

Lessons from the ground: application of the ‘do no significant harm’ principle under the Recovery and Resilience Facility



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CEE Bankwatch Network has welcomed the introduction of the ‘do no significant harm’ (DNSH) principle to EU funds as an additional environmental safeguarding tool. If planned and implemented correctly, the principle will be instrumental in preventing EU funds from financing activities damaging to the environment and climate, and help drive EU spending towards long term sustainability goals. However, substantial barriers to effectiveness remain with how this tool is being understood and applied in practice, which is weakening its potential.

This briefing therefore outlines the key barriers preventing a more successful application of the principle, based on ongoing experience under the Recovery and Resilience Facility (RRF), and provides recommendations for improvement. This is because the EU’s RRF was the first fund to apply the DNSH, meaning it is the most advanced in terms of assessing its effectiveness.

For more information

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Introduction

The introduction of the EU's 'do no significant harm' principle under the Recovery and Resilience Facility marked a major step forward in preventing EU public funds from causing harm to the climate and environment. It also contributes to classifying economic activities as sustainable, as based on the EU Taxonomy Regulation.¹

For the first time, all reforms and investments from the EU's recovery funds were required to undergo a 'DNSH assessment' designed to screen the risk of causing harm to six environmental objectives and align EU spending with the goals of the Green Deal.² The principle also aimed to prevent trade-offs between different spending priorities, and therefore achieve a holistic approach on economic activities that could contribute to one or more EU policy objectives without undermining the rest.

Last but not least, the principle, initiated under the EU Taxonomy Regulation,³ could have a substantial role in avoiding stranded assets in the EU's future resource-efficient and competitive economy and thus ensure effectiveness of EU public spending.

Over two years after Member States conducted individual DNSH assessments for each reform and investment under their national recovery plans, which were then assessed and reviewed by the European Commission, an increasing number of projects are now being implemented on the ground. This provides an opportunity to assess the progress and effectiveness of this tool.

Bankwatch has strongly welcomed the Commission's intention to introduce a tool to prevent EU funds from causing harm. However, our experience has shown that the DNSH principle needs further strengthening in order to become a truly effective and preventive tool.

This briefing presents the current state of play on how DNSH is being applied during RRF implementation, based on the experience of campaigners in central and eastern European (CEE) Member States. It aims both to highlight shortcomings as well as to provide practical recommendations about how this tool can be strengthened.

The role of DNSH in screening EU public funds

Public finance today is one of the strongest forms of leverage for the transition of our economies. Across the European Union, EU public finances account for significant public expenditure, both directly and through national co-financing. In some regions this amounts to nearly half of all public investments.

¹ European Parliament and Council of the European Union, [Regulation \(EU\) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation \(EU\) 2019/2088 \(Text with EEA relevance\)](#), OJ L 198, *EUR-Lex*, 22 June 2020, 13-43.

² European Commission, [Communication from the Commission to the European Parliament, The European Council: The European Green Deal](#), *EUR-Lex*, 2019.

³ European Parliament and Council of the European Union, [Regulation \(EU\) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation \(EU\) 2019/2088 \(Text with EEA relevance\)](#), OJ L 198, *EUR-Lex*, 22 June 2020.

Member States now have an unprecedented amount of access to public resources. Yet these remain highly limited in terms of future financial needs and are extremely precious, especially in the context of the current climate disasters, economic and geopolitical crises where every euro must be spent with maximum effectiveness. Long term thinking is therefore required, but is often missing in the way public spending is planned and implemented today.

This means that the EU's financial instruments should provide resources and actively guide the change in investment patterns away from unsustainable, business as usual approaches. The DNSH principle reflects this approach, by changing the way investments decisions are taken, assessing the potential impact across a wide range of sectors to avoid trade-offs.

If properly applied and implemented, DNSH should firstly act as a crucial mechanism to ensure compliance and enforcement of the EU's environmental legislation, a chronic problem that only exacerbates environmental degradation each year. Secondly, DNSH should also act as a means for checking coherence with longer term policy objectives that have not yet been fully translated into legislative provisions or are in the process of transposition in the national legislation.

