



# Follow-up on the Commission explanatory note

“Application of the do no significant harm principle under cohesion policy”

*Máté Tas, DG REGIO G1*

# DNSH assessment of cohesion policy programmes

- Compliance with the principle has to be demonstrated already during the programming stage
- Assessment shall be carried out at the level of types of actions in the programmes, following the approach outlined in the RRF [technical guidance](#), or by applying other approach
- The DNSH assessment shall be documented by the national authorities, which shall be made available on request of the Commission services
- The programme shall state the results of the assessment for each type of action:
  - *“The types of actions have been assessed as compatible with the DNSH principle, since:*
    - *they are not expected to have any significant negative environmental impact due to their nature, or*
    - *they have been assessed as compatible under the RRF, or*
    - *there have been assessed as compatible under the RRF DNSH technical guidance, or*
    - *they have been assessed as compatible according to Member State’s methodology.”*
- The Commission will assess the programmes in line with Article 23 CPR, and can request additional information supporting the compliance with the DNSH principle from national authorities

# RRF approach

Two step approach: (1) screening, (2) substantive assessment

Part 1 – Member States should filter the six environmental objectives to identify those that require a substantive assessment

<i>Please indicate which of the environmental objectives below require a substantive DNSH assessment of the measure</i>	Yes	No	<i>Justification if 'No' has been selected</i>
Climate change mitigation			
Climate change adaptation			
The sustainable use and protection of water and marine resources			
The circular economy, including waste prevention and recycling			
Pollution prevention and control to air, water or land			
The protection and restoration of biodiversity and ecosystems			

# RRF approach

Part 2 – Member States should provide a substantive DNSH assessment for those environmental objectives that require it

<i>Questions</i>	<i>No</i>	<i>Substantive justification</i>
<b><i>Climate change mitigation:</i></b> Is the measure expected to lead to significant GHG emissions?		
<b><i>Climate change adaptation:</i></b> Is the measure expected to lead to an increased adverse impact of the current climate and the expected future climate, on the measure itself or on people, nature or assets?		
<b><i>The sustainable use and protection of water and marine resources:</i></b> Is the measure expected to be detrimental: (i) to the good status or the good ecological potential of bodies of water, including surface water and groundwater; or (ii) to the good environmental status of marine waters?		
<b><i>The transition to a circular economy, including waste prevention and recycling:</i></b> Is the measure expected to: (i) lead to a significant increase in the generation, incineration or disposal of waste, with the exception of the incineration of non-recyclable hazardous waste; or (ii) lead to significant inefficiencies in the direct or indirect use of any natural resource at any stage of its life cycle which are not minimised by adequate measures; or (iii) cause significant and long-term harm to the environment in respect to the circular economy?		
<b><i>Pollution prevention and control:</i></b> Is the measure expected to lead to a significant increase in the emissions of pollutants into air, water or land?		
<b><i>The protection and restoration of biodiversity and ecosystems:</i></b> Is the measure expected to be: (i) significantly detrimental to the good condition and resilience of ecosystems; or (ii) detrimental to the conservation status of habitats and species, including those of Union interest?		

# How shall the RRF approach be adapted to cohesion policy?

Cohesion policy programmes have a different architecture and regulatory context:

- SEA: obligation to carry out a Strategic Environmental Assessment (SEA) for cohesion policy programmes for which this is needed based on the requirements of the SEA Directive – the alignment of the programme to the SEA report supports DNSH compliance
- Enabling conditions: cohesion policy funding is conditional to the fulfilment of certain criteria derived from EU law
- Level of detail is different in cohesion policy programmes than in RRFs
- EU payments under cohesion policy are reimbursements of expenditure incurred in MS – corrective mechanisms if EU law is not complied with
- No obligation to follow the RRF technical guidance note – if other approach is applied it shall provide similar information as required by the RRF checklist

# A positive SEA ensures DNSH compliance?

- Scope is different (DNSH definition and SEA Directive)

DNSH	SEA
<b>1. climate change mitigation</b>	climatic factors
<b>2. climate change adaptation</b>	
3. water and marine resources	water
<b>4. the circular economy</b>	circular economy not explicitly mentioned but indirectly covered
5. pollution prevention and control	air, soil ...
6. biodiversity and ecosystems	biodiversity, fauna, flora
	<u>other elements:</u> population, human health, material assets, cultural heritage...

