ClientEarth

Reckless Risk-taking

An evaluation of recent EU legislative proposals on permit-granting and environmental assessments

Policy Summary

On December 10, 2025, the Commission published proposals for a **Regulation on speeding up environmental assessments** and a **Directive on the acceleration of permit-granting procedures**, as part of the Environment Omnibus and the Grids Package, respectively.

While the stated objectives of these proposals are to simplify environmental legislation and to accelerate the decarbonization of the European Union's economy, the proposals also include some measures that are either not necessary or not relevant for the achievement of these objectives. Instead, these measures are expected to lead to avoidable, yet irreversible, environmental harm to Europe's already critically degraded ecosystems, potentially leading to human health risks and incurring additional financial loss in the long term, if they are adopted in their current form.

Their adoption will lead to an overall weakening of the level of environmental protection provided by the previously applicable environmental standards in the EU, most notably through direct and indirect amendments to the Birds & Habitats Directives and the Environmental Impact Assessment Directive. At the same time, the proposed acts, if adopted in their current form, carry significant risks of being challenged in court due to potential incompatibilities with the EU Treaties. The same risks would apply to any national acts transposing and/or implementing them.

In terms of the collective ecological impact of the Commission's proposals, it is anticipated that, based on their current drafting, they will:

- End the strict protection regime of species under the Birds & Habitats Directives, potentially leading to extirpations, or even, extinctions of priority species.
- Lead to avoidable harm to protected habitats and species by allowing projects adversely affecting such species to go ahead, even in cases where alternative solutions for the project would have comparable financial benefits, but cause significantly less environmental damage.
- Reduce the number and comprehensiveness of environmental assessments, resulting in undocumented and thus unmitigated adverse environmental and human health impacts.

From a legal angle, the proposals as currently drafted are expected to:

- Further complicate national permit-granting procedures, creating legal uncertainty for businesses and investors, and increasing administrative burden of competent authorities;
- Contradict, and risk sidelining, strong and clear case law from the Court of Justice of the European Union that has provided authoritative interpretation, clarification and refinement for a series of relevant provisions of the EU environmental acquis, improving their on-the-ground implementation.
- Restrict access to justice rights of affected communities and other members of the public to challenge plans, programmes or projects with potentially detrimental effects on their health and local environment, even allowing for certain installations to continue their operation despite potential procedural or substantive illegalities.

I. Introduction

In July 2025, the European Commission launched a ***Call for Evidence on the Simplification of administrative burden in environmental legislation, considering a*** proposal for a new regulation to simplify and streamline administrative requirements related to the environment in the areas of waste, products, and industrial emissions. This proposal forms part of the European Commission's wider "simplification" agenda, aiming to reduce administrative burden and businesses' compliance costs, associated with the implementation of EU legislation. It is an initiative largely set in motion pursuant to the Draghi report[1] and embedded in the Commission's Competitiveness Compass, where permitting and administrative procedures ("administrative burden") are claimed to be an obstacle to the Union's economic growth by making Europe a less attractive location for investment, compared to other regions.[2]

In this context, ClientEarth made a submission to the Commission's Call for Evidence, expressing its views on the initiative,[3] firmly holding that the achievement of the Union's environmental objectives, as Treaty-derived obligations and steering principles for all Union policies, cannot be deemed an "administrative burden". While simplification is key in improving how EU environmental legislation is implemented, there are numerous ways (including non-legislative ones) in which this can be achieved. Simplification efforts should address the real bottlenecks that Member States and businesses encounter, rather than lead to a substantive reduction of the standards afforded by the EU Treaties.[4]

Despite clear warnings and objections stated by ClientEarth and other NGOs (as well as EU citizens who represented 97% of respondents) in response to the Commission's Call for Evidence, the Environment Omnibus and the Grids Package, published by the Commission on December 10, 2025, contain highly concerning legislative proposals, namely the ***Regulation for the speeding up of environmental assessments***[5] (hereinafter: "the Environmental Assessments Regulation" or "the Regulation") and the ***Directive on the acceleration of permit-granting of certain infrastructure projects*** (hereinafter: "the Energy Infrastructure Acceleration Directive" or "the Directive"),[6] with the aim to streamline environmental assessments and address delays in the permit-granting procedures.[7] According to the Commission's Executive Vice-President Ribera, *"(t)he Omnibus does not open environmental flagship legislation, such as the Birds and Habitats Directives…"*, while Commissioner Roswall stated that the omnibus *"upholds our vital environmental standards"*.[8] On the Grids Package, Commissioner Jørgensen highlighted that the acceleration and simplification *"procedures for all grid infrastructure, renewable energy projects, storage projects, and recharging stations (…) will be done in a way that does not compromise on environmental protection"*.[9]

Simplification and Cost Saving: Yes, but for whom?

