Methodology for the application of the DNSH principle at national level in Czechia

Deliverable 6: Capacity building

Summary report of the seminars

Contract details

*REFORM/SC2022/112 - Methodology for the application of the DNSH principle at the national level in Czechia*

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Date

Rotterdam, 26/03/2024

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# Seminar for managing authorities

## Welcome and opening remarks

**Martina Krcmarova (OoG)** – stated that the CZ authorities requested this TSI because DNSH and CP are now vital for EU funds. Their aim is to understand and address these principles effectively, ensuring they do not become burdensome administrative tools.

**Gabriela Tschirkova (REFORM)** – recognized CZ authorities' advancements in DNSH, including integration into decision-making, guideline piloting, and capacity building. DNSH is permanent, expanding to methodologies like green budgeting. Therefore, it is vital to maintain consistency and synergies.

## JRC - Overview of ex-ante evaluation of DNSH across EU funds – Q&A

**Peter Janoska**: interested to hear more about the Social Climate Fund, as MS will have to prepare their investment plans. Can any similarities (similar traits/principles) be expected with the current application of DNSH?

* The work on the DNSH guidelines for the Fund is in progress (it should be ready by 9/2024). While specifics are limited at this stage, the legal framework will resemble that of the RRF, including aspects like direct management and eligibility criteria.

**Richard Jurik**: whether the Modernisation Fund will be taken on board in future EC’s guidelines?

* No clear answer is available to this. Nevertheless, the provisions of the new ETS Directive (where the MoF is included) are expected to apply the DNSH principle.

**Julian Toth**: experiences on ex-ante phase transforms into ex-post? Are there differences in how MS’ approaches this – going from ex-post to ex-ante?

* Not all MS are focusing on DNSH. Currently, there is an ongoing TSI with 8 MS. The experiences also differ per fund (the ex-post stage is more advanced under the RRF, much less under the CPF, where there are also more differences between MSs due to national legislation specifics). In any case, the most important is to fulfill the requirements of each fund. In case of questions regarding these requirements, the DG in charge of each fund can be approached for answers.

## Belgium - Experience sharing of DNSH application in the context of RRF – Q&A

**Julian Toth**: regarding Step 1 – Memorandum in ‘Concrete example – call for projects’ slide. What is your experience of candidates / PPs understanding the need for DNSH?

* The BE authorities tried to be clear in the memorandum. They also organized an information session, where it was discussed what DNSH is, why questionnaires have to be filled in, etc. Nevertheless, discrepancies emerged in candidate file submissions, with large companies faring better than SMEs. The BE authorities reached out to the candidates where information/help was needed. Lots of one-on-one contact.

## Slovakia - Presentation of the ex-post application of the DNSH principle within the RRF – Q&A

Remark from **D. Madaj** – the example presented was discussed extensively with the EC, highlighting the importance of seeking advice when MAs are unsure about their rules being set up correctly / aligned with the DNSH requirements.

**Jan Hanaj** (MPO, RRF) – the most difficult task is to turn the DNSH requirements from abstract to concrete, for PPs. How did you deal with smaller projects, where no EIA was required?

* It is always required to state how the DNSH requirements are being taken care of. Furthermore, a reference to slide ‘Structure of application and control of the DNSH requirements II’ – the key is that PPs are aligned with the requirements set by legislation. It is crucial that PPs adhere to all requirements of legislation, in this case, the WFD and its national transpositions, regardless of undergoing an EIA.

**Richard Jurik** – understood that they are stemming from the Taxonomy, which differs between DNSH and basic contribution criteria. How did you address this? And how did you address adaptation?

* On the DNSH / basic contribution criteria – they ensure that projects are DNSH compliant, which means that the basic contribution is also met. Likely above the minimum requirements of DNSH. On the question on adaptation, D. Madaj can put Richard in contact.

## MoE CZ (R. Jurik) – Methodical framework of DNSH and screening from the point of view of climate impact in Czechia – Q&A

**Jan Hanaj** – RRF will finish soon, how will this be addressed? Will the system change?

* The calls issued under the current requirements will continue. Whether the methodology will be binding will be discussed, but this will not be applied retroactively.

**Participant (unknown)** – will there be guidance for the European Maritime, Fisheries and Aquaculture Fund (EMFAF)?

* Martina Cerna’s response – potentially in the future. Currently, EC’s position is that the DNSH requirements are met by the requirements of the Fund. CP is applicable.

