

Taking into account the Taxonomy: acting without harm in Structural Funds and recovery plans

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This briefing compares how the Do No Significant Harm Principle (DNSH) is applied in Cohesion policy and the Recovery and Resilience Fund (RRF). Presenting the features of its design and implementation in both contexts, we aim to identify the main differences and potential complementarity also in relation to existing provisions. While public administrations may face challenges in following this principle throughout the implementation cycle, we provide some good practices and reflect on lessons learned from some Member States.

Introduction

The 2020 Taxonomy Regulation is a key element in the European Union's strategy to achieve sustainable and inclusive growth by helping to reorient capital flows towards sustainable investment. It also applies to the EU's own spending through both the Recovery and Resilience Facility (RRF) Regulation and the Common Provisions Regulation (CPR) that governs the Structural Funds.

Programmes under the RRF and CPR need to be assessed with regard to six environmental objectives:

1. climate change mitigation;
2. adaptation to climate change and prevention of natural hazards;
3. water resource management and protection of marine resources;
4. the transition to a circular economy and the management of technological risks;
5. the fight against air, water and soil pollution;
6. the protection of biodiversity and natural, agricultural and forestry areas.

Investments should be evaluated in terms of their 'substantive contribution' to these objectives, and must also Do No Significant Harm (DNSH) to these objectives. Member States must ensure that this approach is followed in cohesion programmes and recovery plans, or EU funding will be cancelled or reduced.

This Briefing compares how the DNSH principle needs to be designed and implemented in the two frameworks with a view to identifying some common lessons and good practices. What are the most striking differences, and the challenges for public administrations?

DNSH in the Recovery and Resilience Facility

The key points of the RRF Regulation and the DNSH principle

The RRF Regulation already requires that 37% of funding be directed towards climate objectives, which is more ambitious than for the European Regional Development Fund (ERDF) within cohesion policy. The DNSH principle is also much more central in the approval of the recovery plans and the proposed choice of measures than it is in cohesion policy, where it complements a series of other provisions.

The RRF Regulation provides first of all that the DNSH principle must be respected in a transversal manner in the entire plan: that is, on 100% of the financed measures, at the level of each investment and each reform. This principle is one of the eleven criteria of the plan evaluation grid used by the Commission. Plans must reach an 'A' score on this criterion for their plan to be approved.

The methodology provided to Member States by the European Commission (EC) proposes specific elements for each of the six objectives, with concrete examples in the field of energy renovation of buildings, waste management, road transport or fleet renewal.

Six objectives DNSH	Specific examples provided by the EC for RRF measures
Climate impact	Investments in electricity generation must help reduce CO ₂ emissions in line with 2030 targets

Climate adaptation	A risk assessment for investments above €10 million
Water Protection	Water quality risk management
Circular economy	Efficient waste separation and material recycling
Pollution	Use of best available techniques
Biodiversity/Ecosystems	An environmental impact assessment

Ex-ante evaluation of the principle in the RRF as the first step

The DNSH principle is first evaluated ex-ante, when the plans are submitted on the basis of the methodology made available by the Commission. Member States thus had to submit a self-assessment, providing for each proposed measure a calculation of contributions to the objective of 37%, as well as an explanation of the methodology for verifying the DNSH principle during implementation, including the required supporting documents. The Commission then issued recommendations to the Council for the introduction of accompanying measures or corrective measures to avoid possible negative impacts.

For the Belgian recovery plan, for example, energy renovation will not support gas boilers, while hydrogen production will have to be based on a source of electricity from renewable sources to be certified through guarantees of origin or a direct PPA 'power purchase agreement'. The digitalisation of Belgian administration will go through a framework contract for ICT services (information and communication technologies) which will be in conformity with the DNSH. Research and development projects will also have to be technologically neutral while excluding fossil fuel research.

In other Member States plans, the ICT equipment in Malta complies with the Ecodesign Directive and at least 70% of building materials must be recycled. In Romania, the TEN (Trans-European Networks) road investments will have to be compensated by a substantial increase in electric vehicle recharging points and the area of reforestation.

Implications for public administrations in the follow-up of the principle in itinere and ex-post in the implementation of the RRF

If the RRF measure is composed of a single project, then compliance with the principle can be verified in a targeted manner, but plans often also include measures where projects are selected only in a second stage. In those cases the DNSH principle must systematically be integrated during the evaluation and selection of projects following a call for projects. Administrations will have to keep the evidence when communicating milestones and targets or during an ex-post audit, and provide mechanisms for the automatic suspension of funding in the event of non-compliance.

The Belgian recovery plan is based on the observation that some schools cannot be renovated because they are too rundown. The Flemish plan provides for new constructions according to the new Q-ZEN (Quasi Zero Energy) standard, which is the standard for new buildings since 1 January 2021. For other buildings, the renovation must be able to bring about a 30% reduction in energy needs. It will therefore be necessary to check the EPB certificates (Energy Performance of Buildings), energy accounting, energy audits within the framework of the Q-ZEN standard.