These proposals are presented as *necessary*, *targeted* and *technical* improvements, especially from a financial point of view, through €1 billion per year on compliance cost savings by the Environment Omnibus[10] and through hopes for improvements in energy affordability and other net economic gains to come from much needed reforms to EU-wide planning, grid optimization, and benefit-sharing under the Grids Package.

Particularly in the case of the Environment Omnibus, such figures need to be read critically, given the fact they only address administrative and/or compliance costs for *businesses*. They fail to take into account the annual financial and non-financial (but still quantifiable) costs of non-compliance with EU environmental law, primarily borne by citizens, Member States and society at large, even though it amounts to approximately **€180 billion *per year***[11]. These costs are only expected to increase significantly if applicable environmental standards are lowered or implementation momentum for environmental legislation decreases, in the form of more premature deaths and increased healthcare expenses due to environmental reasons, lost productivity profit (eg reduced yields) and pollution cleanup costs, loss and degradation of ecosystem services, etc. [12]

1 ***The Future of European Competitiveness: Part A – A Competitiveness Strategy for Europe*** (September 2024).
2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Competitiveness Compass for the EU (29 January 2025).
3 ClientEarth's full submission to the European Commission's Call for Evidence can be found here: ***clientearth-submission-call-for-evidence-environmental-omnibus.pdf***
4 The Commission's initiative generated significant public concern and citizen engagement, with an unprecedented number of around 200.000 EU citizens calling upon the Commission not to weaken key environmental protections.
5 Proposal for a Regulation of the European Parliament and of the Council on speeding-up environmental assessments.
6 Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2018/2001, (EU) 2019/944, (EU) 2024/1788 as regards acceleration of permit-granting procedures.
7 Other legislative proposals coming out of the packages amend the ***Regulation on Trans-European Energy Infrastructure (TEN-E) Regulation***, the ***Industrial Emissions Directive (and its associated Directive on livestock emissions), the Waste Framework Directive*** . At the same time, the Environment Omnibus ***announces*** a series of new legislative proposals planned for 2026, including a weakening of the Water Framework Directive and a "stress test" of the Birds and Habitats Directives, both planned for Q2 2026, among other initiatives.
8 ***Remarks by Executive Vice-President Ribera, Commissioner Dombrovskis and Commissioner Roswall*** (Brussels, 10 December 2025).
9 ***Remarks by Executive Vice-President Ribera and Commissioner Jørgensen at the Press conference on the European Grids package*** (Brussels, 10 December 2025).
10 European Commission, *Environmental omnibus package: simpler and smarter environmental legislation -Factsheet****https://ec.europa.eu/commission/presscorner/api/files/attachment/882049/Factsheet-Environmental-Omnibus.pdf*** (December 2025)
11 European Commission, ***"Update of the costs of not implementing EU environmental law"***, April 2025.; for more, please consult ***Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2025 Environmental Implementation Review Environmental implementation for prosperity and security***.
12 *Ibid.*

- Similarly, the actual simplification and acceleration benefits generated particularly from the Environmental Assessments Regulation can also be disputed: In the case of the Energy Infrastructure Acceleration Directive, Member States will need to transpose a whole new set of provisions related to renewable energy permitting, all the while being in the *transposition* and *implementation* process of a recent revision of the Renewable Energy Directive.[13]

- The Regulation on Environmental Assessments introduces *new* rules directly applicable upon national permit-granting regimes. These regimes, widely divergent among different Member States, are made up of a set of national administrative law provisions and the laws and bylaws transposing and implementing EU Directives setting the framework for environmental permitting, namely the Environmental Impact Assessment Directive, the Birds & Habitats Directives, the Water Framework Directive, etc. The introduction of a Regulation on the same topics regulated by these Directives without a direct amendment of the Directives themselves is bound to lead to confusion for permit-granting authorities and developers alike, as it is inadvertently leading to multiple, simultaneously applicable regimes (i.e. the existing national regimes that transpose these Directives and the new regime created by the direct applicability of the new Regulation) framing the permit-granting process. To avoid such legal uncertainty, Member States would have to amend all national legislation transposing these Directives as regards their provisions linked to what is covered by the Regulation.