**Participant (unknown)** – will there be any simplified system for SMEs, from an admin burden perspective?

* Admin burden for SMEs should be addressed within a specific call. DNSH applies to all funds. Its operationalization is not coherent across CP and RRF. Trying to work with proportionality for SMEs.
* Martina Cerna’s response – in terms of audits, what is important is that it is done correctly from the methodology perspective. The EC is the monitoring body but unclear whether they are aware of the important role they play.
	+ Another response from the audience - not expecting that EC will not go along with what MS’ are doing, especially if consulted. The issue might be if the court of auditors would look into this. But the discussion on this usually happens on the level of EC-ECA, but the ECA might have questions for CZ.

## Plenary discussion following the project team’s presentation

**Martina Cerna** – question on the **pilot**, was it classified as a renovation or a new building?

* As a renovation – internal labs, etc.

**Jan Hanaj** – question regarding the **length of monitoring of a project**. The lifespan of a building is 40 years, but the grants end after 10 years (collection of different inputs from the participants):

* Regarding CP, 5 years is a minimum. Above 5 years, there is a need for a new CP. Basic monitoring depends on the materials used. DNSH is being monitored for the entire lifespan of the project.
* The financial cycle also plays a role.
* The sustainability of individual projects differs; it is set up per specific project. It needs to be documented for 10 years, as per the law.
* The lifespan of social housing is 20 years.
* Unclear whether there are any EC rules on monitoring.
* Richard – projects should be designed in such a manner that it also considers the end of the project (e.g. recycling). But this is separate from monitoring. It is unlikely that someone will control the DNSH compliance.
* As per CP – monitoring of infrastructure of lifespan of 5+ years. But under RRP, it is based on financial size, but it is still a recommendation. The monitoring question remains open. It is not clearly defined by EC how long to remain and monitor. The answer to this is the project’s interpretation of the existing rules only. CP is not compulsory for RRF. Adaptation measures can be done later, maybe in 20 years. They can be added on later. The lifecycle is being considered here, but no clear guidelines. It Is up to the user to consider this, MAs are hardly going to review this.

**Ministry of Education (RRF)** - DNSH is integrated at a framework level. Occasionally there are renovations, following a building permit. In 2022, they had checklists for DNSH, refining them for their programme based on external experiences. Now they have a new methodological guideline (from RRF), which has new checklists, meaning that they now have v2 of the checklist. However, there remains uncertainty about the legal correctness of their checklists. Responsibility is shifted to the component owner. **How do we protect the owners of components and the country in the case of checks and audits? What is the extent/depth of proving compliance?** (collection of different inputs from the participants):

* What is the extent of having to prove that DNSH has been met? Is it enough to declare (affidavit), or should one weigh and show that enough waste has been recycled?
* The Czech Building Act does not request 70% of recycling.
	+ Richard says they can follow the MoE guidelines.
* There is no official list on how to prove compliance, it also depends on what PPs can provide. Recycling centres can provide a certificate. Might have to be confirmed by EC on a national level.

DNSH was not always set for programmes/calls because it was too soon, and too generic at the time of when they were set up. Under RRF, it started with stating that there is an ‘**assumption that it will not be harmful**’. What to do with this now? There was no checklist from the beginning, how do you do your ex-post/interim evaluation? (collection of different inputs from the participants):

* Commission says that there are no links to environmental targets, but as a part of the project there can be renovations, purchase of vehicles, etc.
* They can prove that national legislation was met, but that’s not sufficient according to the MoE guidelines.
* If you contact DGs, they give you a response with a caveat that no legal consequences can be pulled from this. Does not provide any legal certainty.
	+ There are minutes for the meetings where OoG was present, that should be made available to the MAs who are working on this.

**Discussions with the EC** (2022) – what the MAs have had and agreed on (collection of different inputs from the participants):

* 30% more energy efficient than the original.
* The new building must be in the same place as the old one.
* What happens when there is no EIA – there should be a technical screening.

**Commission’s feedback on unclarities**. There are no cross-fund requirements. No point In trying to replicate CP requirements for RRF. EC itself is not clear on this – MS are asking for a methodology. The current EC will not do this anymore, awaiting the new one. It Is not expected that the EC will be really strict in the coming years because the issue will remain unclear, especially until RRF is still running. Suggestion to send common questions to EC for clarifications.

**Interest** in central body/**centralisation of the issue** – following the Belgian example. Also, part of the governance annex, as a suggestion. Also, across funds. And on a regular basis.

Is there still potential to simplify financial **instruments** within the scope of our project?

Stakeholder **feedback on our guidelines** - looking for links to the MoE guidelines and flagging that some links are not working.

### Questions from us to participants

***How did you approach the list of documents that PP must provide? Identification of concrete documents required under calls/approach / issues?***

**Martin Bursik (MMR, Interreg)**

* They defined the requirements per type of activity, this was reflected in the criteria for PPs. They also thought about how this would be proven during implementation. Inputs were primarily from internal consultations, but they were also consulted with a person or someone knowledgeable of environmental policies (i.e. what can be met elsewhere).
* Waste management poses challenges, especially in construction. Interreg mainly applies to renovations, where the potential for waste utilization is higher. MA checks that the requirements have been met. In one specific case, they will require a certificate that the waste was reused. But they are not sure if this will be sufficient.
* Vehicles are also problematic. They have special vehicles for 112. An exception applies to these, but they were overlooked in the initial call. They defined it as BAT, but they are now struggling with declaring/proving it.

