



Brussels, 28.9.2023  
C(2023) 6454 final

### **Commission Notice**

## **Technical guidance on the application of “do no significant harm” under the Recovery and Resilience Facility Regulation**

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*This document is based on the text of the Regulation on the Recovery and Resilience Facility as politically agreed between the European Parliament and the Council in December 2020 (2020/0104 (COD))<sup>1</sup>.*

*This technical guidance is intended to assist national authorities in the preparation of the Recovery and Resilience Plans under the Recovery and Resilience Facility Regulation. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.*

**The Regulation establishing the Recovery and Resilience Facility (RRF) provides that no measure included in a Recovery and Resilience Plan (RRP) should lead to significant harm to environmental objectives within the meaning of Article 17 of the Taxonomy Regulation<sup>2,3</sup>. According to the RRF Regulation, the assessment of the RRFs should ensure that each and every measure (i.e. each reform and each investment) within the plan complies with the ‘do no significant harm’ principle (DNSH)<sup>4</sup>.**

**The RRF Regulation also states that the Commission should provide technical guidance on how DNSH should apply in the context of the RRF<sup>5</sup>. The present document provides this technical guidance.** This guidance is limited to setting out the modalities of the DNSH application in the context of the RRF only, taking into consideration its specific characteristics, and is without prejudice to the application and implementation of the Taxonomy Regulation and other legislative acts adopted in relation to other EU funds. This guidance aims to clarify the meaning of DNSH and how it should be applied in the context of the RRF, and how the Member States can demonstrate that their proposed measures in the RRF comply with DNSH. Concrete worked out examples on how DNSH should be demonstrated in the plans are provided in Annex IV to this guidance.

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<sup>1</sup> <https://data.consilium.europa.eu/doc/document/ST-14310-2020-INIT/en/pdf>. The numbering and the wording of the enacting provisions are subject to modifications during the ongoing legal revision.

<sup>2</sup> See Article 4a (‘Horizontal principles’) of the RRF Regulation (which states that the RRF can only support measures that respect DNSH) and Articles 15 and 16 (‘Recovery and Resilience Plan’ and ‘Commission assessment’) (which further set out that the RRFs should explain and be assessed in light of “how the plan ensures that no measure for the implementation of reforms and investments included in the plan makes a significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) No 2020/852 (‘do no significant harm’)”).

<sup>3</sup> The ‘Taxonomy Regulation’ refers to Regulation (EU) No 2020/852 on the establishment of a framework to facilitate sustainable investment, by setting out a classification system (or ‘taxonomy’) for environmentally sustainable economic activities.

<sup>4</sup> The ‘Assessment guidelines for the Facility’ annexed to the RRF Regulation set out a number of assessment guidelines as a basis for the Commission to assess the proposals for RRFs as submitted by the Member States. The Commission is therein requested to use a rating system, ranging from A to C, for all the ‘Commission assessment’ criteria listed in Article 16(3) of the Regulation. Assessment criterion (d) clarifies that for the assessment of DNSH, the Commission has only two rating options, A or C. ‘A’ if no measure within a RRF leads to significant harm to environmental objectives and ‘C’ if one or more measures lead to significant harm to environmental objectives (within the meaning of Article 17 (‘Significant harm to environmental objectives’) of the Taxonomy Regulation). That Annex stipulates that a RRF does not comply satisfactorily with the assessment criteria as from the occurrence of a single ‘C’. In such a case, the plan could not be endorsed by the Commission.

<sup>5</sup> This technical guidance document supplements the initial guidance already provided by the Commission in the Annual Sustainable Growth Strategy 2021, and the accompanying staff working document and updates thereof.

## 1. WHAT IS ‘DO NO SIGNIFICANT HARM’?

**For the purposes of the RRF Regulation, DNSH is to be interpreted within the meaning of Article 17 of the Taxonomy Regulation.** This article defines what constitutes ‘significant harm’ for the six environmental objectives covered by the Taxonomy Regulation:

1. An activity is considered to do significant harm to *climate change mitigation* if it leads to significant greenhouse gas (GHG) emissions;
2. An activity is considered to do significant harm to *climate change adaptation* if it leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets<sup>6</sup>;
3. An activity is considered to do significant harm to the *sustainable use and protection of water and marine resources* if it is detrimental to the good status or the good ecological potential of bodies of water, including surface water and groundwater, or to the good environmental status of marine waters;
4. An activity is considered to do significant harm to the *circular economy*, including waste prevention and recycling, if it leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources, or if it significantly increases the generation, incineration or disposal of waste, or if the long-term disposal of waste may cause significant and long-term environmental harm;
5. An activity is considered to do significant harm to *pollution prevention and control* if it leads to a significant increase in emissions of pollutants into air, water or land;
6. An activity is considered to do significant harm to the *protection and restoration of biodiversity and ecosystems* if it is significantly detrimental to the good condition and resilience of ecosystems, or detrimental to the conservation status of habitats and species, including those of Union interest.

