

Applying the ‘do no significant harm’ principle in practice

Examples of reforms and investments under national recovery plans that will cause harm to the environment

Multimodal terminal in Ülemiste for Rail Baltica (reform 1, investment 2, EUR 31.05 million), Estonia’s recovery plan

Contact person: Johanna Kuld johanna@roheline.ee, Estonian Green Movement, Estonia

Description of project

The RRF measure foresees investment in the main Rail Baltica terminal in Tallinn, Ülemiste. Currently, there is no highspeed rail connection to the rest of the EU. The existing railway goes through Tartu, which is a longer route and involves a stopover and switching trains on the Estonia-Latvia border.

Despite the general environmental advantages of rail, the currently planned Rail Baltica route raises numerous concerns, as it endangers ecosystems that belong to high conservation value Natura 2000 areas. Priority must be given to upgrading existing infrastructure rather than building a completely new route.

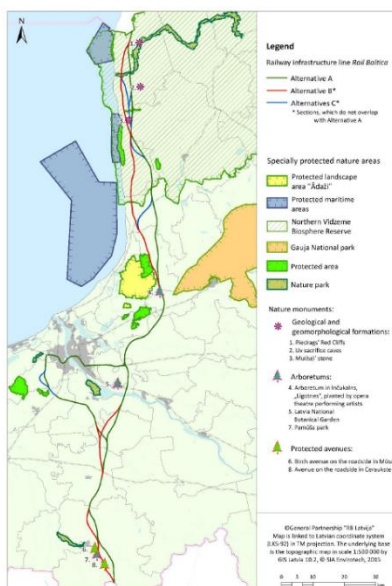


Figure 1. Protected natural areas in the vicinity of the Rail Baltica route (Estonia – Latvia – Lithuania). Source: Construction of the European standard gauge public railway infrastructure line Rail Baltica. Summary of the environmental impact assessment report (2015).

Expected impact on conservation areas

Ülemiste multimodal terminal is a key part of the Rail Baltica and thus cannot be separated from the rest of the railway's impacts on key swamp and bog areas which provide rich habitats and sequester carbon.

Although the route does not go directly through Natura 2000 areas, it is planned so close to their borders that it will disrupt their connectivity, degrade forests and wetlands and result in the loss of habitats and breeding sites for many species. Negative impacts on wildlife migration corridors and hindrance of animal routes and behaviours also need to be carefully assessed. The railway construction phase will also most likely cause noise, air pollution, and vibration, thereby negatively affecting surface water, wetlands, groundwater and fish fauna.¹

In May 2020, the Supreme Court of Estonia annulled the construction plan of Rail Baltica in Pärnu county due to the absence of a sufficient appropriate assessment of the project's impacts on the Luitemaa bird area Natura 2000 site.

The construction plan for the county is currently being updated, but the Ministry of Environment has already found the quality of the new Natura 2000 assessment insufficient and not aligned with the guidelines.²

The impacts and costs of building bridges and dykes over bog areas have not been well assessed by the project promoter, neither have the benefits of the alternative route that would upgrade the existing railway line which connects the second biggest city of Estonia – Tartu – to Tallinn and Riga. This has attracted the public opposition of over 400 public figures who have signed an open letter to the Estonian parliament and government.

In addition, in 2017-2018 a group of independent experts challenged the cost-benefit analyses of the project, pointing out that the environmental and social benefits of shifting freight transport to rail had been overestimated by at least EUR 4.1 billion, because the assumptions about pollution from trucks and excise income from fuel were incorrect.³ They also found that the external costs of damage to ecosystems had not been properly calculated.

Application of the 'do no significant harm' principle

While encouraging rail transport is indeed a way forward to decrease the greenhouse gas emissions of private vehicles and flight traffic and thus has a positive climate mitigation and adaptation impact, climate impact is not the only metric that the project should be assessed by.

Negative biodiversity and ecosystems impact has been mentioned above, and the fact they have been insufficiently assessed has been proven in court. The construction phase is likely to negatively affect water

¹ Lucas P.S., de Carvalho R.G., Grilo C., [Railway Disturbances on Wildlife: Types, Effects, and Mitigation Measures](#). In: Borda-de-Água L., Barrientos R., Beja P., Pereira H. (eds), *Railway Ecology*, 2017.

