



WWF

DISCUSSION
PAPER

MAY
2020

Operational tools for ‘do no harm’ and ‘do good’ approaches in MFF, InvestEU, EU recovery fund and state aid

The present briefing recommends operational mechanisms and tools and clarifies legal opportunities to implement the two complementary elements of ‘do no harm’ and ‘do good’ (climate and environment spending target and corporate targets to increase sustainability).

We recommend the Commission to:

- Immediately table specific amendments in the relevant MFF 2021-2027, InvestEU, EU recovery fund and state aid regulations, empowering the Commission to develop operational ‘do no harm’ and ‘do good’ approaches;
- In parallel, urgently develop voluntary Commission guidelines to clarify ‘do no harm’ and ‘do good’ issues at project and corporate levels (e.g. by June 2020);
- By end 2020, shift to mandatory ‘do no harm’ guidelines, building on Article 7 of the InvestEU regulation;
- By early 2022, shift to mandatory ‘do good’ guidelines through a delegated act.

1. BACKGROUND

As mandated by the European Council, the Commission is about to publish a package for the MFF 2021-2027, InvestEU and EU recovery fund. It has repeatedly stated, at the highest level, that the European Green Deal will be the ‘motor of Europe’s recovery’ and that the recovery should drive the green and digital transformation of the economy. We are also encouraged by the many appeals for green recovery that have blossomed across Europe: By [19 EU governments](#), [Members of the European Parliament](#), [the Club of Rome](#), [scientists](#), [NGOs](#), [200 representatives from business and politics](#), [energy companies](#), and many more.

WWF, as part of the Green 10, issued a letter to the Commission on the 8th of May 2020, calling it to integrate the following demands in this package:

- The Commission should propose a higher, 50% climate and environment spending target for the MFF 2021-2027, InvestEU and the EU recovery fund (similar to the current InvestEU earmarking for its sustainable infrastructure window);
- The ‘frontloading’ of investments in the Cohesion Policy should maintain the climate earmarking (Thematic objective ‘shift towards a green, low-carbon economy’);
- The ‘do no harm’ requirement should apply to the whole package and lead in particular to the exclusion of new projects of fossil fuel production, processing, transport, distribution, storage or combustion and to the exclusion of unsustainable farming practices as well as deforestation;
- The proposal should deliver ambitious levels of finance for external action, exceeding previous levels;
- The EU taxonomy is very relevant to improve climate and environmental spending, and should be applied for its target setting and tracking for programmes in the EU.

Complementarily, in a previous letter on state aid sent to the Commission on the 22nd of April, we made the following recommendation:

- State aid plans in high-carbon and other potentially polluting sectors should be conditional upon corporate commitments to increase their sustainability, by e.g. increasing the proportion of their activities or expenditure that is taxonomy-eligible by a given date, setting climate science-based targets, decommissioning obsolete high-carbon assets or any other meaningful commitment.

The present briefing recommends operational mechanisms and tools and clarifies legal opportunities to implement two complementary elements:

- **The ‘do no harm’ requirement;**
- **The ‘do good’ side (climate and environment spending targets and corporate targets to increase their sustainability).**

2. 'DO NO HARM' SIDE: DEVELOPING COMMISSION'S GUIDELINES

1. The opportunity of mandatory 'do no harm' guidelines in the InvestEU regulation by the end of 2020: Article 7

Very unfortunately, an EU unsustainable taxonomy is not available yet, while the 'do no harm' oath of the European Green Deal makes clear such a taxonomy is much needed to clarify which economic activities are significantly harmful to EU environmental objectives, and do not deserve public support. This is a strong signal that the Commission, in its legislative review of the Taxonomy Regulation required by the end of 2021, should recommend such an EU unsustainable taxonomy to complement the sustainable one, and publish a legislative proposal for that purpose.

In the meantime, a quicker tool is required. There is a concrete opportunity in the InvestEU regulation under Articles 7.3 and 7.6 of the InvestEU regulation¹, which state:

Art 7. Policy windows

(...)

*"3. Financing and investment operations shall be screened to determine if they have an environmental, climate or social impact and if so, **shall be subject to climate, environmental and social sustainability proofing**² with a view to minimise detrimental impacts and maximise benefits on climate, environment and social dimension. For that purpose, promoters requesting financing shall provide adequate information based on guidance to be developed by the Commission. Projects below a certain size defined in the guidance shall be excluded from the proofing. Projects that are inconsistent with the achievement of the climate objectives shall not be eligible for support under this Regulation."*

The Commission guidance shall, in accordance with Union environmental objectives and standards, allow to:

(a) as regards adaptation, ensure the resilience to the potential adverse impacts of climate change through a climate vulnerability and risk assessment, including relevant adaptation measures, and, as regards mitigation, integrate the cost of greenhouse gas emissions and the positive effects of climate mitigation measures in the cost-benefit analysis;

(b) account for consolidated project impact in terms of the principal components of the natural capital relating to air, water, land and biodiversity;

(c) estimate the social impact, including on gender equality, the social inclusion of certain areas or populations and the economic development of areas and sectors affected by structural challenges such as the decarbonisation needs of the economy;

(ca) identify projects that are inconsistent with the achievement of climate objectives.