## 2. HOW SHOULD DNSH BE APPLIED IN THE CONTEXT OF THE RRF?

This section provides guidance on key issues underlying the DNSH assessment: the fact that all measures need to be addressed as part of the DNSH assessment (Section 2.1), although for certain measures the DNSH assessment can take a simplified form (Section 2.2); the relevance of EU environmental legislation and impact assessments (Section 2.3); the core guiding principles of the assessment (Section 2.4); and the applicability of the technical screening criteria of the Taxonomy Regulation (Section 2.5).

### 2.1 All measures need to be addressed as part of the DNSH assessment

**Member States need to provide a DNSH assessment for each and every measure<sup>7</sup> of their RRP.** According to the RRF Regulation, *no measure* included in a RRP should entail significant harm to environmental objectives, and the Commission cannot assess positively the RRP if one or more measures do not comply with DNSH. As a consequence, Member States need to provide an *individual* DNSH assessment for each measure within each

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<sup>6</sup> This means specifically that significant harm to the objective of climate change adaptation can be done by either (i) not adapting an activity to the adverse impacts of climate change when that activity is at risk of such impacts (such as a building in a flood-prone area), or (ii) by maladaptation, when putting in place an adaptation solution that protects one area (“*people, nature or assets*”), while increasing risks in another area (such as building a dyke around a plot in a flood plain which results in shifting the damages to a neighbouring plot that is not protected).

<sup>7</sup> According to Article 14 (‘*Eligibility*’) of the RRF Regulation, “*Recovery and resilience plans eligible for financing under this Facility instrument shall comprise measures for the implementation of reforms and public investment.*”

component of the plan<sup>8</sup>. Therefore, the DNSH assessment is not to be carried out at the level of the plan or of individual components of the plan, but at measure level. This applies equally to measures that are considered to provide a contribution to the green transition and all other measures included in the RRFs<sup>9</sup>.

**Member States need to assess both reforms and investments.** Under the RRF, Member States need to put forward coherent packages of measures, including both reforms and investments (in accordance with Article 14(1) of the RRF Regulation). The DNSH assessment needs to be carried out not only for investments, but also for reforms. Reforms in some sectors, including industry, transport and energy, while having the potential to significantly contribute to the green transition, can also entail a risk of significant harm to a number of environmental objectives, depending on how they are designed<sup>10</sup>. On the other hand, reforms in other sectors (e.g. education and training, public administration, and arts and culture) will likely have a limited risk of environmental harm (see simplified approach in Sections 2.2 and 3), independently of their potential contribution to the green transition, which might still be significant. The present guidance aims to support Member States in carrying out the DNSH assessment for both investments and reforms. The fact that the DNSH assessment must be carried out for reforms should not be understood as a deterrent for inclusion in the RRFs of important reforms in the areas of industry, transport and energy, given that such measures have a major potential to foster the green transition and to promote the recovery.

## **2.2 For certain measures, the DNSH assessment can take a simplified form**

**While all measures require a DNSH assessment, a simplified approach can be taken for measures that have no or an insignificant foreseeable impact on all or some of the six environmental objectives.** By design, certain measures might have a limited bearing on one or several environmental objectives. In this case, Member States may provide a brief justification for those environmental objectives and focus the substantive DNSH assessment on environmental objectives that may be significantly impacted (see Section 3, Step 1). For instance, a labour market reform intended to increase the overall level of social protection for the self-employed would have no or an insignificant foreseeable impact on any of the six environmental objectives, and a brief justification could be used for all six objectives. Similarly, for some simple energy efficiency measures, such as the replacement of existing windows with new, energy-efficient windows, a brief justification could be used as regards compliance with DNSH for the climate change mitigation objective. By contrast, this simplified approach is unlikely to be applicable to some investments and reforms in a number of areas (e.g. energy, transport, waste management, industry) which have a higher risk to affect one or more of the environmental objectives.

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<sup>8</sup> Compliance with DNSH is assessed at the level of each *measure* within the context of the RRF, while Article 17 (*‘Significant harm to environmental objectives’*) of the Taxonomy Regulation refers to *economic activities*. A measure under the RRF (i.e. an investment or a reform) is an intervention that may constitute an economic activity or that may trigger (changes to) economic activities. Therefore, for the purposes of the RRF, *economic activities* as set out in Article 17 of the Taxonomy Regulation are interpreted as *measures* in this guidance.