² [Keskkonnaministeerium: Rail Balticu Pärnu trassi eelnõus on Natura hindamine puudulik](#), *Majandus*, 9 August 2021.

³ Priit Humal, Karli Lambot, Illimar Paul, Raul Vibo, [Major mistakes in Rail Baltica Cost-Benefit Analysis made by Ernst & Young Baltic](#), January 2018.

resources and cause pollution, while little information is available about the circular economy aspects of the project.

Consistent interpretation of the ‘do no significant harm’ principle would require either heavily modifying the construction plans or changing the planned route to protect biodiversity, something which environmental organisations have been advocating for since the beginning of the planning process.

Concerns regarding ‘sustainable water management’ (measure B3.3.1⁴), Poland’s recovery plan

Contact person: Rafał Rykowski rafalrykowski@zielonasiec.pl, Polish Green Network, Poland

At the time of writing, the Polish recovery plan has not been approved and is frozen due to the impasse between the European Commission and Poland over the rule of law. Its approval is expected in the near future, but it is unknown exactly what reforms and investments will be included in the final approved plan.

However, the measure listed below was included in the last publicly released draft plan in May 2021. We wish to highlight this in the hope that it will not be approved during the assessment period once the plan is submitted.

In addition, assessments of draft Polish operational programmes for cohesion policy show very similar, if not identical, proposed measures, as outlined in more detail below. The following case study therefore also aims to ensure that similar measures are not simply refinanced through other EU funding streams.

Description of project

This measure is part of the B.3 package on climate adaptation, totalling EUR 8.6 billion, which will finance mainly construction, reconstruction and expansion of water management facilities like reservoirs, dams, gates and weirs in rural and forest areas across Poland. It aims to promote their dual function of both retaining and draining water and revitalising former and existing water reservoirs on small watercourses for use by forestry, agriculture or renewable energy generation. The planned construction of ‘multifunctional water reservoirs’ and rebuilding old facilities covers practically the entire country.

The Polish recovery plan states⁵:

‘A big challenge is to increase small retention in rural areas, which would help counteract the negative effects of drought. Increasing water retention, among others, in river beds and temporary damming of water with the use of e.g. weirs or gates will redirect these waters to drainage ditches connected with these watercourses, which in turn will lead to an increase in the level of groundwater in the surrounding

⁴ Full title: B3.3.1. Investments in enhancing sustainable water management potential in rural areas include implementing multifunctional hydro-technical investments.

⁵ According to the newest public version of the draft (May 2021) published by the Ministry of Development Funds and Regional Policy <https://www.gov.pl/web/planodbudowy/czym-jest-kpo2>.

areas. Such actions will improve the water balance in the soil: they will ensure water availability in periods of rainfall shortages and ensure the runoff of water to rivers in periods of excess water.'

This means that rivers that are already blocked by a huge number of barriers — it is estimated Poland has as many as 77,000 barriers⁶— will now be further blocked by new ones. Ecological connectivity is one of the most important factors for biodiversity in rivers, which means that already damaged aquatic environments will be put under additional pressure by building new dams. We cannot identify with 100 per cent certainty which specific rivers are in danger, but there is a risk for all rivers in agricultural areas.

Judging by the wording of the measure, it can be assumed that under B3.3.1., reservoirs on rivers will make up a significant proportion of the investments. Once they were built under the pretext of flood protection, now drought has become an additional pretext. This 'multifunctionality', according to the claims of the hydrotechnical, drainage and energy lobby, will therefore provide protection against floods and droughts, and enable production of green energy, etc. The real reasons for the pressure to build reservoirs are large and easy money (hydrotechnical, melioration and energy companies benefit from such investments) and recreation, which is the main motivation for local government officials. Every village head or mayor would like to have an artificial lake in their area, as the prices of land and houses immediately go up.

Rollback of legislative safeguards?

Linked to measure B3.3.1 is a reform – *B3.3. Support for sustainable management of water resources in agriculture and rural areas*. This consists of unspecified amendments to the Water Law, the Construction Code and the Mining and Geological Law aimed at simplifying and expediting the permitting of investments related to water retention.

Based on our previous experience, explained below, we believe that this planned reform will likely relax or remove environmental safeguards, which are already insufficient for some water management projects.