- While the introduction of an environmental single point of contact, coordinated procedures, shorter deadlines and digitalisation requirements[14] for the processing of permit applications and environmental assessments are welcome, they will do little to accelerate the permit-granting process, unless accompanied by designated funding addressing the real bottlenecks in national administrations.[15] On top of that, overly strict timelines[16] will lead to either rushed and superficial assessments, particularly in the case of joint procedures and assessments of projects with a higher complexity,[17] or increased refusals of permit applications, in the absence of adequate time and capacity for thorough review. Each of these outcomes has far-reaching implications, with the former leading to unforeseen environmental and human health damages, and the latter serving as a disincentive for future investments and economic development.

Not only do some of the Commission's proposals actively risk avoidable yet irreversible damage to the environment and human health, but they also contain measures that are potentially incompatible with the EU Treaties. Due to the latter, both acts (once adopted) and any national measures transposing (in the case of the Directive) or implementing them may be challenged in court. At the same time, their *actual* contribution to their stated objectives of permit-granting acceleration, and the purported positive impact of permit-granting acceleration measures on energy affordability, decarbonization, and competitiveness, are highly questionable.

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13 Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources and repealing Council Directive (EU) 2015/652.
14 Regulation on speeding up environmental assessments, Articles 3, 4, 7 and 10 respectively.
15 Such funding can be secured both via national means, as well as in the context of the interinstitutional negotiations on the upcoming Multiannual Financial Framework, whose current setup, as proposed by the Commission, does not ensure the capacity development of environmental authorities. For more, cf ClientEarth's ***submission to the Call for Evidence***.
16 As well as potential administrative concern of a permit application advancing due to tacit approval authorized under Article 14 and Annex of the Regulation on Environmental Assessments, or various Articles of the revised RED and its amendments via Article 1(9), among others, of the Energy Infrastructure Acceleration Directive.
17 Especially considering how decentralised or local permit-granting authorities in several Member States will possess neither the technical know-how, nor the actual staff capacity to process highly complex permit applications for novel tech sectors or for renewables megaprojects.

II. Weakening of applicable standards and concerns regarding compatibility with the precautionary and proportionality principles

In the respective Explanatory Memoranda (and recitals) for the Regulation and the Directive, the Commission claims that the proposals contain ***"targeted provisions… which are strictly necessary to achieve the objectives of the proposal"***[18] and that said proposals **"are designed not to decrease the level of environmental protection"**.[19] EU policy-making, regardless of its sector, should after all ensure a *high level of protection and improvement of the quality of the environment.*[20] Despite the Commission's repeated assurances, a closer look at the proposed measures leaves no room for doubt about the lowering of the previously afforded environmental standards, with potentially irreversible – and otherwise avoidable - impact on EU's nature and, potentially, human health.

The Commission, Council and European Parliament enjoy a broad margin of discretion when they act under a legislative procedure but their powers are constrained by the EU Treaties, which determine both the scope and the conditions under which they can operate. Among those limits is the **need to maintain a high level of environmental protection and to improve the quality of the environment**.[21] This means that adopted Union policy, rather than contributing to the deterioration of the EU's nature, should lead to its improvement, or *at the very least* have a net neutral impact on it. Furthermore, in accordance with Article 11 of the Treaty on the Functioning of the European Union (TFEU), read in conjunction with Article 37 of the Charter of Fundamental Rights of the European Union[22] and the case law of the ECJ, the EU legislature must incorporate environmental protection requirements into the EU's policies and activities (integration principle). *These provisions may serve as a 'standard for reviewing the legality of EU legislation'*.[23]