<sup>9</sup> As such, the scope of activities covered by the DNSH assessment under the RRF Regulation is different, and considerably broader than the one under the Taxonomy Regulation, which aims to identify environmentally sustainable economic activities. It thus classifies and sets out criteria for environmentally sustainable economic activities that substantially contribute to the environmental objectives listed in Articles 10 to 15 of that Regulation, and do not significantly harm those objectives. This is a different aim than the RRF Regulation, which aims to demonstrate that a wide range of measures do no significant harm to any of the environmental objectives.

<sup>10</sup> For instance, a reform that may lead to an increase in funding for fossil fuels through government-owned banks and financial institutions, or an increase in explicit or implicit subsidies for fossil fuels, could be considered to risk causing significant harm to the objectives of climate change mitigation and pollution prevention and control. These considerations would need to be reflected in the DNSH assessment.

**When a measure is tracked as 100% supporting one of the six environmental objectives, this measure is considered compliant with DNSH for that objective<sup>11</sup>.** Some measures are tracked as supporting climate change or other environmental objectives in the context of the RRF, according to the ‘Methodology for climate tracking’ annexed to the RRF Regulation. Where a measure is tracked with a 100% coefficient as supporting climate change objectives, DNSH is considered complied with for the relevant climate change objective (i.e. climate change mitigation or adaptation)<sup>12</sup>. Where a measure is tracked with a 100% coefficient as supporting environmental objectives other than the climate-related ones, DNSH is considered complied with for the relevant environmental objective (i.e. water and marine resources, the circular economy, pollution prevention and control, or biodiversity and ecosystems). In each case, Member States will have to identify and substantiate which of the six environmental objectives of the Taxonomy Regulation the measure supports. Member States would nevertheless need to demonstrate that the measure does not significantly harm the remaining environmental objectives<sup>13</sup>.

**Similarly, where a measure ‘contributes substantially’<sup>14</sup>, pursuant to the Taxonomy Regulation, to one of the six environmental objectives, this measure is considered compliant with DNSH for that objective<sup>15</sup>.** For example, a Member State putting forward a measure that supports the manufacture of energy efficiency equipment for buildings (e.g. presence and daylight controls for lighting systems) would not have to carry out a substantive DNSH assessment for the objective of climate change mitigation, in case the Member State can show that the proposed measure ‘contributes substantially’ to that environmental objective, in line with the Taxonomy Regulation. In such a case, Member States would only have to demonstrate the absence of significant harm to the other five environmental objectives.

### **2.3 Relevance of EU law and impact assessments**

**Complying with the applicable EU and national environmental law is a separate obligation and does not waive the need for a DNSH assessment.** All measures proposed in the RRFs must comply with the relevant EU legislation, including the relevant EU

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<sup>11</sup> To reflect the extent to which a measure contributes to the overarching climate targets set out in the RRF Regulation and compute the overall shares of the plan’s total allocation related to climate, Member States should use the methodology, intervention fields and associated coefficients for climate tracking, according to the ‘Methodology for climate tracking’ annexed to the RRF Regulation. Where the Commission has not validated the choice of intervention field and coefficient proposed by a Member State, the measure will not be considered automatically compliant with DNSH for the relevant objective(s), and the DNSH assessment will still need to be carried out.

<sup>12</sup> For instance, a support/renewal scheme for the replacement of outdated rolling stock with zero tailpipe emission rolling stock could fall in this category.

<sup>13</sup> The approach mentioned in this paragraph is not applicable for measures tracked with a 40% coefficient. For such measures, Member States will need to provide an explanation of why the measure is compliant with DNSH, taking into account the general principles outlined in the rest of this guidance document (for example, Member States will need to confirm that no fossil fuels are involved, or that the criteria spelled out in Annex III are complied with for the climate change mitigation objective). Where measures tracked with a 40% coefficient have no or an insignificant foreseeable impact on a specific environmental objective, or where they ‘contribute substantially’ to a specific environmental objective pursuant to the Taxonomy Regulation, Member States will still be able to apply a simplified approach for that environmental objective (as per the first and third paragraphs of Section 2.2).

<sup>14</sup> Articles 10 to 16 of the Taxonomy Regulation define what ‘substantial contribution’ means for each of the six environmental objectives, as well as for ‘enabling activities’. To benefit from the simplified approach outlined in this paragraph, Member States would need to show that the measure ‘contributes substantially’ to one or more of the environmental objectives pursuant to Articles 10 to 16 of the Taxonomy Regulation (see also Section 2.5).