Harm to water-dependent ecosystems

The list of projects submitted under the Recovery and Resilience Facility by the Podkarpackie Voivodship – just one of many similar sets of projects from across the country – includes the construction of large and small reservoirs and other infrastructure for water retention, including the controversial Kały-Myscowa reservoir. Its construction is a graphic example of the destructive potential of such measures.

Building the Kały-Myscowa reservoir means flooding over 400 hectares of unique areas in the valley of the Wisłoka River, where a dam will be built. It is the heart of the Low Beskids, on the border of the Magura National Park and four Natura 2000 areas.

⁶ Belletti, Barbara, Carlos Garcia de Leaniz, Joshua Jones, Simone Bizzi, Luca Börger, Gilles Segura, Andrea Castelletti, et al. al. 2020, [More than One Million Barriers Fragment Europe's Rivers](#), *Nature* 588 (7838): 436-41.

The project requires the resettlement of several hundred people. Wooden landmarks such as the area's characteristic old buildings are at risk of flooding, and tens of thousands of trees will need to be felled. Some residents are protesting against these plans. The rationale behind the investment is being challenged by specialists, scientists and environmental organisations. In the opinion of the Save the Rivers Coalition: *'If the reservoir were built, it would be a breach of Polish law and European Union law.'*

In principle, investments in water treatment, and the restoration of the land's water-retaining function could assist sustainable water management. However, Polish Waters (PGW Wody Polskie, the state entity governing the Polish water administration authorities) does not see the difference between a sterile drainage ditch and a small river. Therefore, investments in the repair or construction of reservoirs, dams, and weirs on watercourses will cause a significant threat to biodiversity. They are likely to harm rivers, wetlands and water-dependent ecosystems and to be extremely detrimental to the good status or the good ecological potential of bodies of water.

Our concerns are based on previous similar projects. Thousands of kilometres of Polish rivers and streams have been destroyed in this way, also using EU funds, under the pretext of improving water management in rural areas.

WWF has documented so-called 'maintenance works', 'flood damage removal', and 'modernisation' on Polish rivers.⁷ These works are often a euphemism for river regulation and usually take place with only a notification of construction, but without any environmental impact assessment (EIA) or water permit. Such actions are not precisely defined in the Polish water law, and are very harmful to biodiversity, strongly degrading hydromorphology and ecosystems. This has happened with the rivers Supraśl (Natura 2000 site SPA Puszcza Knyszyńska), Moszczanka and Łydynia. One of the most recent outrageous examples, funded by the Polish budget, is the very small Krzyworzeka river in Małopolska. In 2020, Polish Waters used excavators to destroy the river's bed, destroying the habitats of several protected fish species.

An example of a reservoir built as a pseudo-flood-prevention investment of the type described above is the recreational Lagoon on the Wiązownica River (Przytyk commune), built in 2015 for PLN 17 million, of which PLN 11 million from EU funds.⁸ The investment destroyed the meandering, precious river and original ecosystem, and contributed to the deterioration of local biodiversity.

Considering the above, and in view of current governmental policies and plans, such as the draft Plan for the Prevention of the Impacts of Drought, Recovery and Resilience Facility money is almost certain to be used to finance grey infrastructure with little or no positive impact on the availability of water and severe damaging effects on ecosystems and biodiversity. Under this anti-drought plan, whose measures are to be financed under the NRRP, hundreds of weirs and retention reservoirs would be built throughout Poland.

⁷ See for example evidence of river damage: <https://bit.ly/3edJ8mA>.

⁸ It is very hard to find information from which specific fund - potentially the Solidarity Fund (flood damage removal), Regional Operational Programme or Rural development. The investor was the Provincial Board of Melioration and Water Devices in Warsaw.

Water mills or hydropower plants?

Furthermore, the recovery plan states that *'Additional support will cover the revitalization of former and existing water reservoirs and the accompanying cultural infrastructure in the form of water mills to develop a nationwide water retention system in rural areas.'*

In reality, we suspect that this means hydroelectric power plants. According to the Restore-Hydro project, in Poland, about 6,000 such locations have been mapped.⁹ This would significantly increase river fragmentation, as examples from e.g., Croatia show that mill conversions into hydropower plants do not necessarily restrict themselves to the original amount of water used by the mill.¹⁰

If the measure is implemented as originally intended, it will pave the way for environmentally harmful investments, including ineffective reservoirs on watercourses built under the pretext of improving water retention.

