

EU funds should never harm nature, climate or the environment

Statement of the Green 10 on the ‘do no significant harm’ principle

Outline

1. Lessons learned: applying the ‘do no significant harm’ principle to the Recovery and Resilience Facility
2. The ‘do no significant harm’ criteria must prevent environmentally harmful measures: box-ticking of existing EU legislation is not sufficient to ensure environmental protection
3. There is a need for a robust and stringent reporting mechanism for public finance

Summary

We warmly welcome the European Commission’s intention to establish a new mechanism to prevent environmental destruction and ensure the long-term sustainability of public investments, which is urgently needed. The investment decisions made today will undoubtedly have long-term implications and create future path dependencies. This is the first and most important step towards a sustainable use of the EU budget for the long term. The urgent need to address the climate and biodiversity crises, as well as the estimated cost of the green transition and economic shocks caused by the current health crisis, require a new, forward-looking approach where limited public resources are employed in the best way for advancing the transformation of economies and society within planetary boundaries.

However, the undersigned NGOs are deeply concerned about the risks of applying the current ‘do no significant harm’ criteria to EU funds or other policy areas. In the short term, this includes applying simplified ‘do no significant harm’ criteria to the cohesion policy. In the case of the Recovery and Resilience Facility, even the simplified set of ‘do no significant harm’ criteria, as outlined in a technical guidance document for Member States, has not been sufficiently applied. The ‘do no significant harm’ assessments carried out by Member States have been of poor quality and will not be effective in preventing harm. In the longer term, our concerns are relevant for the use of the more sophisticated technical screening criteria outlined in the delegated acts. We believe that EU public funds should not rely on a watered down set of criteria. As a bare minimum, we would like the delegated acts to be based on the original, science-based criteria proposed by the technical expert group.

Therefore, before applying the ‘do no significant harm’ principle to further EU funding programmes, the European Commission must develop sufficiently strong criteria in the delegated acts on the remaining four environmental objectives and revise the existing one to introduce higher ambition, aiming for a truly preventive mechanism as soon as possible. In the meantime, it needs to outline more detailed guidance for the use of the ‘do no significant harm’ principle for each programme via staff working documents.

Background

The European Commission intends to apply the 'do no significant harm' criteria to public funds via the EU budget, which, among other funding streams, will include cohesion policy, the Connecting Europe Facility and NextGenerationEU Green Bonds.¹ They are also considering applying the criteria to State aid in the sectors of climate, energy and environment.¹ This would mean that an entirely new mechanism would be introduced with the objective of preventing environmentally destructive projects from being financed by the EU budget and public money (State aid).

The 'do no significant harm' principle ('the principle') was first applied to EU public funds in the context of the Recovery and Resilience Facility (RRF),² and entered into force in February 2021 as a new safeguarding tool for investments and reforms in the national recovery and resilience plans. The simplified 'do no significant harm' methodology applied under the RRF will be replaced by a more complex form relying on several delegated acts under the Taxonomy Regulation. At the time of writing, only the first delegated act has been published (climate change adaptation and climate change mitigation), leaving the remaining four areas to be published by the start of 2023.

1. Lessons learned: applying the 'do no significant harm' principle to the Recovery and Resilience Facility

Although the 'do no significant harm' criteria were used in a more simplified form in the context of the RRF, experience has proven that the quality of data provided ultimately determines the effectiveness of the principle. Independent expertise and full transparency therefore need to be guaranteed throughout the duration of the implementation of the recovery plans. Moreover, the principle as a one-time sign-off exercise, and give Member States free reign thereafter. For example, it is often unclear in advance whether specific habitats in Natura 2000 sites might actually be affected by a given project, so monitoring and scrutiny must continue during the implementation process; measures should not simply be rubber stamped at the EU level, leaving Member States alone afterwards.

Lesson 1: The quality of the assessments is insufficient. Many recovery plans do not contain enough detail to allow assessment of their environmental impacts. Civil society has already seen 'do no significant harm' assessments for some approved measures which did not even specify exact locations or details, and therefore the measures should not have been approved. For example, one approved plan included funding for 29 irrigation projects without even disclosing the locations of the projects. Assessments supplied by Member States did not accurately reflect the potential harm of this and other such projects; this will only become apparent later in the process, when funds have already been disbursed.

Lesson 2: The time pressure was too great and awareness and guidance are missing. The initial use of the principle during the RRF process has shown that when Member States were left without sufficient guidance, time and resources, the assessments delivered to the Commission and conducted by the Member States were of very poor quality. Sufficient time is needed for Member States to provide thorough assessments. However, we fear that the current delays in the programming of EU funds will lead to rushed decisions and approvals. In the case of the RRF, measures were approved by the Commission before the full content and context of all measures was known.

