relates to.

This is further detailed in the Delegated Acts (C (2021) 2800), detailing that to fulfil the DNSH-criteria the activity must comply with the provisions of the Water Framework Directive in the context of the authorisation or permit setting out the conditions aimed at achieving good status or potential of the affected water body.

However, we observe that the Norwegian hydropower sector is arguing that they can interpret the delegated acts in such a way that any hydropower project that has a license from the Norwegian government, is per definition fulfilling the DNSH-criteria, even if the licence does not aim to achieve good status or potential of the affected water body. The hydropower sector argues that hydropower affected waterbodies that need **exemption** according to with WFD article 4.5 (less stringent objectives) fulfil the DNSH-criteria of the Taxonomy. Norway reported using the exemption "less stringent objectives" [for a total of 1 452 HMWBs](#) when reporting the RBMPs for the years 2016-2021<sup>[1]</sup>.

Norway is Europe's largest producer of hydropower, with substantial exports to the EU through the interconnected grid. It was the revelation of the terrible environmental conditions of our European watersheds that led to the establishment of the WFD. While renewable energy, and hydropower as such, is needed for the global green transition's efforts to tackle climate change, it is worth remembering that energy production is not sustainable solely by virtue of being renewable. Earth is undergoing both a nature and a climate crisis, and the crises are intertwined and mutually exacerbate one another. Therefore, for renewable energy to be sustainable in seeking to tackle climate change, it must not contribute to the degradation of biodiversity. As explained in [our](#)

[response to the public hearing on the taxonomy in 2020<sup>\[iii\]</sup>](#), we therefore welcome the Taxonomy and its DNSH-criteria.

The urgency in our request stems from our observation of the hydropower industry organization Energy Norway [promoting an interpretation that is more favourable for the hydropower industry<sup>\[iii\]</sup>](#).

### Specification of inquiry

On this background, we urgently request clarification on how to interpret the Taxonomy Regulations and delegated Acts concerning the DNSH-criteria for hydropower, specifically regarding the following questions:

1. Is there an absolute requirement that hydropower production should allow for reaching the objectives of good status or good potential, for both new and existing hydro power production, in order to fulfil the DNSH-criteria?
2. The delegated act requires that hydropower operates in accordance with an authorisation or permit aimed at achieving good status or potential of the affected water body.
  - 2a) Does that mean that there is an absolute requirement that all hydropower production requires a permit/licence/authorisation?
  - 2b) Does that require that all licenses/permits/authorisations should refer to the environmental objectives for the affected water bodies, and that the DNSH-criteria require conditions aimed at achieving good status or potential of the affected water body?
3. Can hydropower production causing the application of WFD article 4.5 (less stringent objectives) be considered to fulfil the DNSH-criteria?

Yours Sincerely,  
Christian Steel

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**Director**



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<sup>[i]</sup> [https://tableau.discomap.eea.europa.eu/t/Wateronline/views/WISE\\_SOW\\_SWB\\_SWEcologicalExemptionType/SWB\\_SWEcologicalExemptionType?embed=y&:isGuestRedirectFromVizportal=y&:display\\_count=n&:showAppBanner=false&:origin=viz\\_share\\_link&:showVizHome=n](https://tableau.discomap.eea.europa.eu/t/Wateronline/views/WISE_SOW_SWB_SWEcologicalExemptionType/SWB_SWEcologicalExemptionType?embed=y&:isGuestRedirectFromVizportal=y&:display_count=n&:showAppBanner=false&:origin=viz_share_link&:showVizHome=n)

<sup>[ii]</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12302-Sustainable-finance-EU-classification-system-for-green-investments/F1346300\\_nb](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12302-Sustainable-finance-EU-classification-system-for-green-investments/F1346300_nb)

<sup>[iii]</sup> <https://energiogklima.no/nyhet/er-norsk-vannkraft-taksonomi-kompatibel/>