Application of the 'do no significant harm' principle

This measure should not have passed the 'do no significant harm' assessment. Regarding the objective of protection and restoration of biodiversity and ecosystems, the proposed measure is detrimental to the good condition and resilience of ecosystems, and harmful to the conservation status of habitats and species, including those of Union interest. It runs counter to the objectives of the EU Green Deal and EU Biodiversity Strategy, and is unlikely to be in line with the Water Framework Directive or the Birds and Habitats Directives.

It is very likely that multifunctional hydro-technical investments would lead to mass-scale deterioration of river ecosystems in Poland due to the change of river valleys into reservoirs and due to the disruption of the ecological continuity of rivers and their valleys. Such projects may pose serious threats to biodiversity, including for protected habitats and animal species important to the EU. They will also reduce the self-cleaning capacity of rivers and could potentially increase methane emissions.

Moreover, approving such a measure under the RRF opens the door to other harmful investments. The main Polish operational programme funded through cohesion policy funds, called FENiKS (the programme concerning infrastructure, climate and environment) contains measures that sound similar to B3.3.1. The measures support investments in reservoirs and channel retention, again contradicting the environmental objectives of the Water Framework Directive by disrupting the continuity of ecosystems and morphology of watercourses.

Additionally, the measures proposed in FENiKS supports adapting rivers for inland navigation and the development of waterways. Among other issues, it threatens to permanently disturb the groundwater level of the adjacent areas. It also threatens to prevent the achievement of the environmental goals set out in the Water

⁹ [RESTOR hydro database](#), European Renewable Energies Federation.

¹⁰ [Dabrova Dolina hydropower plant, Croatia](#), CEE Bankwatch Network, accessed 25 February 2022.

Framework Directive. Waterways and inland navigation will also significantly negatively affect channel and valley habitats protected by Polish and Community law (Natura 2000).

As the Natura 2000 network in Poland is incomplete, many valuable natural areas not included in the network lack effective protection. The current practice in managing Natura 2000 sites also does not guarantee an adequate level of protection. Poland is failing to abide by its obligations under Articles 4(4) and 6(1) of the Habitats Directive and 4(1) and 4(2) of the Birds Directive, i.e. the obligation to designate conservation areas, define conservation objectives and implement management plans for sites, and the obligation to ensure effective protection of endangered species listed in the Directive.

No detailed conservation objectives have been defined and no management plans have been adopted for the vast majority of the designated Natura 2000 sites, even though the six-year deadline for doing so has passed. This makes effective protection of the Natura 2000 network in Poland impossible, as one cannot properly assess the impacts of plans and projects on natural habitats and species in reference to the conservation objectives of the given Natura 2000 site.

The Skarżysko section of the S7 road is a case in point: in the absence of a management plan of the Lasy Skarżyskie Natura 2000 site it was impossible to properly assess the project's impact on the habitats of the marsh fritillary – a species for the protection of which the area was designated. As a result, the project promoter destroyed one of the best-preserved populations of this endangered butterfly in Poland, without even compensating for the damage.¹¹

Without adequate protection of Poland's habitats and species, implementation of the 'do no significant harm' principle is not enough. Urgent reinforcement of the Natura 2000 network's protection in Poland is needed, including the designation of areas currently missing from the network and the rapid development and adoption of missing management plans for Natura 2000 sites. Despite those deficiencies the Polish latest recovery plan does not include any provisions that will positively impact the protection or restoration of biodiversity.¹²

Restoration and mitigation of climate change and climate-related disasters for resilient biodiversity forests, Slovenia's recovery plan

Contact person: Pia Höfferle pia.hofferle@dopps.si, DOPPS, Slovenia

Description of the project

The stated goal of the project is forest restoration and mitigation of climate change as well as a plan for resilient biodiversity-rich forests in Slovenia. Concretely, and despite the overly positive name of the measure, RRF and CAP funding is to be used for the construction of new forest road infrastructure, the modernisation of forest

¹¹ For more information, see <https://bankwatch.org/eu-budget-case/s7-motorway>.