<sup>15</sup> This option is particularly relevant for activities that are identified as making a substantial contribution to an environmental objective under the Taxonomy Regulation, but which are not tracked as 100% supporting climate or environment objectives under the ‘Methodology for climate tracking’ annexed to the RRF Regulation. In the area of climate change mitigation, these activities include, for example: specific low- and zero-emission light-duty vehicles; specific zero- or low-emission vessels for water transport; specific low- and zero-emission heavy-duty vehicles; electricity transmission and distribution infrastructure; hydrogen transmission and distribution networks; specific waste management activities (e.g. separately collected non-hazardous waste that is segregated at source and prepared for reuse/recycling); and breakthrough circular economy research, development and innovation.

environmental legislation. Although compliance with the existing EU legislation provides a strong indication that the measure does not entail environmental harm, it does not automatically imply that a measure complies with DNSH, in particular as some of the objectives covered by Article 17 are not yet fully reflected in the EU environmental legislation.

**Impact assessments related to the environmental dimensions or the sustainability proofing of a measure should be taken into account for the DNSH assessment.** Whilst they do not automatically entail that no significant harm is done, they constitute a strong indication for the absence of significant harm for a number of the relevant environmental objectives. Therefore, the fact that a Member State has carried out an Environmental Impact Assessment (EIA) in line with the Directive 2011/92/EU, a Strategic Environmental Assessment (SEA) in line with Directive 2001/42/EC<sup>16</sup>, or Sustainability / Climate Proofing, as laid down in the guidance from the Commission on sustainability proofing under the InvestEU Regulation, for a particular measure included in the RRP will support the arguments brought forward by the Member State in the context of the DNSH assessment. For instance, depending on the exact design of a measure, carrying out an EIA and implementing the required mitigation steps for protecting the environment can in some cases, and in particular when it comes to investments in infrastructure, be sufficient for a Member State to demonstrate compliance with DNSH for some of the relevant environmental objectives (notably, the sustainable use and protection of marine and water resources<sup>17</sup>, as well as protection and restoration of biodiversity and ecosystems<sup>18</sup>). However, this does not exempt the Member State from carrying out the DNSH assessment for that measure since an EIA, SEA or proofing might not cover all aspects that are required as part of the DNSH assessment<sup>19</sup>. This is because neither the legal obligations contained in the EIA and SEA Directives, nor the approach set out in the relevant Commission guidelines on proofing, are the same as those set out in Article 17 (*'Significant harm to environmental objectives'*) of the Taxonomy Regulation<sup>20</sup>.

## 2.4 Guiding principles for the DNSH assessment

**In the context of the RRF, the *direct* and *primary indirect* impacts of a measure are relevant for the DNSH assessment<sup>21</sup>.** Direct impacts may reflect effects of the measure at project-level (e.g. production plant, protected area) or at system-level (e.g. railway

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<sup>16</sup> An environmental assessment is a procedure that ensures that the environmental implications of plans/programmes/projects are taken into account before the decisions are made. Environmental assessments can be undertaken for individual projects, such as a dam, motorway, airport or factory, on the basis of Directive 2011/92/EU (known as 'Environmental Impact Assessment' – EIA Directive) or for public plans or programmes on the basis of Directive 2001/42/EC (known as 'Strategic Environmental Assessment' – SEA Directive).

<sup>17</sup> If the EIA includes an assessment of the impact on water in accordance with Directive 2000/60/EC and the risks identified have been addressed in the design of the measure.

<sup>18</sup> Without prejudice to additional assessments required by Directives 2009/147/EC and 92/43/EEC if the operation is located in or near biodiversity-sensitive areas (including the Natura 2000 network of protected areas, UNESCO World Heritage sites and Key Biodiversity Areas, as well as other protected areas).

<sup>19</sup> Conversely, the DNSH assessment does not waive the obligation for an EIA/SEA, climate, environmental or sustainability proofing, if this is required by existing EU legislation, such as for projects financed through InvestEU or the Connecting Europe Facility.

<sup>20</sup> For example, an EIA is required for the construction of crude-oil refineries, coal-fired thermal power stations and projects involving the extraction of petroleum or natural gas. However, these types of measures would not be compliant with DNSH to climate change mitigation of Article 17 (*'Significant harm to environmental objectives'*) of the Taxonomy Regulation, which state that significant harm is done if an activity 'leads to significant GHG emissions'. Similarly, while the construction of a new airport requires an EIA, on the basis of DNSH to climate change mitigation, only measures related to low-carbon airport infrastructure such as investments in energy-efficient airport buildings, on-site renewable grid connection upgrades of airport infrastructure and related services are likely to be compliant.

<sup>21</sup> This approach follows Article 17 (*'Significant harm to environmental objectives'*) of the Taxonomy Regulation, which requires taking into account the environmental impacts of the activity and of the products and services provided by that activity throughout their life cycle.

network, public transport system), and that occur at the time of implementation of the measure. Primary indirect impacts may reflect effects that occur outside of those projects or systems and may materialise after the implementation of the measure or beyond the timeline of the RRF but are reasonably foreseeable and relevant. An example of a *direct* impact in the area of road transport would be the use of materials during the construction of the road. An example of a *primary indirect* impact would be the expected future GHG emissions due to an increase in overall traffic during the use-phase of the road.