It could be argued that, if adopted in their current form, the proposed Regulation on Environmental Assessment and the Energy Infrastructure Acceleration Directive would undermine the EU's environmental objective to uphold a high level of environmental protection. Several of the measures included in the proposals are bound to have significant negative effects on the environment, and are not limited in other ways, ie via other types of measures and policies, leading to an overall *lack of balance* in the way that the Union's policy objectives are being pursued.[24]

Comprehensive and robust environmental assessments and procedurally sound permit-granting are instrumental in ensuring a high level of environmental protection and in avoiding adverse impacts with massive ecological and socioeconomic costs. Their core function is to ensure that a project is authorised only after the competent assessing authority has excluded, via robust scientific information, the possibility of significant adverse environmental impacts by the plan, programme or project assessed. The environmental assessments enshrined in the Environmental Impact Assessment Directive (EIAD), the Strategic Environmental Assessment Directive (SEAD), Articles 6(3) – (4) of the Habitats Directive and Article 4(7) of the Water Framework Directive (WFD)[25] are irreplaceable, as they are operationalising fundamental principles of EU environmental law, particularly the principles of prevention, precaution, rectification of pollution at the source and "polluter pays", all enshrined in TFEU Article 191(2).

18 *Cf above*, Proposal for a Regulation, Explanatory Memorandum.
19 *Cf above*, Proposal for a Directive, Chapter 3.
20 Consolidated Version of the Treaty on European Union (TEU), Article 3(3)
21 TEU Article 3(3) and Article 191(2) of the Consolidated Version of the Treaty on the Functioning of the European Union (TFEU).
22 Charter of Fundamental Rights of the European Union.
23 Court of Justice of the European Union (CJEU), C-541/20 to C-555/20, *Lithuania and others v. European Parliament and Council*, paras. 423 et seq, as well as the General Advocate's opinion delivered on 14 November 2023, paras. 569-583.
24 For instance, cf CJEU, C-541/20 to C-555/20, paras 437-438.
25 Respectively: *Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment* (**EIAD**), *Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment* (**SEAD**), *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora* (**HD**), *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy* (**WFD**).

Current Legal Context: Regarding the **precautionary principle** in particular, it requires that preventive and protective action be taken in situations where there is a *risk* (ie due to scientific uncertainty or reasonable grounds of concern) of potential harm to the environment or human health. Its link with environmental assessments is inseparable, with the latter being its *procedural expression*. According to the precautionary principle, operationalised via applicable environmental assessments, a project may only proceed if "*no reasonable scientific doubt remains"* as to the absence of adverse environmental and human health impacts.[26] Similarly, plans or projects cannot be authorized if they risk "*lasting and irreparable*" environmental damage,[27] while assessments need to be sufficiently detailed to lead to the *early identification* and *mitigation* of even *uncertain* but *plausible* impacts.[28]

Besides the manifest incongruence of the examined Commission proposals with the principles of EU environmental law, and other general legal principles, *as will be analysed below*, the proposals also seem to clash with the proportionality principle, whose brief analysis is provided here as it is applicable to nearly all measures individually presented below.

Current Legal Context: In line with TFEU Articles 5(4) and 296(1), Union policies "shall not exceed what is necessary to achieve the objectives of the Treaties". The **proportionality principle**, a "general principle" of EU law, serves as a "criterion for the lawfulness of any act of the institutions of the Union".[29] The CJEU has further elaborated on the meaning of the provision, ruling that EU acts must be "appropriate for attaining the legitimate objectives pursued by the legislation" and "must not go beyond what is necessary to achieve them".[30] Compliance with the principle of proportionality, for an act in its entirety or an individual measure,[31] is assessed on the basis of a test, examining the following:

- Whether the act/measure pursues a *legitimate* objective;
- Whether it is *suitable* to achieve that objective;
- Whether it is *necessary* to achieve that objective, in the sense that it is the least restrictive means available to attain the pursued objective;
- Whether the measure is not *manifestly disproportionate*, in the sense that a fair balance has been struck between the pursued objective and other, potentially competing, objectives (*stricto sensu* proportionality, cost-benefit analysis).

While both the Regulation on Environmental Assessments and the Energy Infrastructure Acceleration Directive undoubtedly pursue *legitimate* objectives, many of the measures they propose would likely fail subsequent steps of the "proportionality test", if they were to be adopted in their current form.