¹² https://bankwatch.org/wp-content/uploads/2021/05/2021-05-19_Building_Back_Biodiversity_final.pdf

machinery and a new Centre for Seeds. The political intention of these measures is to encourage and intensify forest management, especially private land owners, to guarantee opened-up and cleaned-up forests, as stated in the Strategic plan for the Common Agricultural Policy.¹³

Similar measures¹⁴ have proven to lead to an increase in exploitation of forest biomass and would worsen the conservation status of already threatened forests in Slovenia. More precisely the following areas could be particularly affected: SPA Krakovski gozd - Šentjernejsko polje (SI5000012), SPA Julijci (SI5000019) and SPA Snežnik-Pivka (SI5000002).¹⁵

With regards to, the Centre for Seeds aims to provide resilient tree species likely to promote reforestation via non-native trees as climate change mitigation measures, as happened in previous similar projects between 2018 and 2021¹⁶. These species, such as the Douglas fir (*Pseudotsuga menziesii*), have damaging effects on old-growth forest by preventing natural regeneration, for example by using resources essential to other species. These tree species are also the fastest to grow, making them highly attractive for using as forest biomass.

The proposed interventions mentioned above are a part of the Common Agricultural Policy 2023-2027 (CAP).¹⁷ The first draft of the Slovenian CAP Programme for 2023-2027 was officially introduced in July 2021,¹⁸ when the NRRP was already approved. The final draft of the CAP was sent to the European Commission in December 2021. Nevertheless, the proposed measures were part of the previous Rural Development Programme,¹⁹ which openly promoted intensification of forest management, for a more productive range of trees that would achieve higher prices on the market and lead to a higher consumption of wood biomass.

Impact on Slovenian forests

Data provided by the Slovenian government under Article 17 of the Habitats Directive in 2019 shows that around three quarters of all forest habitat types in Natura 2000 (which cover more than 50 per cent of all forests in Slovenia) are in an unfavourable or bad condition.

Therefore, additional measures and requirements to open up and clean up forests would add to the current deficit of dead woody biomass (especially coarse). Furthermore, DOPPS–Birdlife Slovenia has already observed that forests often have an inappropriate age structure – an issue also reported in some of the forest management plans. In practice, this means that the regeneration process is altered.

¹³ <https://skp.si/skupna-kmetijska-politika-2023-2027>

¹⁴ Katarina Denac, Tomaž Jančar, Luka Božič, Tomaž Mihelič, Urša Koce, Primož Kmecl, Ivan Kljun, Damijan Denac, Dejan Bordjan, [Monitoring populacij izbranih ciljnih vrst ptic na območjih Natura 2000 v letu 2018 in sinteza monitoringa 2016-2018](#), DOPPS, October 2018.

¹⁵ https://www.ptice.si/wp-content/uploads/2020/12/29_9_2020_Porocilo_monitoring_ptice_2020_corr.pdf

¹⁶ Suitability study on the Douglas Fir and other non-native tree species in the restoration of forests through planting and sowing in Slovenia: <https://www.bf.uni-lj.si/en/organisation/forestry/research/research-projects/68/>

¹⁷ [Slovenian Strategic CAP Plan](#).

¹⁸ <https://www.gov.si/novice/2020-11-11-zacenja-se-javna-razprava-izhodisc-v-okviru-strateskega-nacrta-skupne-kmetijske-politike/>

¹⁹ [Slovenian RDP 2014-2020](#), see the measure 4.2.23. P23 pages 135-36 and the measure 4.2.24 P24 pages 136-17.

Additionally, data provided under Article 12 of the Birds Directive in 2019²⁰ shows that short-term population trends for forest-dwelling birds, which are dependent on old-growth forests²¹ are either in decline or unknown, and that the trends are unknown for the long term. These habitat changes are already having an effect on populations of bird species. This accelerates the existing decline from recent decades, due to inappropriate forest practices inside Natura 2000 designated areas.²²

Application of the ‘do no significant harm’ principle

This measure to be financed through the Recovery and Resilience Facility and the CAP passed the ‘do no significant harm’ assessment while the consequences on old-growth forests in Natura 2000 are likely to be highly damaging.

