

Extension of the 'do no significant harm' principle under the next EU Multiannual Financial Framework

Response to the call for evidence

Background

ClientEarth welcomes the opportunity to provide feedback to the European Commission's call for evidence on the "*application of the "do no significant harm" principle to the Social Climate Fund and policy reflections for its future extension under the next Multiannual Financial Framework*".¹

Our contribution focuses on the future development of a single "do no significant harm" (**DNSH**) guidance for the next Multiannual Financial Framework (**MFF**). We are generally in favour of such guidance and recommend to take the following aspects into account to make it an effective safeguard against environmentally harmful public spending.

Recommendations

1. The single DNSH guidance should act as a **minimum requirement for all EU funds** (and sectors), while leaving room for additional dedicated DNSH tools (guidance, checklist, thresholds) tailored at each specific fund and its governance mechanism.

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14240-Social-Climate-Fund-guidance-on-applying-the-do-no-significant-harm-principle_en

2. **No activity, measure or project can by principle be considered as compliant with the DNSH principle** in the single DNSH guidance. Conversely, the guidance should contain outright **exclusions**, at measure or economic activity level, that unequivocally harm the environment. Such exclusion list applicable across EU funds creates legal certainty and reduces loopholes, while it also leaves room for a dedicated additional exclusion list for each specific EU fund. Funding fossil fuels activities or measures should irrevocably be on the general exclusions list.
3. Where relevant, the single DNSH guidance should be linked to the European Commission's methodology on **environmental harmful subsidies** (EHS) and clearly state that any measure or project that qualifies as an EHS cannot comply with the DNSH principle. This could also be added to the general exclusion list.
4. The application of the DNSH principle should go **beyond the mere compliance with EU environmental law**. It is intended to provide an additional layer of criteria to be complied with to exclude EU funds from financing potentially harmful projects or measures, as well as to improve the environmental performance of projects or measures. In practice, the added value of the principle has so far not always been unleashed, leading to inconsistencies and variations in its application. An ambitious single DNSH guidance can untap the added value of the principle. This also requires capacity building on the application of the principle amongst national authorities, stakeholders and beneficiaries.
5. **Compliance with the DNSH principle should generally be an eligibility requirement**, not only a horizontal principle to be taken into account, to ensure it is legally binding and enforceable. This entails that only measures or projects that can *ex-ante* demonstrate compliance with the DNSH principle are eligible for funding, but it should also mean that actual compliance needs to be verified at the implementation phase. A mechanism for suspension or recovery of payments in case of non-compliance needs to be provided in the single DNSH guidance.
6. The **precautionary principle** should be a key principle embedded in the single DNSH guidance. This implies that projects or measures that are too vaguely defined, lack crucial information or scientific evidence for a DNSH assessment cannot be funded. It also means that the cumulative and long-term impact of projects or measures and potential harmful lock-in effects should be assessed.
7. An effective DNSH principle requires a **high degree of transparency** of its assessment, for greater accountability. Experience across different EU funds so far has shown a lack of transparency of the DNSH assessments. The single DNSH guidance should therefore set out key transparency principles, that can be further tailored to the specific funds.
8. **Objectivity and independence** of DNSH assessments are equally key for a strong DNSH principle and should be embedded as a principle in the single DNSH guidance. Public consultations of stakeholders, including civil society, contribute to the objectivity and independence of the assessments and should therefore be the rule.

9. An effective application of the DNSH principle to EU funds should not lead to increased harmful public spending under **national budgets**. To counter that risk, it is important to also horizontally **apply the DNSH principle across EU state aid policy**.

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