**The DNSH assessment needs to consider the life cycle of the activity that results from the measure.** Based on Article 17 (*‘Significant harm to environmental objectives’*) of the Taxonomy Regulation, ‘significant harm’ in the context of the RRF is assessed by taking into account the life cycle. Applying life cycle considerations rather than carrying out a life cycle assessment suffices for the purposes of the DNSH assessment in the context of the RRF<sup>22</sup>. The scope of the assessment should encompass the production, use and end-of-life phases – wherever most harm is to be expected. For instance, for a measure supporting the purchase of vehicles, the assessment should take into account, among others, the pollution (e.g. emissions to air) generated when assembling, transporting and using the vehicles, and the appropriate management of the vehicles at their end-of-life. In particular, an appropriate end-of-life management of battery and electronic elements (e.g. their reuse and/or the recycling of critical raw materials therein) should ensure that no significant harm is done to the environmental objective of the circular economy.

**Measures promoting greater electrification (e.g. industry, transport and buildings) are considered compatible with the DNSH assessment for the environmental objective of climate change mitigation.** To enable the shift to an effective climate-neutral economy, measures leading to greater electrification of key sectors such as industry, transport and buildings (e.g. investment in electricity transmission and distribution infrastructure; electric roadside infrastructure; electricity storage; mobility batteries; heat pumps) should be encouraged. Electricity generation is not yet a climate-neutral activity across the EU (the CO<sub>2</sub> intensity of the electricity mix differs across Member States), and in principle the increased consumption of carbon-intensive electricity represents a primary indirect effect of such measures, at least in the short term. However, the deployment of these technologies and infrastructure is required for a climate-neutral economy, together with measures to achieve 2030 and 2050 GHG emissions reduction targets, and a policy framework for electricity decarbonisation and the development of renewables is already in place in the EU. In this context, these investments should be deemed as complying with DNSH in the area of climate change mitigation under the RRF, provided that Member States justify that greater electrification is accompanied by increased renewables generation capacity at the national level. In addition, Member States would nevertheless need to demonstrate that these measures do not significantly harm the other five environmental objectives.

**For economic activities where there is a technologically and economically feasible alternative with low environmental impact, the assessment of the negative environmental impact of each measure should be carried out against a ‘no intervention’ scenario by taking into account the environmental effect of the measure in absolute terms<sup>23</sup>.** This approach consists of considering the environmental impact of the measure, compared to a situation with no negative environmental impact. The impact

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<sup>22</sup> In practice, this means that attributional or consequential life cycle analyses (e.g. including the indirect environmental impacts of technological, economic or social changes due to the measure) are not required. However, evidence from existing life cycle analyses could be used to substantiate the DNSH assessment.

<sup>23</sup> This approach applies in particular to measures under the RRF that relate to public investments, or that directly entail a government expenditure. For measures that relate to the implementation of reforms, as a rule the DNSH assessment should be carried out by reference to the status quo before the implementation of the measure.

of a measure is not assessed in comparison to the impact of another existing or envisaged activity that the measure in question may be replacing<sup>24</sup>. For instance, if a hydropower plant requiring building a dam on an untouched area is assessed, the impact of the dam would be evaluated against a scenario where the concerned river remains in its natural state rather than considering a different possible alternative use of the area. Similarly, if a scrappage scheme aims to replace inefficient cars with more efficient cars relying on internal combustion-engines, the impact of the new internal combustion-engine cars would be evaluated in absolute terms as low-impact alternatives exist (e.g. zero-emission cars), rather than compared with the impact of the inefficient cars they are replacing (see Annex IV, Example 5, showing an example of non-compliance with DNSH).

**For economic activities where there is no technologically and economically<sup>25</sup> feasible alternative with low environmental impact, Member States may demonstrate that a measure does no significant harm by adopting the best available levels of environmental performance in the sector.** In these cases, DNSH would be assessed compared to the best available levels of environmental performance in the sector. A number of conditions need to apply for this approach to hold, including the fact that the activity leads to a significantly better environmental performance than available alternatives, avoids environmentally harmful lock-in effects, and does not hamper the development and deployment of low-impact alternatives<sup>26, 27</sup>. This approach should be applied at sector-level, i.e., all alternatives within the sector should be explored<sup>28</sup>.

