SEPTEMBER 2026

APPLICATION OF THE 'DO NO SIGNIFICANT HARM' PRINCIPLE UNDER THE EU'S 2028-2034 MULTIANNUAL FINANCIAL FRAMEWORK (MFF)

Consultation Response by Catherine Devitt

EJNI
ENVIRONMENTAL JUSTICE NETWORK IRELAND

EJNI submission to the targeted public consultation - draft guidance on the application of the 'do no significant harm' principle under the 2028-2034 Multiannual Financial Framework (MFF)

Prepared by Environmental Justice Network Ireland (EJNI) for submission via https://ec.europa.eu/eusurvey/runner/DNSH-Guidance-Next-MFF

This document sets out EJNI's submission to the consultation, organised in the same order as the survey questions, including EJNI's response to each multiple-choice question. The submission is informed by the analysis and positions of the European Environmental Bureau (EEB), CAN-Europe, CEE Bankwatch Network and WWF Europe, whose recommendations are credited throughout, alongside considerations specific to EJNI's work, Ireland and the island's all-island context

General questions on the proposed approach

Overall, does the framework strike a good balance between environmental protection and proportionality/simplicity?

2 (to a limited extent)

Please justify your answer, providing examples where possible

The concept paper strikes this balance to a limited extent. A single, harmonised list of DNSH criteria is a genuine improvement on the fragmented approach across the Recovery and Resilience Facility (RRF), the Social Climate Fund, InvestEU and Cohesion funds, and EJNI supports this shift. Known-upfront, verifiable criteria give managing authorities and beneficiaries greater certainty than the duplicative or self-assessed criteria used to date.

However, several of the proposed carve-outs risk undermining the protection the DNSH principle is meant to deliver. The exemption for fossil-fuelled heat, cold and electricity generation in agriculture and forestry in rural areas is a particular concern from an Irish perspective, since it carries no condition on fuel type, capacity, efficiency or duration.

EJNI also supports CEE Bankwatch Network's observation that treating Taxonomy-aligned activities as automatically DNSH compliant is self-defeating, since several Taxonomy criteria are themselves too weak to rely on here: gas power plants can still qualify as a Taxonomy-aligned "transitional" activity, reopening the fossil fuel loophole the exclusion list should close.

Ireland will access most of its EU funding through the National and Regional Partnership Plan (NRPP), so we would welcome one harmonised standard rather than two co-existing routes to compliance.

Section 1.A: Reduced administrative burden and proportionality

Do you have any comments on section 1.A? Yes

Do you think the single-list approach is simpler and reduces administrative burden? Please explain

3 (to some extent)

A single list known upfront is, in principle, a clear improvement on the current patchwork of programme-specific rules, and would ease the load on a small managing authority such as Ireland's. In practice, however, several carve-outs are drafted in terms that are difficult to verify. The rural and forestry exemption in point 2(e) carries no condition at all, making it harder for a managing authority to judge whether a heating investment is genuinely difficult to decarbonise or simply convenient.

EJNI also supports [CEE Bankwatch Network's recommendation] and [CAN-E's recommendation] that self-assessment does not work well, since an applicant has little incentive to conclude its own measure causes significant harm; assessments should be carried out or reviewed independently, with results disclosed publicly, so that reduced burden is not achieved at the cost of transparency and accountability.

Does the proposed approach allow the objectives of the relevant programmes to be achieved? Please explain

2 (to a limited extent)

Only to some extent. The DNSH guidance should support, not work against, the programmes it applies to, and several of the proposed carve-outs risk doing the latter. Continued eligibility for fossil-fuelled heat and power in agriculture and forestry, for low-emission (rather than zero-emission) vehicles outside the passenger car and light-duty segment, and for pipelines and vessels merely capable of carrying renewable products, all risk locking beneficiaries into fossil-dependent infrastructure and undermining the just transition and climate objectives that EU cohesion and rural development funding is meant to advance. This is particularly relevant to Ireland, where continued dependence on volatile and imported fossil fuel prices runs directly counter to the energy security and just transition objectives that the same funding instruments are meant to serve. A guidance that permits this outcome is not fully aligned with the Union's own policy priorities.