(...)

6. The Commission is empowered to adopt delegated acts in accordance with Article 26 to define the investment guidelines for each of the policy windows.

(...)"

Given that these guidelines are needed to start implementing the InvestEU regulation on the 1st of January 2021, they should be adopted at the latest by the end of 2020.

¹ Final version of the InvestEU Regulation, P8_TA(2019)0433, https://www.europarl.europa.eu/doceo/document/TA-8-2019-0433_EN.html.

² We underline.

We believe that this is a major opportunity of relatively rapid EU legislation to operationalise the ‘do no harm’ principle in a concrete way.

Importantly, to ensure consistency and avoid ‘free rider’ approaches, legislative amendments should ensure that such guidelines apply to all public funding under the MFF 2021-2027, InvestEU and EU recovery fund as well as state aid – not only InvestEU.

2. Developing voluntary guidelines between now and end 2020 for state aid

While the InvestEU proofing guidelines are very timely for InvestEU, the next MFF and the EU recovery fund, they will come late for state aid measures: during the pandemic the Commission already approved a huge €1.9 trillion worth of national state aid schemes³.

We therefore recommend that the Commission sets up voluntary guidelines as soon as possible (e.g. by June 2020), to be used for state aid decisions:

- They will form the basis for the InvestEU mandatory proofing guidelines (delegated act) and should be replaced by the latter when the InvestEU delegated act will be legally enforced, to ensure consistency;
- For the sake of simplicity, they should be merged with voluntary ‘do good’ guidelines urging companies requesting state aid to set environmental targets for improving their sustainability (see next chapter).

3. Initial recommendations for the content of the ‘do no harm’ guidelines

Our initial recommendations for the guidelines are as follow: building on existing regulations and WWF analysis, **the guidelines should:**

- **Exclude all activities that are not compatible with National Energy and Climate Plans (NECPs).** However NECPs usually do not reach the necessary level of granularity and are not yet fully consistent with the 2050 net-zero emission goal, so issues that are much more sector-specific and activity-specific need to be included as well:
- **Exclude the following significantly harmful activities:**
 - New coal mining and new fossil fuel exploration, extraction, transport, storage and processing activities (excluded from the Cohesion Policy regulation - consistency issue);
 - New nuclear power plants (excluded from the Cohesion Policy – consistency issue);
 - New fossil-fuel fired power generation above 262 g CO₂/kWh (recommendation of the EC Technical Expert Group on sustainable finance for the threshold for unsustainable power generation, based on IEA data)⁴;
 - New airport infrastructure or airport extensions (high risk of inconsistency with the 2050 net-zero emission goal);
 - New motorways and highways (high risk of inconsistency with the 2050 net-zero emission goal);

³ <https://www.euractiv.com/section/energy-environment/news/eu-decides-no-green-strings-attached-on-cash-to-virus-hit-firms/>.

⁴ EC Technical Expert Group on sustainable finance (2020), Final taxonomy report: Technical Annex, p. 456.

- New landfilling and incineration (high risk of inconsistency with the 2050 net-zero emission goal and the hierarchy of the Waste Framework Directive and excluded from the EU climate taxonomy criteria by the TEG);
- Agricultural projects at risk of leading to deforestation;
- New industrial animal farming (high risk of inconsistency with the 2050 net-zero emission goal);
- Overfishing, defined as above scientific advice for fishing stocks;
- New resource-intensive aquaculture.

For other high-carbon sectors, we believe that the EU taxonomy is among the most relevant tools (see next chapter).

WWF would be pleased to offer concrete support to the Commission to provide rapid inputs in order to help develop granular ‘do no harm’ guidelines.