Particularly with regards to measures constituting the *least restrictive means available* for the pursuit of their stated objectives or striking a balance between different, competing objectives. For example:

- The Energy Infrastructure Acceleration Directive introduces changes to the permit-granting regime introduced by the latest RED revision (Directive 2023/2413) prior to the Directive itself being fully implemented.[32] This reality renders it impossible for the Commission to have assessed the *necessity* for certain measures, given that it hasn't been able to fully assess the degree of acceleration to renewable energy deployment brought by the implementation of Directive 2023/2413.
- Furthermore, it would be challenging to argue how exempting changes or extensions to certain installations from the obligation to undergo an environmental assessment, in the context of repowering and beyond[33] is a *necessary* measure in the context of "cutting red tape" and streamlining the permit-granting procedures.

26 CJEU, C-127/02, *Waddenzee*, para 59.
27 CJEU, C-258/11, *Sweetman,* para 46.
28 CJEU, C304/05 *Commission v Italy* para 69
29 CJEU, C441/07, *Commission v Alrosa Company Ltd*, para. 36
30 For instance, CJEU, C58/08, *Vodafone v UK Secretary of State on Business*, para. 51
31 The applicability of the principle of proportionality on individual measures derives from the wording of 5(4) (content *and* form) and has been confirmed by the CJEU in C-331/88, *FEDESA and Others*, para 13
32 Article 5(1) of the Directive 2023/2413 sets the transposition deadline only for May 21, 2025.
33 New RED Article 16c(4) (Energy Infrastructure Acceleration Directive Article) and Regulation on Environmental Assessments Article 5, respectively.

III. Environment Omnibus – Regulation on Environmental Assessments

a. No Impact Assessment

No impact assessment was undertaken for the proposed **Regulation on Environmental Assessments**, an omission that renders that proposal incompatible with what is required under the Inter-Institutional Agreement on Better Law-Making[34] and the Commission's Better Regulation Guidelines,[35] given that the Commission does not adequately justify how its proposal and the measures included in it have been shaped in an evidence-based manner and are aligned with the principle of proportionality. The Commission has put forward "urgency" due to "pressing geopolitical and competitiveness challenges" as a justification for this omission, making use of a derogation clause included in the Better Regulation Guidelines, without any additional information to support its claims on what constitutes the urgency or how omitting the impact assessment for such a far-reaching proposal would ensure that the proposals' objectives are not undermined. The reliance on grounds of urgency as a way of deviating from the obligation to undertake an impact assessment was recently analysed by the European Ombudswoman, who highlighted the risks of an overly wide interpretation of the term.[36] Generally, it seems that the Commission is over-relying on the exceptional "urgency" clause, treating it as the norm, rather than a derogation to be interpreted narrowly.[37]

Furthermore, while an impact assessment could have been omitted on the exceptional grounds of "urgency" (which we presently argue has not been properly used, leading to maladministration concerns), the Commission would still need to provide adequate information that would enable the Parliament and Council to assess the proportionality of the chosen measures. It would need to showcase how individual measures included in their proposal that effectively restrict the *comprehensiveness* and *scope* of applicable environmental assessments and change the protection status of a significant number of species constitute the *least restrictive* policy options, or that *plausible alternatives* have been examined, as required by the proportionality principle. Based on the Explanatory Memorandum and the Staff Working Document accompanying the proposal, it is clear that **the Commission has been unable to prove that.**

> For more on the incompatibility of the Commission's practice of omitting a proper impact assessment for its proposals and the legal risks associated with that (including the possible violation of the principle of proportionality), please consult the European Ombudswoman's *Recommendations*, (for findings on administrative maladministration on these grounds) as well as ClientEarth's *submission to the Call for Evidence on Better Regulation*.[38] The issue is also addressed in ClientEarth and partners' ***Complaint to the European Ombudsman*** on the same issue.[39]

b. Strict Protection

Article 8 of the proposed Regulation establishes that any *killing* or *disturbance* of protected species[40] occurring in the context of plans or projects covered by the Regulation shall not be considered deliberate, contingent upon two conditions. In other words, any such killing or disturbance will not be in violation of Article 5 of the Birds Directive and 12(1) of the Habitats Directive, if:

- *Appropriate* and *proportionate mitigation measures* that ensure that *significant adverse impacts on the population of the species …is avoided, despite (…) negative impacts on individual specimens;* and that there are ongoing monitoring and subsequent additional measures in case they prove inadequate.
- *Best available technologies* for the prevention of the killing or disturbance have been considered.