Does the proposed approach avoid duplication with existing EU environmental legislation? Please explain

3 (to some extent)

Not entirely. We support the principle that DNSH should add value rather than duplicate existing EU environmental law, and a guidance built on clear, closed criteria can achieve this. However, using existing EU legislation as an unchanging baseline is difficult where that legislation is itself under active revision. Proposals such as the Regulation on speeding up environmental assessments [could weaken protections] under the Birds, Habitats and Water Framework Directives, including through broadened use of overriding public interest derogations. If the DNSH baseline shifts as that underlying legislation changes, "avoiding duplication" becomes harder to assess and the guidance risks locking in a lower standard than currently applies. We would ask the Commission to clarify how the DNSH guidance will be kept consistent with, and not fall behind, the environmental acquis as it evolves over the life of the next MFF.

Is the proposed approach to proportionality adequate and operational? Please explain

3 (to some extent)

Only to a limited extent. A closed list of clearly defined exclusions is, in itself, the right way to secure proportionality, legal certainty and low administrative burden, since compliance becomes a straightforward check rather than an open-ended assessment. We do not see a strong case for further differentiating the application of the list by intervention type, management mode or project size, beyond the exemption already proposed for direct income support that cannot be linked to a specific investment. Introducing further thresholds or sector exemptions would reintroduce the fragmentation and legal uncertainty the single list is meant to remove. Proportionality is better achieved through the design of the criteria and carve-outs themselves, several of which, as noted elsewhere in this response, need tightening rather than further exemption to remain both proportionate and environmentally sound.

Is a differentiated approach needed for research activities?

No.

Should a specific approach be developed for financial instruments and budgetary guarantees? If yes, what should its key features be?

Yes

Yes. A dedicated approach may be needed for equity-type products and working capital, where linking DNSH to a single identifiable activity is genuinely difficult, but as highlighted by CAN-E, this should not weaken standards for the ECF InvestEU instrument, expected to channel a substantial share of the next MFF. EJNI supports WWF's recommendation that the full set of DNSH criteria should apply to non-equity investments and related guarantees, consistent with how promotional banks already screen operations against exclusion lists in due diligence, and that the existing InvestEU sustainability proofing process, which requires climate and environmental assessment beyond a basic exclusion check, should continue as a second layer under the ECF rather than being replaced by an exclusion list alone.

Section 1.B: Where feasible or appropriate

Do you have any comments on section 1.B? Yes

Comment on the definition of crisis

Aligning the definition of crisis with Article 2(22) of the Financial Regulation is a reasonable basis for consistency. However, the scope of the exemption needs to be defined ex ante and read alongside the exemptions already available elsewhere in the guidance, including those for defence and security and for special-purpose and emergency vehicles, which already address genuine emergency needs. A crisis-based exemption should not become a general route around DNSH for fossil fuel investment. Fossil fuel infrastructure typically takes years to plan and build, so it cannot, in practice, respond to an immediate crisis, and using the crisis exemption to fund it would not improve resilience on the timescale that matters. Any use of the exemption should be time-bound, linked to the specific crisis invoked, and reported on, so that it is not used to justify longer-term investment decisions.

Comment on the definition of reasons of overriding public interest

EJNI supports [CEE Bankwatch Network's position] that extending reasons of overriding public interest (ROPI) into a general DNSH exemption is self-defeating. A ROPI designation under the Habitats, Birds or Water Framework Directive is only available once a dedicated assessment has already found a project causes harm to those Directives' objectives. Treating that finding of harm as a reason to skip a DNSH assessment gets the logic backwards: it would let the most clearly harmful projects bypass scrutiny while less damaging ones are still assessed. ROPI was never designed as a budget spending rule and applies equally to private and public investment, whereas public funding should be held to a higher standard. We do not think a general ROPI exemption from DNSH is defensible.

