GOVERNMENT OF MALTA

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Explanatory note

APPLICATION OF THE "DO NO SIGNIFICANT HARM" PRINCIPLE UNDER COHESION POLICY IN RELATION TO INTERREG

Applies in relation to the implementation of Interreg programmes in Malta 2021-2027

DISCLAIMER

Disclaimer: This Strategy provides guidance of an explanatory and illustrative nature and is intended to assist all those involved in the implementation of the respective Funds. Relevant national and European Union legislation take precedence over the content of these documents and should always be consulted.

Interreg

Italia - Malta

Cofinanziato dall'Unione Europea
Co-funded by the European Union

EXPLANATORY NOTE

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

The Common Provisions Regulation (CPR) in Recital 10 states that in the context of tackling climate change *“the Funds should support activities that would respect the climate and environmental standards and priorities of the Union and would do no significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) No 2020/852”* (“The Taxonomy Regulation”). In addition, in accordance with Article 9(4), “*the objectives of the Funds shall be pursued in line with the objective of promoting sustainable development as set out in Article 11 TFEU, taking into account the UN Sustainable Development Goals, the Paris Agreement and the "do no significant harm" principle*”.

This explanatory note aims to clarify how the compliance with the ‘do no significant harm’ principle (DNSH) shall be ensured under cohesion policy[1] in line with the legal framework established in the CPR, the ERDF/CF Regulation, the JTF Regulation and the Interreg Regulation. It ensures coherence with the approach under the Recovery and Resilience Facility (RRF) and thereby avoids unnecessary administrative burden for Member States.

1. What is ‘Do No Significant Harm’?

For the purposes of the CPR, 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;
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

1 Cohesion policy funds: European Regional Development Fund, Cohesion Fund, European Social Fund +, Just Transition Fund

ecosystems, or detrimental to the conservation status of habitats and species, including those of Union interest.

2. How should the DNSH principle be applied in the context of the CPR? [2]

Certain types of investments that are deemed harmful to the environment are legally excluded from the scope of the Cohesion Policy Funds[3]. For the eligible investments under cohesion policy, compliance with the DNSH principle is supported through the following provisions:

- the compliance with relevant EU environmental legislation (as part of applicable law) at the level of each operation is an explicit requirement in the CPR;
- the 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[4];
- the thematic enabling conditions under Policy Objective 2 which make funding conditional to the fulfilment of certain criteria derived from the environmental acquis;
- in case of non-compliance with any of the rules, the regulatory framework provides for effective mechanism for not disbursing EU Funds to the programmes concerned, hence preserving the general objective of the DNSH principle.

The above provisions support but do not exclude automatically the possibility to define types of actions in the programmes which do not comply with the DNSH principle. Therefore, a dedicated assessment

has to be carried out during the programming phase to prevent the inclusion of activities or types of actions in the programmes that could do significant harm.

Construction works

Apart from any mitigatory actions that may be deemed required on an ad hoc manner, for measures that require construction works, the economic operators carrying out such works are to ensure that at least 70% (by weight) of the non-hazardous construction and demolition waste (excluding naturally occurring material referred to in category 17 05 04 in the European List of Waste established by Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (notified under document number C(2000) 1147)) generated on the construction site shall be prepared for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, in accordance with the waste hierarchy, Article 11.2 (b) of Directive 2008/98/EC on waste and the EU Construction and Demolition Waste Management Protocol.

By way of guidance, these requirement should be reflected in the procurement process.

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2 The Interreg programmes on EU external borders involving non-EU partner countries should apply the DNSH principle similarly to the application of other horizontal principles. Given the limitations such as the absence of RRF in the non-EU part of the programmes the principle of proportionality should be applied.

3 Article 7 of the ERDF and Cohesion Fund Regulation, Article 9 of the JTF Regulation

4 Directive 2001/42/EC of the European Parliament and of the Council on the Assessment of the effects of certain plans and programmes on the environment. The SEA procedure has to be completed before the Commission formally adopts the programme subject to the SEA.