Summary comparison of DNSH in RRF and Cohesion policy

RRF	Cohesion Policy
37% climate target	37% climate target for Cohesion Fund and 30% for ERDF
DNSH part of the assessment of plans with A grade	Strategic environmental assessment (SEA) for programmes and certain activities are exclusion from scope of ERDF/CF and JTF
2 cross-cutting principles: DNSH and additionality	4 horizontal principles: DNSH, sustainable development, Charter of Fundamental Rights and Equality
Funding for green reforms (not only investments) foreseen in the RRF plans	Set of enabling conditions linked to Policy Objective 2 'Green Growth'

DNSH transversal to the entire plan: each investment and each reform	Climate Proofing for investments in infrastructures
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DNSH in EU cohesion policy

Different earmarking approach in EU Cohesion

The CPR specifies that each Member State must establish a climate contribution target when submitting its Partnership Agreement. This target is expressed as a percentage of its total ERDF and Cohesion fund with a minimum of 30% for ERDF (less demanding than RRF) and 37% for Cohesion Fund resources to strategic objective 2 'a greener Europe'.

Among the first partnership agreements adopted by the Commission, Member States also mention additional green efforts. Germany, for example, commits to achieve carbon neutrality by 2045 and dedicates 6% of the ERDF to biodiversity issues. Greece will dedicate EUR 4.2 billion from the ERDF/Cohesion Fund and commits to close lignite thermal power plants by 2028 while favouring multimodal transport rather than road transport axes. Lithuania will contribute with EUR 1.7 billion of ERDF/Cohesion Fund climate objectives, and is committed to ensuring that 50% of its electricity needs and 67% of heating come from renewable sources.

Complementing the SEA assessment with the DNSH principle

EU Cohesion programmes continue to come under the 2001 SEA Directive which requires Member States to carry out a Strategic Environmental Assessment (SEA) for each programme that is likely to produce significant negative impacts on the environment. Each programme must identify the environmental risks involved in each action and propose measures to compensate for these negative effects.

The SEA already gives a first indication of compliance with the DNSH principle but further screening will need to be done to ensure compliance to the six DNSH objectives. The Commission recommends using the SEA to target actions harmful to the environment and provide a first element for the DNSH assessment. The two processes can be

integrated. For example, an SEA was carried out for the ERDF/ESF Occitanie Operational Programme, covering four of the six DNSH objectives, while a complementary analysis on the other two was conducted additionally. Conversely, if an action was subject to a DNSH assessment under the RRF, the results also apply to cohesion policy.

Implications for public administrations in the follow-up of the principle in itinere

Members States need to ensure that horizontal principles are respected when implementing operations during the whole lifecycle of structural funds programmes. The DNSH principle is stipulated together with sustainable development as a horizontal principle alongside two other ones: the Charter of Fundamental Rights and Equality. The RRF Regulation on the other hand takes a simpler approach by referring to only two cross-cutting principles: additionality of the measures and the DNSH principle.

Managing Authorities need to exclude certain activities that are harmful to the environment. For example, the regulations governing the ERDF and Cohesion Fund, as well as the Just Transition Fund, exclude investments related to fossil fuels or the financing of landfills for waste treatment.

The CPR also specifies that Managing Authorities need to ensure that all investments in infrastructure with an expected lifespan of at least five years perform a climate proofing testing. Beneficiaries of structural funds are explicitly required to comply with relevant EU environmental legislation.

Finally, EU Cohesion policy relies strongly on thematic enabling conditions. For example, expenditure linked to ERDF investments in renewable energy can be reimbursed only provided that the National Energy and Climate Plan (NECP) has been submitted to the EC. Failure to satisfy enabling conditions would mean that the flow of EU funds will be interrupted. The RRF does not rely on enabling conditions but provides financial support for targeted green structural reforms, such as the gradual removal of the traditional company cars benefits in Belgium by financing the shift to electric vehicles.

Conclusion

The RRF and the EU cohesion policy both need to follow the DNSH principle in a consistent manner. In the RRF, the DNSH assessment is clearly outlined in a RRF technical guidance and complemented by national guidance. For EU cohesion policy, the Commission suggests following the same approach as RRF but also allows Member States to apply other approaches for this assessment.

The main challenge for both the RRF and EU cohesion policy will be the actual monitoring of correct implementation of DNSH on the ground by the final beneficiaries. In practice, it will be necessary to upgrade technical specifications in procurement and to ensure that the principle is well illustrated throughout the public procurement procedure. In Italy, this means following a 300-page guide and 29 ex-ante and ex post control tracks in the various areas.

Both RRF and EU cohesion policy would benefit from a reinforcement of capacities to properly implement the DNSH principle, especially since some of the objectives may prove more challenging for operations and beneficiaries than others: circular economy requirements are more challenging than those for climate change because of the more complex chain of suppliers/small- and medium-sized intermediaries/ consumers. It is the role of public administrations to make the necessary resources available for support (help-desks, contact points, sharing of good practices among Member States).

Looking to the future, the DNSH will need to be implemented alongside new EU priorities. The current Ukraine crisis is already changing the whole setting. The new REPowerEU proposal presented by the Commission on 18 May 2022 foresees that new measures in Recovery plans to improve energy infrastructures that meets the immediate security of supply needs for gas and oil do not need to comply with DNSH. The EU priority is now to ensure very rapid reduction of dependency on Russian suppliers. However, the exemption is limited to a limited set of new measures (mainly gas and oil facilities). All other operations in REPowerEU still need to comply to DNSH. With more of these exemptions, the DNSH set of rules will inevitably get more complex and patchy.