The RRF was the first funding stream to apply DNSH, but since then, it has been extended to also include all funds under the Common Provision Regulation regulation,⁴ as well as being referenced in the Guidelines on State aid for climate, environmental protection, and energy.⁵ DNSH application under the RRF can therefore be seen as a 'pilot', making it even more important to learn from the experience and ensure that shortcomings are addressed and the tool is strengthened.

How does the DNSH principle work?

During the initial preparation of recovery plans, Member States were required to provide a DNSH assessment for each reform and investment included in their recovery plan, as outlined per the RRF regulation. Additional guidance was provided in the form of a Technical Guidance Note, detailing how Member States should apply the DNSH and the necessary supporting evidence needed to justify compliance with the principle.⁶

Member States are required to conduct either a simplified or substantive DNSH assessment, depending on the nature of the investment or reform in question. If a measure is marked as 100 per supporting an environmental objective, or there is no foreseen negative impact, then a simplified assessment can be undertaken. If a measure does not fulfil these criteria, a substantive assessment is needed, which requires substantial justification and evidence that it complies with each environmental objective. The

⁴ European Parliament, Council of the European Union, [Regulation \(EU\) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy](#), *EUR-Lex*, 30 June 2021.

⁵ European Commission, [Guidelines on State aid for climate, environmental protection and energy 2022](#), *EUR-Lex*, 18 February 2022.

⁶ European Commission, [Technical guidance on the application of 'do no significant harm' under the Recovery and Resilience Facility Regulation 2021/C 58/01, OJ C 58](#), *EUR-Lex*, 18 February 2021, 1-30, see section 2.2.

Commission's guidance note provides a list of different examples which Member States can use to justify claims that no significant harm will be done.

The DNSH principle is first evaluated ex-ante, when the plans are submitted by Member States to the Commission. If any investment or reform is deemed unsatisfactory by the Commission, then it is not approved and consequently is not included in the recovery plan.

During implementation, DNSH compliance is ensured through the pre-agreed milestones and targets included in Member States' recovery plans. This could include integrating DNSH considerations and any mitigating steps into the corresponding milestones and targets. When Member States submit payment requests for the next disbursement of funds, they must show that they have achieved the relevant milestones and targets set by a certain date.

In addition, Member States are encouraged, although not legally required, to integrate DNSH criteria and considerations into the relevant call for proposals and project selection criteria. If the RRF measure is composed of a single project, then compliance with the principle can be demonstrated for the specific project, but plans often include measures which are made up of several projects, and these are selected only in a second stage. In such cases, the DNSH principle must be integrated during the evaluation and selection of projects through a call for proposals and project selection criteria.

From paper to practice: DNSH implementation on the ground

a) Recovery plan assessment and approval stage

The process of assessing Member States' DNSH assessments during the time of recovery plan submission and subsequent approval has raised questions about the level of scrutiny applied to screening investments.

The assessments originally submitted to the Commission were so simplified that they were largely meaningless, consisting of yes/no questions to reply without having to provide any proof. Measures were often so vaguely described that their impacts could not be properly assessed. This can be attributed partly due to the Commission's assessment template, and partly as a result of lack of qualified staff at national level who were conducting the assessment.

DNSH is also applied ex-ante, before crucial details of measures such as location, size, timeline and impacts are planned and assessed. This leads to meaningless results and misleading assessments and relies on criteria that rarely go beyond what is anyway required by existing EU environmental legislation.

The following concerns were raised during this initial stage:

1. A lack of transparency of the DNSH assessment

The majority of assessments have not been systematically published and made publicly available, making any additional assessment impossible. Full transparency is needed in order for independent actors to determine whether the assessment is of sufficient quality and accuracy, and to provide additional input and expertise where necessary. Failure to disclose these assessments increases mistrust between managing

authorities and civil society, and is not in line with the Aarhus Convention's requirement to disclose environmental information.

2. Information available not going to the level of detail needed

In cases where assessments are available, the assertions are often not backed with sufficient evidence justifying that the activity in question will not cause harm to the environment. For example, data analysis, clear facts or ecological studies are not provided.

3. Doubts about DNSH compliance for specific projects and the use of a simplified assessment

Several projects have been financed that include road transport and fossil gas. These call into question the effectiveness of the DNSH principle for preventing harmful investments.

