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Subject: Application of the do no significant harm principle in the European Commission's evaluation of Greece's NRRP

Following up on our correspondence with you in relation to the Greek NRRP, in light of the fact that the full list of projects is for the first time made public,¹ and of the shortcomings of Greece's NRRP that we highlighted in our previous assessment to the European Commission², we wish to bring to your attention certain more specific issues, which will be crucial to the application of the “do no significant harm” (DNSH) principle.

As a starting point, we welcome a number of elements included in the plan:

- First, we consider extremely positive that the plan entails no fossil fuel infrastructure, at least on the grants side.
- Second, it is equally positive that the plan does not entail waste incineration plants that would be both counterproductive for the achievement of the EU's and Greece's circular economy targets, and contradict the RRF and the taxonomy regulation's DNSH criteria.
- Third, and despite the fact that biodiversity related investments represent a very limited fraction of the plan, we welcome the package of investments in biodiversity conservation and protected area management.
- Fourth, we welcome the greater details provided on the loan component of the plan, while noting that the architecture of the loan facility still hasn't been disclosed by the Greek authorities.

However, we remain alarmed by investments which, in our view, openly contravene the DNSH criteria of the RRF regulation and the taxonomy regulation – and yet have been given a favorable rating by the European Commission in its Proposal for a Council

¹ Annex to the Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan of Greece. https://ec.europa.eu/info/files/annex-proposal-council-implementing-decision-approval-assessment-recovery-and-resilience-plan-greece_en

² WWF Greece (2021). WWF Briefing on the Greek National Recovery and Resilience Plan to the European Commission. https://wwfeu.awsassets.panda.org/downloads/wwfgreece_comments_on_greek_nrrp.pdf

Implementing Decision on the approval of the assessment of the recovery and resilience plan for Greece³. These concern:

- The favorable rating and approval of irrigation infrastructure projects which contravene the DNSH principle
- The favorable rating and approval of the loan component of the plan with limited justification of a sufficient DNSH proofing

New irrigation infrastructure

The list of irrigation infrastructure approved by the European Commission in its assessment of the Greek NRRP entails the construction of eleven (11) river dam projects across Greece, and one (1) water transfer project, according to leaked information.

In its assessment of the NRRP the European Commission notes that:

“for irrigation, flood mitigation and water measures included in component 1.4, compliance with the DNSH principle will be ensured inter alia by requiring that any work regarding dams is in line with the Water Framework Directive, ensuring among others that new extraction is only allowed if the status of the water body is in good status and will remain so, also taking into account the projected impacts of climate change based on best science.”⁴

However, hydromorphological modifications through infrastructures that alter the connectivity of river ecosystems, such as dams and other “grey infrastructure”, are a key driver of poor ecological status of rivers across the EU. As analysed by the European Environment Agency in its European Assessment of status and pressures:

“[...] the most commonly occurring pressures on surface water bodies are hydromorphological, affecting 40 % of all such bodies. In addition, 17 % of European water bodies have been designated as heavily modified (13 %) or artificial (4 %) water bodies. The WFD requires action in those cases where the hydromorphological pressures affect ecological status and prevent the WFD's objectives from being achieved. If the morphology is degraded or the water flow is markedly changed, a water body with good water quality will not reach its full potential as an aquatic ecosystem”⁵.

Moreover, in its assessment of the first RBMPs of Greece the European Commission highlighted⁶, among other recommendations, that

“[...] particularly urgent is the development of sound methodologies to address hydromorphological pressures. The current combination of weak pressure analysis (with not precautionary enough thresholds of significance), lack of ecological status assessment methods sensitive to hydromorphological pressures, unclear process for designation of HMWB and lack of development of GEP makes it very likely that significant hydromorphological pressures are completely overlooked in the implementation process. Potential effects of “smaller” modifications such as dams

³ European Commission (2021). Proposal for a Council implementing decision on the approval of the assessment of the recovery and resilience plan for Greece. COM/2021/328 final. https://eur-lex.europa.eu/resource.html?uri=cellar:6b084852-cf45-11eb-ac72-01aa75ed71a1.0002.02/DOC_1&format=PDF.

⁴ European Commission (2021). Analysis of the recovery and resilience plan of Greece Accompanying the document, Proposal for a council implementing decision on the approval of the assessment of the recovery and resilience plan for Greece

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021SC0155&from=EN>

⁴ <http://wfdver.ypeka.gr/en/management-plans-en/approved-management-plans-en/>

⁵ European Environment Agency (2018). European waters Assessment of status and pressures. <https://www.eea.europa.eu/publications/state-of-water>

⁶ European Commission (2018). Report on the implementation of the Water Framework Directive River Basin Management Plans Member State: GREECE. SWD (2015) 54 final/2/17.7.2018.

https://ec.europa.eu/environment/water/water-framework/pdf/4th_report/Greece_CORRECTED_5_EN_autre_document_travail_service_part1_v5-1_FINAL.pdf

lower than 15 m, dredging, river straightening, drainage, etc., including impacts to transitional and coastal waters, should be assessed.