Comment on the definition of defence and security, including dual-use activities

EJNI supports CEE Bankwatch Network's recommendation on this point. The term "security" is overly broad and could cover almost any activity a Member State chooses to label as such. It should be deleted, aligning the exemption instead with Article 1(3) of the EIA Directive, which allows Member States to decide, case by case, not to apply its provisions only to projects whose sole purpose is defence or response to civil emergencies. The 2014 amendment to that Directive deliberately narrowed an earlier, vaguer exemption to projects with defence as their sole purpose, to avoid interpretation problems; the same lesson should apply here. On dual-use activities, we would exclude them from the exemption entirely, so a project with a genuine civilian purpose alongside a defence one cannot escape assessment simply because a defence rationale is asserted.

Comment on the application of the 'where feasible or appropriate' principle

EJNI supports WWF's concern about the interaction between the "where feasible and appropriate" exemptions and the proposal to map DNSH criteria only to specific intervention fields, with all other fields treated as automatically compliant. Intervention fields are often broadly defined and can cover activities with very different environmental profiles, so a "green list" risks becoming a major loophole. Combined with an exemption for defence and security defined by intervention field, this creates a risk that Member States could select or frame activities under fields that do not carry a DNSH assessment. We would ask the Commission to limit any green list to fields with no foreseeable environmental impact, and keep higher-risk fields subject to the DNSH criteria and a case-by-case justification requirement, consistent with the transparency expected of the NRPP.

Are there other areas or cases where DNSH should be considered not feasible or appropriate?

No additional comment.

Section 1.C: Climate change adaptation

Are additional criteria for climate change adaptation necessary?

Yes

How might such criteria best be introduced proportionately, without excessive administrative burden?

Additional climate adaptation criteria are needed, and EU public funding should meet a higher standard than the EU Taxonomy, which was designed for private finance. Publicly funded activities should be designed and delivered so that they are resilient to current and projected climate risks over their expected lifetime, and should not increase the vulnerability of people, ecosystems, infrastructure or economic activities, or transfer climate risk to other locations, sectors or population groups. This is directly relevant to Ireland's exposure to more frequent and severe flooding and coastal erosion, and to the cross-border river catchments shared with Northern Ireland, where adaptation planning already requires cooperation across two jurisdictions and, in places, two distinct regulatory regimes. Any additional criteria should require consideration of direct, indirect, cumulative and cross-border effects, and should require applicants to demonstrate that alternative adaptation pathways, including nature-based and ecosystem-based solutions, were genuinely considered before a hard infrastructure response was chosen. Measurable resilience indicators, monitoring arrangements and corrective measures should be built into project design from the outset, rather than assessed only after the fact. Particular attention should be given to critical infrastructure, ecosystem resilience, and the risk that a project locks a community or system into a maladaptive response for decades to come. We would also caution that adaptation criteria should not be developed in isolation from the mitigation criteria already set out in section 2 of the concept paper. A project that increases resilience to one climate hazard while increasing fossil fuel dependency, for example fossil-fuelled back-up generation justified on resilience grounds, should not be treated as automatically compliant with DNSH simply because it addresses adaptation.

Are exposure and size adequate for guiding the application of such criteria? Please explain

3 (to some extent)

To some extent. Exposure and size are reasonable starting criteria for identifying which large-scale or critical infrastructure projects warrant additional scrutiny, but they should not be the only factors considered. The territorial context also matters, including whether a project sits within a shared river catchment, a coastal or flood-risk area, or a region already experiencing measurable climate stress. For Ireland and the island as a whole, cross-border infrastructure and shared water catchments mean that the adaptation implications of a project can extend beyond the jurisdiction in which it is funded. We would encourage the Commission to ensure that the criteria for identifying in-scope projects can account for this kind of cross-border or cross-catchment exposure, rather than relying solely on the size and exposure of the project as it sits within a single Member State's territory.

Section 2.A: DNSH areas and criteria for EU Member States

The comments below focus on the points of the exclusion list most directly relevant to EJNI's work. For points not addressed here (points 3, 4, 7, 8, 9, 10, 12, 13, 14, 16 and 17), EJNI has no specific comment to add beyond the general observations set out above and defers to the more detailed technical assessments prepared by WWF, the EEB, and other environmental NGOs on these points.