4. Misunderstanding of DNSH and the added value of the concept

The aim of the principle is to go beyond simply ensuring compliance with pre-existing environmental legislation. It is instead intended to provide an additional layer of criteria that need to be complied with to more tightly screen EU funds for financing potentially damaging activities. Yet, our experience is that national authorities responsible for applying the principle interpret it instead as a compliance check with EU legislation, which must be done regardless of the assessment.

5. Lack of objectivity and independence of assessments

Those responsible for proposing and implementing the investment are often the same as those conducting the DNSH assessment. This raises questions about the objectivity and level of expertise, especially when there is very limited external input and consultation.

6. The European Commission's capacity to check the assessments is insufficient

The quantity of assessments to be checked is not proportional to the European Commission's current capacities, which in turn allowed too many possibilities for incoherent interpretations.

b) Implementation stage

Since this initial ex-ante assessment, a number of reforms and investments have started to be implemented, requiring attention to ensure that there is sufficient monitoring and scrutiny applied. The ongoing implementation of measures under the RRF means that proper monitoring and scrutiny is needed to ensure they are implemented both in line with environmental legislation and the original DNSH assessment as conducted and positively assessed by the Commission. There are, however, limited mechanisms in place for checking proper and thorough compliance.

The vague nature of the assessment form supplied by the Commission, however, combined with the significant flexibility given to Member States for ensuring this is complied with during implementation, has led to a wide range of approaches for applying DNSH in practice.

A number of shortcomings have been identified in regards to the application of DNSH during implementation. These can be summarised as follows:

Continued misunderstanding of the role of DNSH

As was highlighted during the plan approval stage, there are very different understandings about the concept of DNSH and its added value, which has led to wide variations in terms of ensuring DNSH is properly applied during the project selection and implementation.

For example, some assessments at project level in Hungary consist of merely listing current legislation, which has already proven to be inefficient at preventing harm to the environment, while other assessments, even in the same country but in different sectors, provide a much higher degree of scrutiny through additional criteria.

A common and consistent understanding and approach is vital to ensure the principle has maximum value. This includes reinforcing the understanding that DNSH must go beyond simply showing compliance with environmental legislation that is already required.

Inconsistencies with the application of DNSH at project level

DNSH compliance must be assured during the implementation of individual projects. This means adequate criteria need to be complied with during the call for proposals, as well as the projects reflecting the DNSH assessment that was supplied at the measure level. Yet, the application of DNSH at project level and how to apply it during the calls for proposals remains a key barrier.

National authorities are applying different approaches, which, although to be expected, has created various inconsistencies and differences between the levels of application. In Estonia, for example, DNSH is applied via a common guidance document, providing only general instructions on how the calls for proposals should reflect DNSH criteria during the selection procedure, whereas in Poland, specific criteria are being applied on a case-by-case basis. There is a lack of consistency in understanding of the principle and scope of application in relation to different economic activities (in terms of size, nature and potential impacts on EU Green Deal objectives).

The national guidance documents and system put in place for implementation should be clear, enforceable and open for feedback to avoid inconsistencies with regard to the strength of screening.

Gaps between DNSH on paper and implementation in practice

Planned mitigation measures and further biodiversity assessments that were promised by the countries to the Commission during the initial recovery plan assessment and approval stage are not always being realised during the implementation phase. There is a divergence between what was stated would take place during the initial DNSH assessments, compared to the reality of the situation on the ground.

For example, in the case of flood risk mitigation measures in Latvia, the DNSH assessment provided promises to prioritise green infrastructure solutions as a mitigation measure to reduce environmental harm. However, in reality these green infrastructure solutions are only just beginning to be applied in the country. There are still too many gaps in terms of the level of application, legislation and know-how (including

available research information) for them to be considered sufficient to prevent harm to the environment and to justify a positive DNSH assessment. Although the relevant RRF measures have not yet been implemented in practice, there is a strong danger that they will cause more harm than expected by the DNSH assessment due to this ‘reality gap’.

DNSH applied ex-post rather than ex-ante

The stage at which DNSH is applied is critical to ensure it successfully prevents financing of harmful activities. For this reason, an assessment must be done prior to, or as part of the selection criteria for the project applicant to implement the project. For example, an applicant can declare that they will comply with the DNSH principle and that they will provide a DNSH compliance analysis after implementation, supported simply by a declaration.