Agriculture is indicated as exerting a significant pressure on the water resource in most Greek RBDs. There needs to be further investigation regarding the hydromorphological pressures from agriculture. In addition, the measures taken as regards agriculture need to be more specific, in order to have more reliable positive results regarding the WFD objectives.

[...]

In relation to hydromorphological pressures, and based on a sound assessment, measures should be taken to mitigate the impacts (e.g. river restoration, removal of structures, etc.)”.

Even though the publication of the assessment of the second (revised) RBMPs of Greece by the European Commission is still pending⁷, the European Commission has raised its concerns initiating an EU Pilot mechanism (9895/2021) regarding the deficiencies identified in the Greek plans.

Further, a key objective of the EU’s Biodiversity Strategy for 2030 consists precisely in restoring

“freshwater ecosystems and the natural functions of rivers in order to achieve the objectives of the Water Framework Directive. This can be done by removing or adjusting barriers that prevent the passage of migrating fish and improving the flow of water and sediments. To help make this a reality, at least 25,000 km of rivers will be restored into free-flowing rivers by 2030 through the removal of primarily obsolete barriers and the restoration of floodplains and wetlands. [...] Member State authorities should review water abstraction and impoundment permits to implement ecological flows in order to achieve good status or potential of all surface waters and good status of all groundwater by 2027 at the latest, as required by the Water Framework Directive”⁸.

In short, the projects proposed by the Greek government in its NRRP (and given a favorable rating by the European Commission in its assessment of the NRRP) not only fail to contribute to the aforementioned objectives, but openly undermine those targets. Indeed, it is unfounded to assume that “good ecological status” can be maintained when the hydromorphological conditions of affected rivers are expected to be fundamentally altered, especially when considering the current and projected impacts of climate change⁹.

Worse still, although the European Commission’s assessment states that:

“any work regarding dams is in line with the Water Framework Directive, ensuring among others that new extraction is only allowed if the status of the water body is in good status and will remain so”¹⁰

such is not the case for all water bodies included in the Greek plan.

Indeed, based on publicly available data from Greece’s official river basin management plans¹¹ we were indicatively able to identify at least four (4) water bodies which are not currently classified in “good ecological status” as per the WFD’s classification. These are namely the Almopaios river, the Nestos river, the Neochoritis river, and the Enipeas river.

⁷ https://ec.europa.eu/environment/water/water-framework/impl_reports.htm

⁸ European Commission (2020). EU biodiversity strategy for 2030. <https://eur-lex.europa.eu/legal-content/EN/TXT/DOC/?uri=CELEX:52020DC0380&from=EN>

⁹ European Environment Agency (2018). *Op. Cit.*

¹⁰ European Commission (2021). Analysis of the recovery and resilience plan of Greece

Accompanying the document, Proposal for a council implementing decision on the approval of the assessment of the recovery and resilience plan for Greece

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021SC0155&from=EN>

¹¹ <http://wfdver.ypeka.gr/en/management-plans-en/approved-management-plans-en/>

It consequently seems that a detailed assessment of the water bodies affected has not been undertaken ahead of the approval of these plans.

Article 2.4 of Annex 5 of the RRF regulation clearly states that:

“The Commission shall take into account the following elements for the assessment under this criterion:

Scope

—no measure for the implementation of reforms and investments projects included in the recovery and resilience plan does significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852 (the principle of ‘do no significant harm’).

Rating

A no measure does significant harm to environmental objectives (the principle of ‘do no – significant harm’)

C one or more measure does significant harm to environmental objectives (the principle – of ‘do no significant harm’)”

According to article 17 (c (i)) of Regulation (EU) 2020/852,

“activities that are detrimental to the good status or the ecological potential of bodies of water, including surface water and groundwater”,

are considered to significantly harm water resources¹².

We fully support the letter and spirit of the DNSH principle, as stated in the RRF Regulation, which is clearly violated by these projects. We therefore maintain that the irrigation infrastructure projects should not have been rated favorably by the Commission.

Further, in the *Annex to the Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Greece*¹³, the European Commission notes, among others, that:

“Any investment in dams shall respect the following criteria: [...]

(iii) for a newly built dam, ensure that it shall not result in the deterioration nor compromise the achievement of good status of the relevant and connected water bodies; and

(iv) other possible alternatives to building a dam have been explored and the authorities provide the reasons why, if applicable, such alternatives were not feasible”.

However, there is no explanation as to how the European Commission will ensure that these projects fully respect the aforementioned conditions.

¹² European Commission (2020). Regulation (eu) 2020/852 of the european parliament and of the council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

¹³ European Commission (2021). Annex to the Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Greece
https://ec.europa.eu/info/system/files/com_328_1_annexe_en.pdf

As such, our questions are the following:

- Did the European Commission undertake a detailed assessment of the ecological status of affected water bodies prior to the approval of those plans?
- Does the European Commission consider that the available data on affected water bodies is reliable, given the concerns expressed the European Commission in its assessments of river basin management plans?
- How does the European Commission intend to validate that the pre-conditions set in pages 218 and 218 of the *Annex to the Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Greece*, are met?
- How does the European Commission intend to enforce those criteria in a scenario whereby these are unmet and/or the evidence provided by the Greek authorities is insufficient?