¹ https://ec.europa.eu/competition-policy/system/files/2021-06/CEEAG_Draft_communication_EN.pdf

² https://ec.europa.eu/info/sites/default/files/c2021_1054_en.pdf

Lesson 3: Independent expert assessments are required to avoid vested interests. Only in very rare cases did Member States use independent experts to conduct initial ‘do no significant harm’ assessments. In some cases, national governments and Ministries interpreted and applied the requirements differently, resulting in inconsistency and ambiguity in the process. The overall process was seen as a box-ticking exercise by the relevant ministries, who lacked the necessary information and required field expertise. Sufficient expertise and knowledge is therefore key in order to deliver accurate, truthful assessments.

Lesson 4: Transparency and verification in the form of public consultation is needed. Transparency and full public disclosure of the assessments is essential in order to allow for external scrutiny, for example by NGOs or sectoral experts. The failure to disclose the contents of draft recovery plans prevented the use of third-party expertise for identifying harmful measures, therefore leading to the approval of measures harmful to nature. In some cases, the assessments submitted by Member States did not reflect the views of third-party experts. Objective assessments by independent experts could help guarantee that harmful measures are modified or rejected.

Recommendation 1: The European Commission must not accept plans/programmes that do not describe and publicly disclose individual measures and their planned locations.

Recommendation 2: The European Commission needs to provide increased guidance, capacity building and time for Member States to conduct these assessments properly and ensure they include accurate and detailed information. This should also include outsourcing assessments to independent, third-party experts. Such evaluations should be transparent, with information publicly available and consulted for a reasonable period of time before approval, in line with the Aarhus Convention.

2. The ‘do no significant harm’ criteria must prevent environmentally harmful measures: box-ticking of existing EU legislation is not sufficient to ensure environmental protection

By setting additional criteria and requirements, the principle can and should prevent harmful measures and create additional incentives to undertake investments that are not only legal, but truly sustainable. Occasionally, the European Commission has effectively set high criteria that do go beyond existing law, setting a real precedent that should encourage similar action for further activities. Unfortunately, numerous gaps still remain where this is not the case and where the criteria are not restrictive enough to prevent significant harm.

Overall, we regret that for several sectors covered by the climate mitigation and adaptation delegated act, the principle that is supposed to prevent harmful activities rarely goes beyond reiterating the rules which every actor is anyway legally obliged to comply with, especially on biodiversity, as the examples in Annex 1 show. The criteria fall far short of what was proposed by the Technical Expert Group (TEG) in March 2020, thus compromising what should be an effective safeguard based on latest available science and evidence and a way to distinguish sustainable investments from those which are merely legally tolerated. The act in some cases does not even facilitate or encourage progress towards better implementation of existing legislation.

Recommendation 1: We ask the European Commission to introduce strict criteria in the forthcoming delegated acts that aim to improve the application of the ‘do no significant harm’ principle and complete the Commission’s much needed initiative. In the meantime, the Commission needs to outline more detailed guidance for how the principle will be applied for each programme via staff working documents.

3. There is a need for a robust and stringent reporting mechanism for public finance.

The quality and strength of the reinforced 'do no significant harm' principle will rely heavily on the level of control and scrutiny given to it by the European Commission. However, it is still unclear how the responsible authorities will process the data and assessments (at the Member State level as well as the European Commission level). As described in more detail below, the quality of the procedures in place for the RRF was far below what is required: it is understood that DG ENV, who was responsible for approving 'do no significant harm' assessments, had just two working days per country to analyse the assessments provided by Member States. This falls far short of what is needed, and is especially alarming given the potential long-term impacts of approving activities that have not been properly scrutinised. The level of expertise required by the European Commission or other monitoring institution in order to approve the projects and their impacts on the environment is key. For projects dealing with fresh waters, such as irrigation or hydropower, expertise and time are needed to analyse data on hydromorphological changes, impacts on alluvial forests and wetlands that depend on watercourses, and the impacts on nearby migration corridors and on the carbon cycle.

The importance of proper oversight by the Commission is even more necessary when considering the public nature of EU programmes and funds, which implies greater responsibility and accountability in comparison to private investments. Therefore, a certain amount and quality of data is needed. As guardians of the Treaty, the European Commission's ex-ante assessment capacity needs to be strengthened in order to monitor the implementation of the principle. This should include accurate monitoring of what is happening on the ground.

Recommendation 1: Together with stronger 'do no significant harm' criteria, we ask the European Commission to propose a detailed process for submission, assessment and disclosure of the 'do no significant harm' assessments that are submitted. Enough funding, time and human resources capacities need to be ensured at both the EU and Member State levels.

Recommendation 2: The European Commission must update its current process for monitoring the assessments. When the Commission reviews the assessments, it must go beyond EU law and truly try to prevent harm. At the same time, it must lead to better implementation of EU environmental legislation, which has often been lacking. In addition, a proper monitoring and tracking system should be applied throughout the course of investments, rather than simply rubber stamping Member States' 'do no significant harm' assessments at the EU level and giving full discretion afterwards.