Recommendations

- **As soon as possible (e.g. by June 2020), the Commission should develop voluntary guidelines to be used for state aid decisions, merging the two sides of ‘do no harm’ and ‘do good’ (environmental target setting);**
- **By the end of 2020, the Commission is required to develop mandatory ‘do no harm’ guidelines under Art 7 of the InvestEU regulation:** this is a major opportunity to use relatively rapid EU legislation to operationalise the ‘do no significant harm’ principle. **To ensure consistency, the Commission should immediately table legislative amendments to ensure that such guidelines apply to all public funding under the next MFF, InvestEU and EU recovery fund as well as state aid.** These mandatory guidelines will build on and replace the voluntary ones.
- **Content-wise,** the ‘do no harm’ guidelines should exclude activities incompatible with National Energy and Climate Plans (NECPs) and, more granularly, exclude fossil fuels and other specific environmentally-harmful activities.
- **By the end of 2021,** the Commission, in the required legislative review of the Taxonomy Regulation, should recommend an EU unsustainable taxonomy to complement the sustainable one, and publish a legislative proposal for that purpose.

3. ‘DO GOOD SIDE’: TOOLS FOR CLIMATE AND ENVIRONMENT TARGET SETTING

The ‘do good’ side relates to the implementation of:

- The recommendation for 50% climate and environment spending targets for the MFF 2021-2027, InvestEU and the EU recovery fund;
- The recommendation on making state aid conditional on corporate commitments (environmental targets) to increase the sustainability of their business model.

Both are indeed required to ensure consistency with the European Green Deal and to contribute to, not derail the Paris Agreement, EU 2050 net-zero emission goal and biodiversity goals.

We develop below two cases at project level and at corporate level, providing concrete recommendations.

1. At project level

If a company, municipality, or any other stakeholder asks for public support for a given project, **the best approach is to build on the EU taxonomy**; it is relatively straightforward to use it at project level as the EU taxonomy is economic activity-specific.

The EU taxonomy is not yet legally enforceable. However, the two delegated acts for climate objectives (mitigation and adaptation) will be adopted by 31 December 2020 at the latest, according to Articles 10 and 11 of the Taxonomy Regulation: “6. *The Commission shall adopt the delegated act referred to in paragraph 3 by 31 December 2020, with a view to ensuring its application from 1 January 2022.*”

While the taxonomy disclosure requirement for companies as per the Taxonomy Regulation, will only enter into application by 1 January 2022, **as soon as the delegated acts are published in the EU Official Journal, they will enter into force and can therefore be referred to in the relevant MFF 2021-2027, InvestEU and EU recovery fund regulations.**

The timeline of the climate taxonomy delegated acts is therefore compatible with the timeline of the MFF 2021-2027, InvestEU and the EU recovery fund, which only start in 2021.

It should be noted that the taxonomy delegated acts can therefore be used from early 2021 for climate tracking in the MFF 2021-2027, InvestEU and the EU recovery fund and from early 2022 for broader environmental tracking.

It is slightly more problematic with the four other delegated acts for the remaining environmental objectives (circular economy, pollution prevention, freshwater and marine, and biodiversity and ecosystems): they will be adopted by 31 December 2021 at the latest, according to Articles 12 to 15 of the Taxonomy Regulation: “5. *The Commission shall adopt the delegated act referred to in paragraph 2 by 31 December 2021, with a view to ensuring its application from 1 January 2023.*”

The relevant MFF 2021-2027, InvestEU and EU recovery fund regulations should refer to these delegated acts as well and clarify that they will only be used when they become legally enforceable, ie by end 2021/early 2022. This is therefore a two-step approach: climate first, other environmental issues second. While this is not ideal, it follows the sequenced approach decided under the Taxonomy Regulation. Urgency is such that it is not meaningful to wait for all the taxonomy delegated acts to be finalised.

2. At company level

We propose to differentiate whether the company is a large one⁵ or an SME.

We recommend two complementary filters:

- For all companies (including SMEs), a ‘do no harm’ filter;
- For large companies in high-carbon and other potentially polluting sectors, a ‘do good’ filter to increase their sustainability. We consider that it is very relevant for this

⁵ ie above 250 employees accordingly with the Accounting Directive and Eurostat.

filter to focus only on large companies in the most sensitive sectors environmentally-wise, to maximise the effectiveness of the policy and avoid unnecessary burden.

We recommend three steps to the Commission:

1. **Immediately table legislative amendments in the relevant regulations** to ensure that the companies requesting public support must set and implement a time-bound environmental target to improve the sustainability of their business model and evidence it;
2. **In parallel, establish as soon as possible (e.g. by June 2020) voluntary guidelines** specifying the options for companies to set and evidence their time-bound environmental target;
3. **Shift to mandatory guidelines** as soon as the taxonomy disclosure requirement for companies enters into force (1 January 2022).

2.1. Developing Commission's voluntary guidelines as soon as possible to clarify how companies can set and implement a time-bound environmental target

In the previous chapter, we recommended the Commission to urgently (e.g. by June 2020) develop voluntary guidelines for state aid decisions, merging the two sides of 'do no harm' and 'do good' (environmental target setting).