Based on the available data from the Habitats Directive reporting and the fact that previous RDPs included measures which promoted further exploitation of forest habitats in Natura 2000 areas, the measures proposed under the Recovery and Resilience Plan should have been seriously questioned and should never have passed the assessment under Objective 6: ‘*Protection and restoration of biodiversity and ecosystems: it is not significantly detrimental to the good condition and resilience of ecosystems, or detrimental to the conservation status of habitats and species*’²³.

The case shows that assessing whether significant harm is done or not requires significant field expertise and is all about detailed work. The current framework of DNSH is not preventing harm, not even in areas of sensitive biodiversity such as Natura 2000 sites.

Widening of the Ponte dei Mille Levante terminal in the Port of Genoa and construction of a new breakwater, Italy’s recovery plan

Contact person: Elena Gerebizza egerebizza@recommon.org, ReCommon

Description of project

The measure forms part of the ‘Extraordinary Programme of Urgent Investments’ in the Italian recovery plan. This foresees the widening of the Ponte dei Mille Levante terminal, part of a wider renovation project for the Port of Genoa, and includes plans for the construction of a new breakwater for the port.

²⁰ <https://zrsvn-varstvonarave.si/informacije-za-uporabnike/katalog-informacij-javnega-znacaja/porocanje-po-12-clenu-direktive-o-pticah/>, see data for ‘Poročilo za obdobje 2013-2018’.

²¹ *Tetrao urogallus, Dendrocopos medius, Dendrocopos leucotos, Dendrocopos syriacus, Picoides tridactylus, Ficedula parva, Ficedula albicollis, Glauclidium passerinum.*

²² Denac et al, [Monitoring populacij izbranih ciljnih vrst ptic na območjih Natura 2000 v letu 2020 in sinteza monitoringa 2019-2020. Poročilo. Ministrstvo za kmetijstvo, gozdarstvo in prehrano, DOPPS, 2020.](#) See *Dendrocopos medius* and *Picoides tridactylus*.

²³ *Picoides tridactylus* and *Dendrocopos medius*.

The breakwater construction is the largest infrastructure financed by the Italian government under the recovery plan, with an estimated cost of EUR 950 million. It will benefit from EUR 500 million through the complementary fund set up by the Italian government, EUR 100 million through the Recovery and Resilience facility, and EUR 300 million via a loan by the European Investment Bank to the Western Ligurian Sea Port Authority. The new breakwater for the port is the basis for the restructuring and reorganising of the entire Port of Genoa, aimed at allowing the docking of mega tourist and cargo ships of 20,000 twenty-foot equivalent units (TEUs) and larger.

The widening of the Ponte dei Mille terminal – together with the widening of Ponte Doria terminal - will cost an estimated EUR 33 million. It will benefit from EUR 30 million funding to the Western Liguria Sea Port Authority through the Recovery and Resilience facility.

As described below, our concerns are based on the improper way in which environmental impact assessments and the DNSH assessment more broadly have been conducted, leading to a ‘salami slicing’ approach, in violation of the EU principles of strategic assessment, assessment of alternatives and precautionary approach. The slicing of a unitary intervention is illegitimate and so is the assessment of the infrastructure carried out so far.

The activities have only been assessed individually, rather than cumulatively, therefore failing to assess the cumulative impact of the individual infrastructure. They failed to accurately document the overall negative impact on:

- 1) the surrounding marine environment – impact on NATURA 2000 sites
- 2) on the wider ecosystem of the Mediterranean Sea where it is located
- 3) Genoa’s urban development and the climate impact of the induced traffic

The construction of the breakwater and the related infrastructure works could have an impact on the entire ecosystem of the Mediterranean Sea, which is not assessed in any of the individual activities into which the overall measure has been divided.

The project would take place in the Pelagos Sanctuary, an international marine park for the protection of marine mammals. Established in 1999 between France, Italy and the Principality of Monaco, the park aims to protect the relatively large and diverse populations of marine mammals in the area.

A rough estimate puts the number of macroscopic animal species at 8,500, representing between 4 and 18 per cent of marine species worldwide, which shows a remarkable level of biodiversity. This is especially the case in terms of the number of predators at the top of the food chain such as marine mammals, given that the Mediterranean accounts for just 0.82 per cent of the area and 0.32 per cent of the world’s ocean volume.