***Can anyone still edit calls / are there any new calls forthcoming?***

* MoE. Not many new calls anymore. But for many requirements, these are met by legislation. They are trying to burden the PPs as little as possible and cover this on the programme-level. They are not anticipating extensive changes to the calls. They followed the MoE guidelines and internal approaches.
	+ Monitoring approach – example of waste. The requirement for 70% of waste is part of the call. It is not said at which state it will be controlled.

***Usability of the methodology***

* **P. Ptackova**
	+ It is usable. When presenting the pilot, from her perspective, the process steps are aligned with the approach of implementation colleagues.
	+ They are working on the technical criteria, which are the most important. The criteria are progressively becoming more stringent, and the key is to understand what the technical requirement means in practice and how it can be proven. The list of the technical criteria is a live document.
	+ Applying the approach above within the legal framework presents a challenge. Environmental legislation preferences may conflict with other critical laws (e.g. energy efficiency and energy label – that only the highest energy efficiency appliances can be used, which are hard to come by – when applying this there is a clash with public procurement guidelines favouring one type of appliances). Practical implications of relying on BATs. CENIA will not have the capacity to answer all requests for applicants, plus it is costly.
		- Currently, their issue other than the guidelines themselves (which look all fine), is the concrete requirements, especially those above minimum requirements, and whether they are in clash with other legislations.
	+ MAs are looking for someone to consult with and to prepare argumentation commonly – coming back to the need for centralisation.
		- The MoF is coordinating the project and developing a common mapping on the Taxonomy, owners of screening criteria, whether CZ is meeting the screening criteria (or not), interpretation of the screening criteria, and engaging various ministries affected by this topic.
			* The issue is that sometimes the Taxonomy (or other requirements) is outdated / less strict than the current CZ legislation. As a result, the MPO has chosen to prioritise compliance with the latest local legislation rather than blindly adhering to EU requirements.
			* The aim of the MoF is also this – to flag old aspects of the Taxonomy, on the basis of what the MPO is doing.

***What is needed for PPs to understand DNSH?***

* Component owners and MAs need to understand the concept, while recipients should view it in the form of a checklist rather than a new requirement. A brief explanation is needed, for a general understanding of how projects approach environmental aspects.

# Seminar for project proponents

## Presentation of the MoE CZ (R. Jurik) - discussion / Q&A

Are there specific DNSH measures/rules in Czechia? Is each Member State developing its own rules or are these made at the EU-level?

* The EC is developing general sectoral pathways, but most actions are done at the national level reflecting NECPs, other national strategies, legislation, and environmental conditions. The Czech government is actively engaged in this and will be consulting the private sector.

## Presentation of the MoF CZ (O. Melcher) - discussion / Q&A

**Mr. Dolezal**: the current project shows the state’s failure to integrate the DNSH requirements (and other SF requirements that apply to the public sector) into legislation, zoning plans, SEA, etc. The state should be making the system in such a way that it is easy for the general public and the private sector (for example, when applying for a building permit for a specific project, the competent authority should be able to tell you whether such project meets environmental requirements or not).

* ***Response from O. Melcher***: in order to do that there is a need for political interest; interest in integration and centralisation. On top of that, the state and public authorities do not currently have the capacity.
* ***Response from Mr. Dolezal***: he sees the introduction of all the SF requirements as a reaction to poor implementation of environmental policies by MS’. He believes that if nothing else, then money will force MS’ to adhere to environmental requirements (drawing from his experience from the WB in developing countries, where the same approach is applied). He appreciates the acknowledgment of the existence of DNSH by the OoG and the key ministries (MoE, MMR and MoF) and their work on it, but emphasises the need for further integration.
* ***Response from R*. *Jurik***: The way that the EU has set up SF requirements is not what Mr. Dolezal is looking for. These requirements impose obligations on the private sector, and he believes it is not the state's responsibility to incorporate them into legislation, thereby increasing stringency. Moreover, he notes that this integration is not a priority on the political agenda.

**Another stakeholder (Public Procurement Association?)**: Flagging that currently DNSH and its framework are not fixed enough (yet) that projects could be declined on its basis.