**In light of the conditions set out above, measures related to power and/or heat generation using fossil fuels, as well as related transmission and distribution infrastructure, as a general rule should not be deemed compliant under DNSH for the purposes of the RRF, given the existence of low-carbon alternatives.** From a climate change mitigation perspective, limited exceptions for measures related to power and/or heat generation using natural gas, as well as related transmission and distribution infrastructure, can be made to this general rule, on a case-by-case basis. This is relevant specifically to Member States that face significant challenges in the transition away from more carbon-intensive energy sources, such as coal, lignite or oil, and where a measure or combination of measures can therefore lead to a particularly large and rapid reduction in

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<sup>24</sup> This approach is in line with the logic of the Taxonomy Regulation: under the draft delegated act, several of the technical screening criteria on DNSH are based on *absolute* criteria, such as specific emissions thresholds, (e.g. CO<sub>2</sub> limits for adaptation solutions in electricity generation activities or for passenger vehicles). The approach is further supported by the precautionary principle, which is one of the guiding principles of environmental laws in the EU, including the Taxonomy Regulation (Recital 40 and Article 19(1)(f)) and stems from the fact that harm to the environment needs to be seen from an absolute, not relative perspective (e.g. global warming arises due to the absolute level of the stock of GHG emissions).

<sup>25</sup> To show that an alternative with low environmental impact is not economically feasible, Member States need to take into account the costs arising across the lifetime of the measure. These costs include negative environmental externalities and future investment needs required to switch to an alternative with low environmental impact, avoiding lock-ins or hampering the development and deployment of low-impact alternatives.

<sup>26</sup> Recitals 39 and 41, as well as Article 10(2) of the Taxonomy Regulation, set out the definition of ‘transitional activities’. The conditions described here draw from that definition but are not the same, given that the Taxonomy Regulation defines criteria for transitional activities making a substantial contribution, while the present guidance sets out criteria for DNSH only, and as such, it is applicable to a broader set of measures and applies a different substantive test.

<sup>27</sup> This approach, and the DNSH assessment overall, is without prejudice to other considerations affecting the assessment of measures in the context of the RRFs, including considerations associated with State aid control, consistency with other EU funds, and possible crowding-out of private investment. In relation to measures supporting activities covered by the EU Emission Trading System (ETS) in particular, in order not to distort the market signals put in place by the ETS and in line with the approach under the Just Transition Fund, activities with projected CO<sub>2</sub> equivalent emissions that are not substantially lower than the relevant benchmarks established for free allocation should generally not be supported under the RRF.

<sup>28</sup> In cases where even the best available levels of environmental performance would still lead to environmentally harmful lock-in effects, measures supporting research and development for lower impact alternatives should be considered, in line with intervention fields 022 and 023, set out in the ‘Methodology for climate tracking’ annexed to the RRF Regulation.



GHG emissions. Those exceptions will need to comply with a number of conditions laid out in Annex III, in order to avoid carbon-intensive lock-in effects and be in line with the EU's decarbonisation objectives for 2030 and 2050. In addition, Member States will need to demonstrate compliance with DNSH of these measures for the remaining five environmental objectives.

**To ensure that measures are future-proof and do not lead to harmful lock-in effects, and to promote beneficial dynamic effects, accompanying reforms and investments may be required.** Examples of such accompanying measures include equipping roads with low-carbon infrastructure (e.g. charging stations for electric vehicles or hydrogen fuelling stations) and putting in place appropriate road access or congestion charges, or broader reforms and investments to decarbonise national electricity mixes or transport systems. While these additional reforms and investments could be addressed within the same measure, by way of a sub-measure, this might not always be possible. Thus, flexibility should be granted to allow Member States in limited circumstances and on a case-by-case basis to demonstrate avoidance of adverse lock-in effects by relying on accompanying measures in the RRP.

**Compliance with DNSH, along these guiding principles, should be integrated in the design of measures, including at the level of milestones and targets.** The description of measures in the RRP should reflect the relevant DNSH considerations from the outset. This may mean integrating DNSH considerations and necessary mitigating steps to be taken to ensure compliance into corresponding milestones and targets or in tendering and procurement processes<sup>29</sup>. For example, a measure setting out investments in a large road infrastructure project, which required an EIA to be carried out before issuing the relevant permits, could specify as a milestone the implementation of the required mitigation steps for protecting the environment that resulted from the EIA. When it comes to the tendering or procurement process for this type of project, the measure's design could set out that tender or procurement specifications will contain specific conditions related to DNSH. This could include, for instance, a minimum percentage of construction and demolition waste that will be prepared for reuse and recycling. Likewise, accompanying measures that support the shift to cleaner modes of transport, such as reforms related to road pricing, investments supporting modal shift to rail, inland waterways or incentives for the use of public transport, should be integrated in the description of the measure. Measures of a more general nature, such as broad industry support schemes (e.g. financial instruments covering investments in companies across multiple sectors), should be designed to ensure adherence of the relevant investments with DNSH.