Concluding remarks

The 'do no significant harm' principle as currently set out in the delegated acts of the Taxonomy Regulation is not ambitious enough, nor will it prevent environmentally harmful activities, and it does not strengthen compliance with existing EU legislation. 'Do no significant harm' seeks to prevent significant harm, and should never be interpreted as a sustainability screening mechanism for investments. At this stage in the global climate and environment emergencies, we can no longer afford to spend public funds for projects that would harm the environment and therefore our future. For this reason, our recommendations should be taken on board before applying the principle to further EU policies.

ANNEX 1: The questionable application of the ‘do no significant harm’ principle under the Recovery and Resilience Facility

The application of the ‘do no significant harm’ principle under the Recovery and Resilience Facility, based on the European Commission’s guidance,³ has failed to effectively assess the proposed investments and reforms. Biodiversity, climate and energy experts have flagged the lack of information, detail and location for several measures that, depending on the content that needs to be defined, could be highly harmful. Measures to be financed that could ‘go either way’ show that the principle does not require enough information to actually address potential harm.

Example 1 – Measure from the Romanian recovery plan: Pillar 1 – Green transition: we afforest Romania and protect biodiversity, EUR 199 million

The Romanian plan proposes to invest EUR 199 million in technologies to better protect forests from extreme weather conditions, leading to the development of up to 200 forestry operators by 2025 and their equipment to better access the forests. Based on previous experiences with forestry roads financed by EU funds – containing the same measure description – we foresee the potential misuse of these funds, leading to illegal activities such as logging. The lack and poor quality of available data for Romanian forests seriously calls into question how almost EUR 200 million can be justified when no measure is proposed to prevent illegal logging. The requested investments should therefore be put into perspective. The concrete afforestation measures need to be better detailed and planned, yet there is a lack of information available about this.

Example 2 – Measure from the Slovak recovery plan: Renovation of buildings – Investment 1: Improving the energy efficiency of family houses, EUR 528 million (EUR 50 million for gas boilers)

The Slovak programme prioritises natural gas boilers, briefly mentions solar energy, and avoids heat pumps due to the false assumption that people won’t be interested in them. This creates a bias towards fossil fuel energy use which was not reflected in the ‘do no significant harm’ assessment. This bias is not justified by previous experience with such boilers in the Czech Republic.

The promotion of fossil gas boilers is irrational given their climate impacts, the EU’s dependence on imports and the rapidly increasing price of natural gas in recent weeks.⁴ The European Commission’s recent toolbox for action and support on tackling rising energy prices confirms this.⁵ The European Commission should therefore re-evaluate the exemption for fossil gas boilers in the technical guidance on ‘do no significant harm’⁶ in light of the recent price increases and its recent toolbox.⁷

Example 3 – Measure from the Latvian recovery plan: Investment: 1.3.1.2.i. Investments in flood risk reduction infrastructure, EUR 33 million

During the evaluation of the Latvian recovery plan, neither the national authorities nor the European Commission revealed any details about the 29 irrigation projects foreseen in Latvia. Despite several formal requests for information at the national level, this information has still not been revealed to the requesting NGOs, even now that the plan has been approved. Without knowing the details, it was and still is impossible to make a proper ‘do no significant harm’ assessment. Furthermore, the completed assessment states that: ‘the measure will reduce the negative impact on biodiversity’. However, this is not true, because all irrigation activities usually have a negative impact on biodiversity. Thus, it is

³ https://ec.europa.eu/info/sites/default/files/c2021_1054_en.pdf

⁴ [Dutch TTF Natural Gas Calendar](#)

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A660%3AFIN&qid=1634215984101>

⁶ https://ec.europa.eu/info/sites/default/files/c2021_1054_en.pdf

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A660%3AFIN&qid=1634215984101>

surprising that the Commission accepted these investments, which poses a direct threat to climate targets and biodiversity.

Example 4 – Measure from the Estonian recovery plan: Component 5: sustainable transport, EUR 31 million

The Commission’s assessment of the plan characterises the Rail Baltic construction as an important component of greening Estonia’s transport system. While encouraging rail transport is indeed a way forward to decrease the CO₂ emissions of private vehicles, the route that is currently planned endangers ecosystems, parts of which are located in high conservation value Natura 2000 areas. Respect for the ‘do no significant harm’ principle requires either modifying the construction project or changing the planned route to protect biodiversity, which environmental organisations have been advocating for since the beginning of the planning process. For example, the planners could have chosen to modify the already existing railway route, which would have significantly reduced the destructive effect on ecosystems. The inability of the Commission to distinguish holistic ‘greening’ projects from ecosystem-destroying ‘greening’ projects displays the deep disconnection between biodiversity and climate issues at the highest levels of decision-making in the EU.

On behalf of:



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