Timewise, voluntary guidelines have the benefit of speed. We believe that in such guidelines the Commission should specify two options for companies to set and evidence a time-bound environmental target for improving the sustainability of their business model (while leaving room for alternative options):

- An option to use the EU taxonomy;
- An option to use corporate methodologies setting climate science based targets and net zero transition plans;
- Room for alternative, innovative options.

1. Operational option for companies to use the EU taxonomy

The EU taxonomy is a well suited tool for corporates for setting and implementing a time-bound environmental target for improving the sustainability of their business model. Indeed, **corporates can use the EU taxonomy in a forward-looking way to set targets**, taking their taxonomy exposure at a given point in time as the baseline, and committing to improve such taxonomy exposure at a future point in time (in terms of % of annual revenues, and /or capital expenditure (CapEx) and/or operational expenditure (OpEx) aligned with the EU taxonomy by given dates, e.g. 2025 and 2030).

Example:

- **Baseline:** Company X in a high-carbon sector has 7% of taxonomy-eligible revenues and 25% of taxonomy-eligible Capex by end 2019;
- **Target:** Company X commits to reach 20% of taxonomy-eligible revenues and 80% of taxonomy-eligible Capex by end 2025. A further 2030 target will be needed afterwards.

However, the requirement for companies to publish their climate taxonomy exposure (the baseline) will only enter into application by 1 January 2022. **To accelerate this timeline, the Commission's guidelines should urge large companies requesting public support to publish their taxonomy exposure as from 2020 in a voluntary way, and set targets on that basis.**

This 2020 taxonomy exposure could be a first, approximate analysis of their turnover, their investments and their operational expenses, thus simply anticipating the future disclosure

obligation of the taxonomy regulation. Several European companies listed in the stock market have already referred to the EU taxonomy in their annual report in 2019 on a voluntary basis, like Acciona or SPIE, showing the feasibility of this approach. Such disclosure would build on the final TEG climate criteria until the Commission's Delegated Acts are adopted.

On the basis of their taxonomy disclosure, companies should be urged to take time-bound targets to improve their taxonomy exposure (e.g. by 2025 and 2030). There are various complementary ways to set such targets at corporate level: increase the % of annual revenues, annual capex or annual opex that is green (ie taxonomy-eligible). The company should be urged to set such targets so that they will ensure alignment of the business model with the Paris Agreement and the net-zero emission goal by 2050 at the latest.

The EU and Member States could be even more granular, and modulate their level of support accordingly with the level of environmental ambition (i.e. the taxonomy exposure) of a given company. For example the Commission and/or Member States could adjust the overall amount granted to a company according to the level of its 'greening' ambition – ie the percentage of its revenues / capex becoming taxonomy-eligible, adjust the interest rate in the case of a loan, or turn a part of the loan into a grant if the company reaches a certain high level of sustainability.

This taxonomy option only applies for the economic activities covered by the TEG climate criteria.

2. Operational option for companies to use methodologies setting climate science based targets and net zero transition plans

The Commission's guidelines could clarify that companies can set climate science based targets and net zero transition plans to improve the sustainability of their business model in an evidenced way.

Many companies have already set up climate targets and some are science-based. For example, **through the climate Science-Based Target initiative⁶ 873 companies globally already committed voluntarily to set a climate Science-Based Target, validated independently, to align their business model with the Paris Agreement in a 5-15 year timeframe.** It builds on forward-looking climate scenario analysis and requires companies to use a below 2°C or 1.5°C scenario. The number of companies committing such a climate science-based target is growing fast, with around one new company committing per day.

Complementarily, investors are increasingly engaging with investee companies to urge them to set such targets: this is what the **ClimateAction100+ investor coalition** is doing since three years, with more than 300 investors totalling 30 trillion \$ in assets under management⁷.

In addition, the Commission's guidelines should build on the Benchmark Regulation, which clarifies for the new category of Climate Transition Benchmarks what companies are required to do in order to evidence their commitment to the climate transition:

Art 19b. Requirements for EU Climate Transition Benchmarks

“Administrators of EU Climate Transition Benchmarks shall select, weight, or exclude underlying assets issued by companies that follow a decarbonisation trajectory by 31 December 2022, in accordance with the following requirements:

- i. the companies disclose measurable carbon emission reduction targets to be achieved within specific timeframes;*

⁶ <https://sciencebasedtargets.org/>.

⁷ <http://www.climateaction100.org/>.