Point 1: Mining, extraction, production, transport, transmission, distribution and storage of fossil fuels

Do you have comments on point 1 and its exemptions? Yes

Are the scope and formulation clear?

2 (to a limited extent)

Which elements need clarification?

The exclusion of the full fossil fuel value chain, from extraction to storage, is welcome and represents a genuine tightening compared with the broad transmission and distribution carve-outs currently available under Cohesion Policy and the RRF. Three elements of the drafting nonetheless need to be revisited. First, supporting CAN-E's assessment, we believe the carve-out in point (d) for "low-carbon fuels" is drawn too widely. We would recommend limiting this carve-out to renewable hydrogen, produced close to the point of use from additional renewable electricity not needed for other purposes and used only where direct electrification is not feasible, removing the reference to fossil-derived low-carbon fuels entirely.

Second, the carve-out in point (f) for infrastructure and mobile assets "capable of" transporting renewable, low-carbon or non-energy products sets too low a bar, since almost any tank, pipeline, trailer or vessel meets this test regardless of what it actually carries. Deleting this carve-out entirely would be the most robust fix.

Third, the definition of fossil fuels expressly includes peat, which matters directly for Ireland, where EU and national funding has supported the rehabilitation of cutaway and industrial peatlands. We would ask that the final guidance confirm peat extraction, transport and storage for energy purposes fall within the exclusion, and that funding for peatland rehabilitation and rewetting is clearly recognised as outside its scope.

Do you expect any challenges in the implementation and verification of point 1 and its exemptions?

3 (to some extent)

Yes, several of the carve-outs raise verification difficulties as drafted. Decommissioning and rehabilitation (carve-out a) can be proven ex ante through written confirmation from the competent national authority, which is standard practice in remediation funding. Hydrogen-readiness (carve-out b) needs independent technical certification, such as TEN-E Project of Common Interest documentation, since the claim is otherwise unverifiable. Back-up storage (carve-out c) is verifiable via permits and dedication clauses in the funding agreement. Low-carbon fuel compliance (carve-out d) would rely on Renewable Energy Directive certification, but for grid-connected gas physical traceability is not possible, creating a risk of double counting under a book-and-claim approach. The dedication test we recommend for carve-out f would need a contractual commitment to renewable or non-energy use in the grant agreement, with actual use monitored ex post, since a one-off declaration of capability at the point of funding would not be sufficient.

Point 2: Generation of electricity, heat or cold from fossil fuels

Do you have comments on point 2 and its exemptions? Yes

Are the scope and formulation clear?

2 (to a limited extent)

Which elements need clarification?

EJNI supports WWF's recommendation that point (c), allowing generation of electricity with "low-carbon fuels", should be limited to renewable hydrogen for the same reason as under point 1. We share WWF's concern that point (d), exempting on-site heat or cold generation for Net-Zero Industry Act technologies, could apply to facilities also covered by the Emissions Trading System, undermining its carbon price signal; we would recommend applying the same safeguard as point (a), that EU funding does not support fossil-based generation assets, to close this gap.

Our principal concern remains the exemption in point (e) for generation of electricity, heat or cold in agriculture and forestry in rural areas, which carries no condition on fuel type, capacity, efficiency or duration. This matters directly for Ireland. An unconditional exemption risks locking farm and forestry enterprises into continued reliance on volatile fossil fuel prices, at the point where EU rural development and just transition funding should support the opposite outcome. If a carve-out is retained, it should be limited to a closed list of applications genuinely difficult to decarbonise paired with a phase-out plan rather than open-ended eligibility.

EJNI also supports Climate Strategy & Partners' recommendation (shared internally with EJNI) that point 2 be clarified to explicitly cover the acquisition and installation of fossil-fuel-fired heating appliances, including peat-fired boilers and stoves, since it is currently ambiguous whether buying such an appliance for a home or farm building falls within the exclusion at all.

Do you expect any challenges in the implementation and verification of point 2 and its exemptions?