Stricter requirements must be in place while selecting a project implementer to avoid potential violations during the project's implementation. This could include, for example, a checklist comprising specific criteria that need to be proven for the applicant to be awarded the project.

Lack of independent and qualified expertise to carry out assessments

Independent and qualified expertise is required to ensure DNSH compliance, yet several examples point to where project applicants are given the responsibility to conduct these assessments.

Although the responsibility put on the beneficiary can be positive in the sense that it provides more localised knowledge and active participation by those directly involved in the investment, the project promoter is by definition biased and must not be the one carrying out the assessment.

In Estonia, for example, the common guidance document outlining DNSH application under the call for proposals states how compliance may be assessed by the applicant itself, which will likely weaken the quality of the assessment.

Difficulty operationalising DNSH within the RRF timeframe

All payments for financing measures under the RRF must be completed by 2026, creating a very short timeframe for implementation. Managing authorities are therefore often struggling to conduct the necessary procedures to operationalise DNSH, such as impact assessments, within this short window. Rather than indicating the burdensome nature of ensuring DNSH compliance, this instead shows the need for increased national level resources and staffing to dedicate more capacity to such procedures. This would help ensure for example that there are much shorter times for evaluating whether projects need full-scale EIAs, which is a key obstacle slowing down the process.

Recommendations: how can DNSH be better implemented under the RRF and beyond?

1. **Develop better DNSH guidelines specifically designed for the implementation stage.** The only guidance issued so far was from February 2021, and exclusively concerned the assessment rather than implementation of DNSH. New, updated guidance is urgently needed for Member States and national authorities to frame expectations about the enforcement of the DNSH while the implementation and monitoring of investments and reforms is conducted. This should specifically include its application at the project level and would help develop a more consistent and uniform approach across Member States.

The relation between the DNSH principle and existing procedures like environmental impact assessment (EIA) and strategic environmental assessment (SEA) should also be clarified to avoid confusion and streamline enforcement of EU legislation.

2. **Develop and actively promote national level capacity building.** The DNSH assessment process cannot be framed as a one-time only box ticking exercise as part of the recovery plan approval. Instead, this should be an ongoing process which is continuously monitored throughout implementation.

Capacity building at national level needs to be carried out to ensure there is coherent understanding of the principle among managing authorities, beneficiaries and civil society actors. This will ensure continuous tracking of all reforms and investments, and to create the necessary expertise and know-how to fully implement measures in line with the assessments.

3. **Consult with a wide variety of stakeholders (including environmental NGOs) to improve expertise and accuracy of the tool.** Similar to the above point, civil society and in particular environmental NGOs are well positioned to provide their expertise in relation to applying DNSH. As such, they should be directly involved, and where applicable even responsible for ensuring the proper application and continued monitoring of implementation.
4. **Ensure increased access to information of all reforms and investments to be financed and DNSH assessments.** So far, either no or very few details have been made publicly available about investments planned or under implementation and their DNSH assessment. At the very minimum, key information needs to be known, such as specific locations, name and expected impacts, to monitor and scrutinise the process and allow concerns to be raised when necessary.
5. **Commit to interventions and enforcement where there is evidence of violations and non-compliance.** In cases where there is a lack of transparency, undue use of fast-track procedures, or weak implementation of the DNSH principle reported by civil society, it is crucial to have prompt intervention and enforcement. This means suspending the disbursement of RRF funding, particularly in cases of higher risk for misuse of the public funding and harm to the environment.

6. **Always exercise the precautionary approach.** The precautionary principle must be applied when screening measures, whereby reforms and investments that are too vaguely defined and lacking specific information, such as locations, should not be approved. Projects should be assessed with regard to their cumulative and long term impact, taking into consideration broader factors and implications, rather than relying simply on ‘yes’ or ‘no’ answers.

7. **Less haste, more speed:** Sufficient time must be allowed for programming and spending EU funds and carrying out the relevant environmental and other assessments in order to do so. The RRF was clearly aimed at speedy disbursement, but it needs to be honestly assessed what impact this has had on the quality of measures and projects selected and whether such mechanisms should play a role in the EU’s crisis response in the future.



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