- Transposition in MS + specific ToR for SEA
- Objective is different

# How to make the best use of the SEAs to demonstrate compliance with the DNSH?

## **SEA is ongoing:**

- Add an additional chapter within the SEA report on the DNSH compliance with the DNSH principle (if SEA ongoing); or
- Add specific considerations on how the DNSH was complied with, in the light of the information and assessment under the SEA report.

## **SEA has been finalized:**

- Prepare a summary paper/table outside the SEA report on the DNSH compliance.

*Note: Solutions going beyond the SEA Directive requirements.*

# At what level shall the DNSH assessment be carried out?

- The assessment shall be carried at that level of the programme which provides the most detailed information about the scope of the funding
- This is the *types of actions*, which is an obligatory element of all programmes, pursuant to Article 22(3)(d)(i) CPR
- The definition (scope) of the types of actions has to be sufficiently detailed to allow for a meaningful DNSH assessment
- The relevant statement (4 options) shall be provided for all types of actions in the programme
- If the same statement applies across the types of actions under one specific objective, then one statement is sufficient
- Same approach applies to Interreg programmes

# Is a DNSH assessment necessary for “soft” measures?

- Assessment shall be carried out for all types of action
- Screening is likely provide the result that no substantive assessment is necessary (step 1 in the RRF checklist)
- Short justification necessary why no substantive assessment is necessary
- Statement in the programme:  
*The types of actions have been assessed as compatible with the DNSH principle, since they are not expected to have any significant negative environmental impact due to their nature.*
- The above does not apply automatically to these types of action, the screening has to be carried out, and its results will determine the way to proceed

# Does a 100% climate/environmental coefficient justify DNSH compliance?

- Same approach as outlined in detail in the RRF [technical guidance](#)
- Where the type of action is assigned to an intervention field that is tracked with a 100% coefficient as supporting climate or environmental objectives, DNSH is considered complied with for the relevant climate or environmental objective (but not for all!)
- The 100% coefficient can be used as a justification of DNSH compliance only for the objective to which the type of action contributes
- Example: intervention field “71 - Promoting the use of recycled materials as raw materials” with 100% environmental coefficient justifies compliance with the circular economy objective of the DNSH, but not with the other objectives
- 40% coefficient cannot be used as justification of DNSH compliance, and a substantive assessment may be necessary

# What is the role of Member States in selection of operations, specific to DNSH?

- Compliance with the DNSH principle during programme implementation is the responsibility of Member States, but there is no requirement to carry out a DNSH assessment for all operations
- Prerequisite: sufficiently clear definition of the scope the *types of actions* in the programme, that take into account the DNSH principle in their design, and allow for an exhaustive DNSH assessment of the programme
- The operations selected by the Managing Authority have to fall within the scope of the types of actions defined in the programme (that are DNSH compatible)
  - applying selection criteria that are aligned to the definition of the type of action, including elements on which basis the type of actions was subject to a positive DNSH assessment
  - the Managing Authority may decide to apply DNSH specific selection criteria
- Financial instruments: the financial intermediary is responsible to select operations that fall under the scope of the types of actions defined in the programme
- Management verifications by the MA to verify that the co-funded operations comply with the programme, audits by the AA to ensure effective functioning of the management and control systems  
(Key requirement 2: Appropriate criteria and procedures for the selection of operations)

# Timing of the Commission note

- The DNSH principle was inserted to the CPR at the initiative of the Council during the final stages of the legislative negotiations
- The approach proposed by the Commission was presented at the technical seminar on 2021-2027 programming of 16 June 2021 ([link](#))
- Objective of the note: consistent application of the principle across Member States and with the RRF
- The DNSH assessment has to be documented by Member States even in cases where the programme was already submitted to the Commission (we expect scrutiny from stakeholders – European Court of Auditors, European Parliament, civil society)