3 (to some extent)

Yes. EJNI supports WWF's assessment that several carve-outs here are difficult to verify in practice: the 300-hour cap on back-up assets (carve-out b) needs annual, ex-post verification of metered run-hour logs rather than a one-off declaration; low-carbon fuel use (carve-out c) faces the same traceability problem as under point 1, workable for dedicated on-site supply but not grid-connected gas; and the Net-Zero Industry Act carve-out (carve-out d) is unclear on whether it covers an entire plant or only the specific listed process. The agriculture and forestry carve-out (carve-out e) has no verifiable conditions at all, which is precisely why we recommend narrowing it to a closed list paired with a phase-out plan.

Point 5: Construction and expansion of roads

Do you have comments on point 5 and its exemptions? Yes

Are the scope and formulation clear?

3 (to some extent)

Which elements need clarification?

EJNI has no specific comment to add on point 5 beyond the general observations set out above, and defers to the more detailed [technical assessments prepared by WWF] and CAN Europe (unpublished) on this point.

Do you expect any challenges in the implementation and verification of point 5 and its exemptions?

3 (to some extent)

EJNI has no specific comment to add on point 5 beyond the general observations set out above, and defers to the more detailed [technical assessments prepared by WWF] and CAN Europe (unpublished) on this point.

Point 6: Manufacturing, acquisition and leasing of rail rolling stock

Do you have comments on point 6 and its exemptions? Yes

Are the scope and formulation clear?

3 (to some extent)

Which elements need clarification?

On point 6, EJNI defers the general observations set out above, and defers to the more detailed [technical assessments prepared by WWF] and CAN Europe (unpublished) on this point. We would like to add this issue is particularly relevant to the all-island dimension of rail investment, including cross-border services between Dublin and Belfast, where electrification decisions on one side of the border have direct implications for service planning and emissions on the other, and where a consistent, ambitious standard on both parts of the network would support rather than complicate future investment planning.

Do you expect any challenges in the implementation and verification of point 6 and its exemptions?

2 (to a limited extent)

We would recommend that any claim of infeasibility be supported by a route-level electrification assessment, refreshed periodically, rather than accepted as a one-off determination at the point of funding, particularly given the pace of electrification planning on routes such as the Dublin–Belfast corridor.

Point 11: Landfill facilities

Do you have comments on point 11 and its exemptions? Yes

Are the scope and formulation clear?

3 (to some extent)

Which elements need clarification?

We generally welcome the exclusion of landfill facilities. EJNI supports the EEB's recommendation that the carve-out for capture and utilisation of landfill gas should be removed rather than merely tightened.

Do you expect any challenges in the implementation and verification of point 11 and its exemptions?

3 (to some extent)

Yes, though removing the capture-and-utilisation carve-out as we recommend would substantially simplify verification.

Point 15: New artificial barriers disrupting river continuity in free-flowing river stretches

Do you have comments on point 15 and its exemptions? Yes

Are the scope and formulation clear?

2 (to a limited extent)

Which elements need clarification?

This exclusion is a welcome addition and, in principle, aligns with the Nature Restoration Regulation's target of restoring 25,000 km of free-flowing rivers by 2030, itself only around 1.5% of Europe's river network. As currently drafted, however, it does not go far enough. First, the exclusion applies only to stretches already mapped as free-flowing under that Regulation, but this mapping remains incomplete and inconsistent across Member States, which risks creating a perverse incentive not to map. Pending complete mapping, River Basin Management Plans and national barrier inventories should be used as interim sources so that unmapped stretches are not treated as unprotected, and the exclusion should extend to stretches selected for restoration under National Restoration Plans, as well as to karst landscapes and other protected areas, since hydropower and similar barriers there can cause significant, unpredictable damage to underground water flows that river-continuity mapping alone would not capture.

This is particularly relevant to Ireland and the island as a whole, where major catchments cross the border and are managed through cross-border river basin planning under the Water Framework Directive, so a barrier built on one side has consequences for continuity and ecological status assessed on both sides.

Do you expect any challenges in the implementation and verification of point 15 and its exemptions?