Loan facility and DNSH

We welcome the inclusion of clear DNSH criteria in the loan facility, as outlined in the *Annex to the Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Greece*. However major gaps remain, and the governance of the loan facility remains opaque, especially when taking into consideration that more than 1/3 of the plan's budget will be channeled through this facility.

The loan facility is expected to ensure that DNSH criteria are met via four routes – namely:

1. The creation of selection criteria for compliance with the Do No Significant Harm Technical Guidance (2021/C58/01) of supported activities
2. The use of sustainability proofing
3. An exclusion list
4. Mandatory legal compliance checks with the relevant EU and national environmental legislation by an independent auditor.

Starting from the latter, it is evident that the mere compliance with EU and national environmental legislation should be taken as granted regardless of the DNSH screening, and cannot constitute a demonstration that DNSH criteria are met. Indeed the latter are supposed to enhance the sustainability proofing of investments over and above the provisions of the existing environmental legislation, and not merely consist in a legal checklist (which should be applied regardless). Put in plain terms, this provision does not provide any additionality in terms of applying the DNSH principle.

The exclusion list of activities and assets¹⁴ is certainly very positive, but equally limited in both breadth and granularity. In terms of breadth, only a handful of sectors and assets are included (however important they may be) and, for example, activities with a potentially high impact on natural resource use and/or biodiversity are ignored. In terms of granularity, the exclusion list could have included specific unsustainable assets and practices in sectors that don't pose an a priori DNSH risk but whose practices may significantly harm the environment. To give the example of the blue economy sectors, the technical annex of the latest UNEP-FI report *Turning the tide* provides a detailed screening of sustainable and unsustainable practices for a number of crucial blue economy sectors (seafood, ports, maritime transport, marine energy and coastal and maritime tourism)¹⁵. These screening criteria could be used for expanding the exclusion list to specific practices in these sectors.

¹⁴ The following list of activities and assets are excluded from eligibility: (i) activities and assets related to fossil fuels, including downstream use; (ii) activities and assets under the EU Emission Trading System (ETS) achieving projected greenhouse gas emissions that are not lower than the relevant benchmarks; (iii) activities and assets related to waste landfills incinerators and mechanical biological treatment plants; and (iv) activities and assets where the long-term disposal of waste may cause harm to the environment

¹⁵ UN Environmental Programme. (2021). *Turning the tide: How to finance a sustainable ocean recovery*. <https://www.unepfi.org/publications/turning-the-tide/>

The use of sustainability proofing methodologies, based on the *Technical guidance on sustainability proofing for the InvestEU Fund*, is also positive but insufficient¹⁶. First, the technical guidance is based to a large extent on legal compliance, hence reproducing the aforementioned limitations. Second, the €10 million threshold for undertaking a sustainability proofing assessment may be useful in the context of InvestEU but is highly problematic in the case of Greece's NRRP. Indeed, this arbitrary threshold is likely to generate a bunching effect below the threshold for avoiding such an assessment: for example, a large company borrowing 9.9 million EUR from the loan facility would be exempted from a sustainability proofing assessment, even when the latter could be required on the grounds of "significant impacts" as defined by the guidance.

Although we acknowledge that the "principle of proportionality" is important, the question is how this principle is applied in practice. More concretely, instead of a simplistic arbitrary threshold we propose the applicable of a sustainability proofing assessment under the following conditions:

- The investment is larger than 10 million EUR, or;
- The recipient is a large company as defined by 2003/361/EC, or;
- The recipient is a medium-sized company as defined by 2003/361/EC with a significant exposure to high risk sectors (e.g. mining, agro-food etc.).

Last but not least, we welcome the creation of selection criteria for compliance with the Do No Significant Harm Technical Guidance (2021/C58/01) of supported activities. However, who will create those selection criteria and whether these will be disclosed in a spirit of transparency remains unclear. We consider imperative to involve civil society organizations and wider stakeholders in the process of creating selection criteria in order to ensure that the latter do not result in greenwashing activities and assets that pose a significant risk from a DNSH perspective. Similarly, the governance process is not specified, and how the European Commission intends to monitor and validate whether these criteria are appropriately implemented remains unclear.

As the loan facility is currently being designed we ask the European Commission to ensure that:

- **The DNSH screening in the context of the loan facility does not result in a mere legal checklist**
- **DNSH selection criteria are publicly disclosed and transparent**
- **Wider civil society is involved in the design of DNSH selection criteria**
- **The threshold for mandatory sustainability proofing assessments acknowledges complexity by setting additional minimum criteria**
- **A monitoring mechanism is in place for ensuring that the application of DNSH provisions are fully respected.**

We remain at your disposal for any clarification you may need.

Sincerely yours,

Olivier Vardakoulis,
Lead Economist, WWF Greece

¹⁶ European Commission (2021). Commission Notice on Technical guidance on sustainability proofing for the InvestEU Fund. https://europa.eu/investeu/system/files/2021-04/investeu_sustainability_proofing_guidance_en_0.pdf