For the purpose of financial products implemented under the Member State compartment pursuant to the relevant provisions of the InvestEU Regulation as referred to in Article 7 of the Regulation on the Recovery and Resilience Facility, the Commission considers the application of the Technical guidance on sustainability proofing for the InvestEU Fund (2021/C 280/01) in combination with the application of the relevant implementing partner's policies related to implementing the InvestEU Fund (notably the EIB Group's 'Climate Bank Roadmap 2021-2025' and the EBRD's '2019 Environmental and Social Policy' and 'Methodology to determine the Paris Agreement alignment of EBRD') sufficient to prove the absence of significant harm as per Article 5(2) of Regulation (EU) 2021/241. Guarantee agreements for implementing partners, other than the EIB Group and the EBRD, will have to align with the standards set out in the Taxonomy Delegated Acts for the relevant environmental objective or have similar criteria to the EIB Group policy

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<sup>29</sup> Milestones and targets, including those reflecting compliance with DNSH, are subject, like all other milestones and targets, to Article 19a of the RRF Regulation (*'Rules on payments, suspension and termination of agreements regarding financial contributions and loan support'*).

above mentioned or rely on the RRF exclusion list set out in the relevant Council Implementing Decision Annex.

## **2.5 Applicability of the technical screening criteria of the Taxonomy Regulation**

**Member States are not required to refer to the ‘technical screening criteria’ (quantitative and/or qualitative criteria) established according to the Taxonomy Regulation to substantiate compliance with DNSH.** According to the RRF Regulation<sup>30</sup>, the entry into force of the delegated acts containing technical screening criteria<sup>31</sup> should not affect the technical guidance provided by the Commission. However, when assessing compliance with DNSH, Member States have the option of relying upon the technical screening criteria in the delegated acts under the Taxonomy Regulation. They can also refer to the draft version of the delegated acts.

## **3. HOW SHOULD MEMBER STATES CONCRETELY SHOW IN THEIR PLANS THAT THE MEASURES COMPLY WITH DNSH?**

**To facilitate the Member States’ assessment and presentation of DNSH in their RRP, the Commission has prepared a checklist (see Annex I),** which should be used by Member States to support their analysis of how each measure relates to DNSH. The Commission will then use this information to assess whether and how each measure in RRP respects DNSH, in accordance with the criteria established in the RRF Regulation.

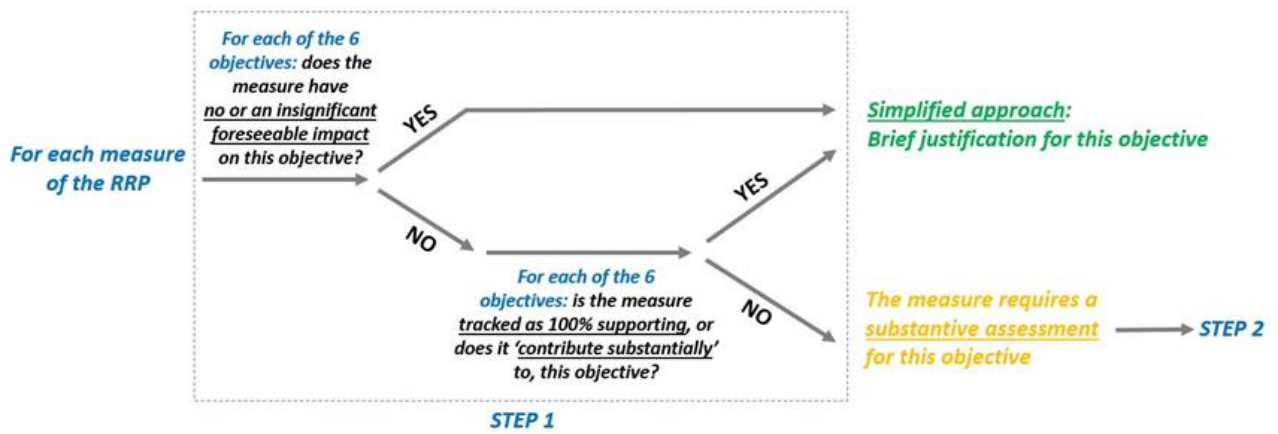
**The Commission invites Member States to answer the questions set out in the checklist, and integrate the answers into their RRP,** as part of the description of each measure (see Part 2, Section 8 of the Commission Template – *do no significant harm*). Where necessary for supporting the assessment provided in the checklist, Member States are also invited to provide additional analysis and/or supporting documents, in a targeted and limited manner, to further substantiate their replies to the list of questions.