3 (to some extent)

Yes. The central difficulty is that mapping of free-flowing river stretches under the Nature Restoration Regulation remains incomplete and inconsistent across Member States, so relying on that mapping alone risks treating unmapped stretches as unprotected and could create a perverse incentive against completing the mapping. Pending complete mapping, River Basin Management Plans and national barrier inventories should be usable as interim evidence. Demonstrating that a project "does not disrupt continuity" can be proven ex ante through a hydromorphological assessment in line with Article 4(7) of the Water Framework Directive, covering sediment transport and fish passage, and verified ex post through fish-passage monitoring. For cross-border catchments such as the Erne, the Foyle and the Blackwater, verification should draw on the relevant cross-border river basin management plan rather than a single jurisdiction's data alone, since continuity and ecological status are assessed on both sides of the border.

Point 18: Manufacture or placing on the market of substances of very high concern (SVHC)

Do you have comments on point 18 and its exemptions? Yes

Are the scope and formulation clear?

1 (not at all)

Which elements need clarification?

We share the concern that the exemption for substances of very high concern, based on an undefined "design or redesign stage" approach to minimising concern, sets an unworkable and largely unverifiable standard, with no substitution requirement, no essential-use test and no measurable endpoint. EJNI supports the EEB's recommendation to delete the exemption altogether, so that point 18 reads: "Activities which manufacture or place on the market substances identified as substances of very high concern pursuant to Article 59 of Regulation (EC) No 1907/2006 (REACH) shall be considered to cause significant harm." We also support WWF's recommendation to extend this to a grouping approach covering PFAS and other very persistent substances, since the Article 59 candidate list alone lags hazard evidence by years.

Do you expect any challenges in the implementation and verification of point 18 and its exemptions?

4 (to a great extent)

Yes, and this is precisely why we recommend deleting the exemption rather than trying to make it verifiable.

Final questions

Do you consider any of the criteria in the concept paper unnecessary?

No, based on our review of the points addressed in this response; we defer to other ENGO assessments on points outside our direct focus.

Do you see a need to include additional criteria or areas not covered in the concept paper? If yes, please explain

Yes

We would ask the Commission to include drainage or conversion of peatlands and wetlands, including for agriculture, forestry or extraction, as an additional criterion, unless conversion is part of restoration or rewetting. This sits alongside our point on point 1, since without a clear treatment of peat across the guidance, funding could undo the peatland rehabilitation already under way in Ireland. EJNI also supports WWF's recommendation on new hydropower in protected areas or on free-flowing rivers, and CEE Bankwatch Network's recommendation to exclude companies convicted of environmental breaches within the previous five years from EU funding.

Given Ireland's rapid growth in data centre capacity and its strain on grid infrastructure, EJNI supports Bankwatch's call for a criterion requiring data centre funding to meet high standards of additionality in water and energy efficiency, since this sector's impacts are not currently captured by any EIA or DNSH assessment. Finally, EJNI supports the EEB's recommendation to look beyond substances of very high concern alone and address pollution and hazardous chemical releases across the full project lifecycle, so that compliance with chemicals legislation is a baseline, not evidence of no significant harm.

References

The following sources informed the analysis in this submission.

CAN-Europe, CAN Europe input to consultation: Methodology guidance for the Application of the 'Do No Significant Harm' Principle in the 2028–2034 EU Budget, 31 March 2026.

CEE Bankwatch Network, The Commission's 'do no significant harm' concept paper, position paper, 14 September 2026.

Climate Strategy & Partners, Building-up DNSH best practices in InvestEU for the new European Competitiveness Fund, technical note, September 2026. (Unpublished at the time of submission – shared with EJNI).

European Environmental Bureau, draft response to the consultation on the Commission concept paper on DNSH application, 2026 (Unpublished at the time of submission – shared with EJNI).

European Commission, Commission concept paper on the 'Do No Significant Harm' (DNSH) guidance for the Multiannual Financial Framework 2028-2034, 15 July 2026.

WWF European Policy Office, Commission concept paper on the 'Do No Significant Harm' (DNSH) guidance for the EU budget 2028-2034: technical assessment of section 2

WWF European Policy Office, Commission concept paper on the 'Do No Significant Harm' (DNSH) guidance for the EU budget 2028-2034 (briefing), September 2026.