- ii. *the companies disclose a reduction in carbon emissions which is disaggregated down to the level of relevant operating subsidiaries;*
- iii. *the companies disclose annual information on progress made towards those targets;*
- iv. *the activities relating to the underlying assets do not significantly harm other ESG objectives.”*

Complementarily, Article 3(1) of the Climate benchmark regulation defines the decarbonisation trajectory:

“(23c) Decarbonisation trajectory” means a measurable, science-based and time-bound trajectory towards alignment with the objectives of the Paris Agreement by reducing Scope 1, 2 and 3 carbon emissions as referred to in point (1)(e) of Annex III.”

While the benchmark regulation focuses on benchmark providers in general, the above articles clearly focus on companies (as stocks selected or not for a given Climate Transition Benchmark) and how they should set meaningful climate science-based targets. This should be integrated in the Commission’s guidelines to clarify how companies should set climate science-based targets to improve the sustainability of their business model in an evidenced way.

In addition, companies should set net-zero emission time-bound transition plans to provide further details. Such plans should be time-bound and granular, i.e. at asset-level. In particular, transition plans would clarify how and when a given high-carbon company plans to retire its high-carbon assets (e.g. coal plants), and to align its business model with the Paris Agreement in a timely fashion.

On the basis of the above, we recommend that the Commission include the three following elements at least in its guidelines:

Large companies in high-carbon and other potentially polluting sectors requesting public support should:

- Set and disclose a measurable, science-based carbon emission reduction target to be achieved within a specific timeframe, ensuring that the company’s business model will reach a decarbonisation trajectory aligned with the objectives of the Paris Agreement by reducing Scope 1, 2 and 3 carbon emissions and reaching net-zero emissions by 2050 at the latest;
- Set and disclose a time-bound transition plan explaining how the climate target will be achieved, disaggregated down to the level of relevant operating subsidiaries and to the level of relevant physical assets;
- Disclose annual information on progress made towards this target.

This option can currently work for more sectors and companies than the option relying on the taxonomy, as the taxonomy criteria are not yet developed for several sectors.

Companies that have already adopted climate targets should be asked to set updated, more ambitious/accelerated ones to deserve public support.

2.2. Shift to mandatory guidelines as soon as the taxonomy disclosure requirement for companies enters into force (1 January 2022)

As from the 1st of January 2022, large companies⁸ will be required to disclose their taxonomy exposure in term of annual revenues, capex and opex. The baseline for companies to set taxonomy-related targets will therefore become publicly available.

⁸ Covered by the scope of the Non-financial reporting directive, currently under review.

This major change makes it possible and relevant to change the above approach and shift to mandatory guidelines: **as from early 2022 companies requesting public aid should be required to set taxonomy-related targets to increase the sustainability of their business model. For that purpose the Commission should be empowered to adopt a delegate act in the relevant MFF 2021-2027, InvestEU, EU recovery fund and state aid regulations.**

Recommendations

We recommend the following operational tools at project level and corporate levels for climate and environment target-setting ('do good' side):

- **At project level, the best approach is to build on the EU taxonomy.** The climate taxonomy delegated acts will enter into force as soon as they are published in the EU Official Journal (end 2020-early 2021) and **can therefore be referred to in the relevant MFF 2021-2027, InvestEU and EU recovery fund regulations**, which will only start in 2021.
- This also means that the taxonomy delegated acts can therefore be used from early 2021 for climate **tracking** in the MFF 2021-2027, InvestEU and the EU recovery fund and from early 2022 for broader environmental tracking.
- **At corporate level**, we recommend two complementary filters: a 'do no harm' filter for all companies and a 'do good' filter for large companies in high-carbon and other potentially polluting sectors to increase their sustainability.
- **The Commission should immediately table specific amendments** to ensure that the relevant MFF 2021-2027, InvestEU, EU recovery fund and state aid regulations require companies requesting public support to set and implement a time-bound environmental target to improve the sustainability of their business model;
- **In parallel, the Commission should establish as soon as possible (e.g. by June 2020) voluntary guidelines to clarify how companies can set and evidence a time-bound environmental target.** We recommend two options building on (i) the EU taxonomy and (ii) methodologies setting climate science based targets and net zero transition plans. These urgent guidelines should be merged with the 'do no harm' ones for the sake of simplicity.
- **By early 2022 when the taxonomy disclosure requirement for companies enters into force, the Commission should shift to mandatory 'do good' guidelines:** companies requesting public aid should be required to set taxonomy-related targets to increase the sustainability of their business model. For that purpose, the Commission should be empowered to adopt a **delegated act** in the relevant MFF 2021-2027, InvestEU, EU recovery fund and state aid regulations.

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