**The checklist is based on the following decision tree, which should be used for each measure of the RRP.** The section below provides more information on the two steps of the decision tree.

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<sup>30</sup> Recital 11b of the RRF Regulation.

<sup>31</sup> Based on Article 3(d) of the Taxonomy Regulation (*‘Criteria for environmentally sustainable economic activities’*), the Commission is empowered to adopt delegated acts containing detailed technical screening criteria (quantitative and/or qualitative criteria) to determine the conditions under which a specific economic activity can (i) qualify as substantially contributing to one of the six environmental objectives; and (ii) do no significant harm to any of the other environmental objectives. So far, one delegated act related to climate mitigation and climate change adaptation has been published for consultation. It can be found at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12302-Climate-change-mitigation-and-adaptation-taxonomy#ISC\\_WORKFLOW](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12302-Climate-change-mitigation-and-adaptation-taxonomy#ISC_WORKFLOW)



Decision tree

**Step 1: Filter the six environmental objectives to identify those that require a substantive assessment**

As a first step, Member States are invited to complete **Part 1 of the checklist** (see Annex I), to identify which of the six environmental objectives require a substantive DNSH assessment of the measure. This first, high-level screening will facilitate Member States’ analysis, by distinguishing between environmental objectives for which the DNSH assessment will require a substantive assessment, and those for which a simplified approach (see Section 2.2) can be sufficient.

*Part 1 of the checklist*

<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			

Where the answer is ‘no’, Member States are asked to provide a brief justification (in the right-hand column), why the environmental objective does not require a substantive DNSH assessment of the measure, based on one of the following cases (to be indicated by Member States) (see Section 2.2):

- a. **The measure has no or an insignificant foreseeable impact on the environmental objective** related to the direct and primary indirect effects of the measure across its life cycle, given its nature, and as such is considered compliant with DNSH for the relevant objective;
- b. **The measure is tracked as supporting a climate change or environmental objective with a coefficient of 100%**, and as such is considered compliant with DNSH for the relevant objective;

- c. **The measure ‘contributes substantially’ to an environmental objective, pursuant to the Taxonomy Regulation**, and as such is considered compliant with DNSH for the relevant objective.

For RRP measures for which the simplified approach would suffice, the requested explanations (right-hand column) can be limited to a minimum and if useful grouped together, allowing Member States to focus on the demonstration of the DNSH assessment for those measures where a substantive analysis of possible significant harm is required.

**Where the answer is ‘yes’, Member States are invited to proceed to Step 2** of the checklist for the corresponding environmental objectives.

*For worked out examples in relation to this step, see Annex IV.*

**Step 2: Provide a substantive DNSH assessment for those environmental objectives that require it**

**As a second step, for each measure of the plan, Member States are invited to use Part 2 of the checklist (see Annex I) to perform a substantive DNSH assessment for those environmental objectives selected with a ‘yes’ under Step 1.** Part 2 of the checklist compiles, for each of the six objectives, the questions corresponding to the legal requirements of the DNSH assessment. For measures to be included in the plan, they have to comply with DNSH. Therefore the answers to the questions in Part 2 of the checklist has to be ‘no’, to indicate that no significant harm is being done to the specific environmental objective.

*Part 2 of the checklist – Example for the environmental objective ‘climate change mitigation’*

<i>Questions</i>	<i>No</i>	<i>Substantive justification</i>
<i>Climate change mitigation: Is the measure expected to lead to significant GHG emissions?</i>		

**Member States are asked to confirm that the answer is ‘no’, and to provide a substantive explanation and justification of their reasoning in the right-hand column, on the basis of the corresponding questions.** Where necessary, as a complement to the table, Member States are also invited to provide further analysis and/or supporting documents, in a targeted and limited manner, to further substantiate their replies to the list of questions.

**Where Member States cannot provide a sufficient substantive justification, the Commission may consider that a given measure is associated with possible significant harm** to some of the six environmental objectives. If this is the case, the Commission would need to give a rating of ‘C’ to the RRP under the criterion spelled out in paragraph 2.4 of Annex II to the RRF Regulation. This would be without prejudice to the process outlined in Articles 16 and 17 of the RRF Regulation, and in particular the possibility for further exchanges between the Member State and the Commission outlined in Article 16(1).

*For worked out examples in relation to this step, see Annex IV.*

**Where useful, when providing a substantive DNSH assessment in the context of Step 2, Member States can rely upon the list of supporting elements of evidence provided in Annex II.** This list is provided by the Commission to facilitate the case-by-case assessment by the Member State as part of the substantive assessment in the context of Part 2 of the checklist. While using this list is optional, Member States can refer to this list

to identify the type of evidence that can support their reasoning to establish that a measure is compliant with DNSH, complementing the general questions included under Part 2 of the checklist.