The Genoa port expansion will have significant impacts both during construction and operation, due the increase of marine traffic. The expansion aims at attracting more mega cargo vessels to the port and therefore to the Pelagos Park. Marine traffic, which is particularly dense here, causes strikes that prove fatal to large

cetaceans and are severe enough to threaten the already vulnerable local populations of fin whales and sperm whales.

Biologists have noted that *'the role played by well-functioning marine ecosystems is a determining factor in mitigating climate change. Marine ecosystems, more than on land, function thanks to the relationship between the biological, physical and chemical components. The alteration of just one component can have consequences even at a considerable distance from the sites where the alteration occurred. Although the Mediterranean is an enclosed sea, it functions as a small ocean where there is a rapid "turnover" of energy that is transferred by currents and marine organisms from the surface to the deepest depths and vice versa'*.

Expansion of the port will also lead to increased on-land traffic and air pollution in the city of Genoa. More than eight different projects are aimed at modifying and upgrading the existing on-shore infrastructure with the aim of increasing the capacity of the port. The cumulative impact in terms of induced traffic is not assessed, so there is also a lack of assessment of the overall climate impacts of the project and its contribution – or lack thereof – to the greenhouse gas reduction goals for the transport sector. Genoa already has very dense traffic, noise derived from port operations, tourist and cargo vessel emissions, and substantial social and health problems associated with this.

New fast-track environmental procedures in Italy and requirements under the EU law

The project's preparation and approval processes contradict the principle of non-regression of EU legislation, i.e. a prohibition on state conduct that results in environmental degradation or in the weakening of environmental laws. The project was considered under a fast-track procedure under both an Extraordinary Programme of Urgent Investments in the area of Genoa,²⁴ after the collapse of the Morandi motorway bridge, as well as a new fast-track environmental impact assessment procedure adopted by the Italian government for projects under the National Recovery and Resilience Plan.²⁵

The new procedure includes a shorter period for stakeholders for providing comments on the EIA assessment. The fast-track procedure however should not be an excuse for failure to hold adequate public consultations, carry out good quality EIA assessments and inform neighbouring countries as required by the law.

It should be noted that upon a petition filed by local affected citizens and NGOs under the Italian EIA law, a 'public inquiry' was held in Genova, allowing a debate between project proponents and opponents. The outcome of the consultation process, as submitted within the EIA by the project proponents, has been criticised as biased and not grounded in actual findings. It has thus been challenged by several participants.

Beyond the specifics of the project in Genoa, there is also a question of principle, that is whether such mega projects, with serious environmental and social impacts, should ever benefit from simplified procedures for approval.

²⁴ [Legge 16 November 2018, n. 130, also known as 'Legge Genova'](#).

²⁵ [Decreto-Legge 31 May 2021, n. 77](#).

Application of the 'do no significant harm' principle

Failure to take into account the project's impact on Genoa's urban development and the Mediterranean ecosystem is in breach of the EIA Directive's requirements to assess cumulative impacts, and risks inflicting 'significant harm' on the marine ecosystem and protected species, including by affecting the ecosystem's ability to mitigate climate change. This is in violation of the EU's 'do no significant harm' principle that governs the use of Recovery and Resilience Facility funding, from which both the Ponte dei Mille extension and the construction of the new breakwater benefit.

The project is not in compliance with the 'do no significant harm' principle due to clear violations of EU legislation.

1) It is not in compliance with the Espoo Convention (Convention on Environmental Impact Assessment in a Transboundary Context) or with the trans national obligations of the Pelagos Agreement. Lack of appropriate assessment of the impact on NATURA 2000 sites is a violation of the Habitats and Birds Directives.

2) It is not in compliance with the EU EIA Directive. By splitting up a single project as described, the Ministry responsible for this measure is proceeding in an illegitimate manner in assessing the environmental impact of the extension of the Ponte dei Mille, as well as the environmental impact of the construction of the new breakwater at the Port of Genoa.

Assessment of the cumulative impacts of individual activities is required by the EIA Directive and the 'Preliminary Environmental Study', makes no reference to the cumulative impacts of the project, either in relation to the new breakwater or to other related works to rebuild the Port.

Breach of the Espoo Convention automatically also means that the assessment is in breach of the EIA Directive.