## Guidelines presentation & subsequent discussion

**Question to all stakeholders – how (often) do you deal with DNSH? How do you perceive the guidelines, will they be helpful to you?**

**p. Batkova (Charles University):**

* DNSH is an integral part of her everyday work. The CUNI (or even MU) are the biggest receivers of funding for projects (play a role in 7 components from RRF). She appreciates the current approach applied by the ministries – applicants already know from the call what is required from the DNSH perspective, and the requirements are not burdensome. However, differences exist among ministries and policy officers in their approaches and specific requirements; for instance, the MPO sends question lists and sometimes may include green tagging.
* With years of experience in grant schemes, she has noticed that recommendations often evolve into binding obligations. At the same time, the CZ MAs make them binding but there is not enough guidance on the application.
* They struggle with filling in a monitoring list of the DNSH criteria (which they get with projects), without any guidance on how. While the need for monitoring is understood for infrastructure projects, even those, not doing harm or having a green tagging must complete paperwork.
* The methodology looks great but she is a bit worried that it will not be binding, and MAs might not follow it.
* She would welcome any reduction of administrative burden and revisions, which projects need to provide for the DNSH documentation, especially for projects with green tagging.
* The issues outlined above have been faced recently – post 2022.
* ***Martina Cerna’s response:***
	+ Appreciates the nudges from Ms Batkova over time that have resulted in some working groups on MMR level, for better communication and centralisation.
	+ Agrees on administrative burden. They have spoken to the delivery unit to discuss exactly this. Hoping for a similar approach for OP Employment.

**p. Dvorak**

* The guidelines should highlight that you first have to meet applicable legislation and that DNSH is on top of that. While yes, CZ usually has good legislation in place, it is important to flag that people should adhere to the EU legislation because CZ takes too long to transpose and implement.
* Feedback on section 2.3 of the guidelines – could provide more explanation on monitoring. Understands that is not the scope of the methodology but it is important for PPs. Even a little expansion would be helpful - explaining what will be monitored so that PPs are aware.

**Another stakeholder**

* The approach to DNSH does not necessarily have to be ‘easier’ than other things that the Taxonomy requires, but there is a need for synergies.

**Petr Chroust (?)**

* Proposes implementing DNSH at a national level rather than a project-specific. If national legislation, incorporating DNSH, is met, environmental harm is avoided. However, he recognizes the current gap, so an interim solution like the guidelines is necessary. Nonetheless, efforts should be made to achieve the ideal scenario.
* They do projects on a local, very small scale. Huge burden for local authorities, so they are often worried about even applying for funds. The administrative burden needs to be as small as possible.
* Need for education about the environmental impacts, and small-scale choices and to consider the extent of the impact (higher scale for a highway than for desks for a school).

**Questions to banks’ representatives? What is your experience of banks on co-financing? Experience with DNSH?**

* There are different interpretations of the DNSH requirements among banks – one bank can say a project is compliant and one can say that it is not.
* Banks are questioning whether it is necessary for MAs to request DNSH compliance as a specific/binary criterium.
* Clients are worried not about getting the funding, but about audits and having to return the funds. A banking sector stakeholder expressed concerns about DNSH compliance, especially for projects/grants approved at the beginning of the programmes/NPO = before the DNSH guidelines were in place (Spring 2022). At that time, authorities (e.g. MPO) often passed over virtually the entire DNSH assessment to the project level by requiring affidavits that the PP complies with DNSH requirements and/or the authority’s guidelines (e.g. OP TAK). To manage the risks, it would be good to know what sanctions (% of the grant) are threatening for which DNSH-principle breaches.
* The more requirements there are to get the funding, the more difficult it is for banks to co-finance.
* Interpretation of the Taxonomy by a foreign entity (which banks can be) is entirely different than that of Czech MAs. Can there be a long list for MAs for documents that can be used to show that DNSH has been met? MAs can then select from this long list (that PP know), instead of coming up with new ways of proving.
* Can there be a methodology on MMR-level, that would be binding for MAs?
	+ **Martina Cerna** – looking ahead they want to develop the guidelines further and make them binding.

**Other remarks made**

**Richard Jurik** - flagging that the majority of the rules are not meant to be in the legislation. Understands the issues for the private sector. The state is required to implement DNSH at the state level, meaning that OPs should be designed in such a manner that they are aligned with DNSH. Does not expect that audits would put the responsibility on PPs.

**Richard Jurik** – nowadays lots of legislation has requirements applying directly to the private sector – e.g. CSRD. General appreciation for what the MoF has developed (Ota’s presentation) – helps to confirm that the requirements have been met for banks.

**Martina Cerna** – task of the state for mitigation and adaptation – the state should define how these should look like. For large projects, there should be an alignment with national climate plans. For adaptation, the state has strategies with goals and targets. Projects financed by the EU should have their contribution to both mitigation and adaptation defined (jointly with the state and PP).

General appreciation for the work done (by us and the state) as a closing remark.

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