34 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better LawMaking, [2016] OJ L 123, 12.5.2016.
35 **European Commission, Staff Working Document, *Better Regulation Guidelines*, SWD(2021) 305 final, 3 November 2021.**
36 ***Recommendation on the European Commission's compliance with 'Better Regulation' rules and other procedural requirements in preparing legislative proposals that it considered to be urgent (983/2025/MAS - the "Omnibus" case, 2031/2024/VB - the "migration" case, and 1379/2024/MIK - the "CAP" case) | Recommendation | European Ombudsman***.
37 It should be noted that an impact assessment has been omitted for a whole host of other legislative proposals included in Omnibus Packages, including: ***Omnibus I, ie the amendment to the Corporate Sustainability Due Diligence and Corporate Sustainability Reporting Directives***, the changes to the ***Pesticide Regulation (and associated Regulations) under the Food & Feed Safety Omnibus***, the ***Regulation under the Chemicals Omnibus*** (no *proper* impact assessment), the ***Regulation on permit-granting acceleration under the Defence Readiness Omnibus***.
38 ClientEarth, ***Reply to the call for evidence on Better Regulation*** *(4 February 2026).*
39 *Complaint to the European Ombudsman Maladministration of the Commission in the preparation of the 2025 proposal to amend the CSDDD as part of the Omnibus I package* (April 2025). See also, European Ombudsman, *Recommendation on the European Commission's compliance with 'Better Regulation' rules and other procedural requirements in preparing legislative proposals that it considered to be urgent (983/2025/MAS - the "Omnibus" case, 2031/2024/VB - the "migration" case, and 1379/2024/MIK - the "CAP" case).*
40 Namely those included in Article 1 of the Birds Directive and Annex IV of the Habitats Directive.

The proposed provision seeks to generalize the novelty introduced by the revised RED,[41] whereby a comparable exemption was included for the killing or disturbance of species, specifically for impact from projects inside Renewable Acceleration Areas.

Current Legal Context: Against the already presented Treaty backdrop of prevention, precaution and high level of protection of the EU's environment, the Habitats Directive requires Member States to establish a **"system of strict protection"** for Annex IV(a) species, prohibiting (among others) their deliberate killing and disturbance.[42] This provision's aim is to maintain or restore species at "favourable conservation status" and the definition/role of conservation status is embedded in the Directive's scheme.

The Court has repeatedly underlined that strict protection is **preventive in nature** (TFEU Article 191(2)) and "presupposes the adoption of coherent and coordinated measures of a preventive nature" capable of ensuring the effective avoidance of deterioration or destruction of breeding sites/resting places.[43] Under the Court's settled interpretation, the "deliberate" element is met not only where harm is intended but also where the operator accepted the possibility of capture or killing.[44] Even factual circumstances showing awareness of risk can ground "deliberate disturbance".[45]

Importantly, the Court has rejected Member States' approaches that condition the operation of strict prohibitions on showing *population level* harm or deterioration of conservation status,[46] while also making clear that Member States cannot narrow strict protection on the basis that a species has achieved (or locally enjoys) a favourable conservation status.[47] Particularly for birds, restriction of Birds Directive's Article 5 only to "at-risk" species has also been deemed impermissible.[48]

For birds, Article 5 Birds Directive establishes a general system of protection for all wild birds (deliberate killing/capture; deliberate destruction of nests/eggs; deliberate disturbance—when significant "having regard to the objectives").

Treaty-compatibility concerns that could be raised, in case of adoption of the present proposal in its current form, are as follows:

- A potential violation of the **principle of coherence** (TFEU Article 7) could also be considered, as the proposed measure goes manifestly against the stated objectives and *raison d'etre* of the amended provisions (Birds Directive Article 5 and Habitats Directive Article 12), rendering them, at least partially, unimplementable.

- **Proportionality** concerns, due to i) the relevance, i.e. *suitability*, of this measure in the achievement of the Regulation's stated objective to streamline permitting procedures and ii) the inherent risk of extinction from the violation of the precautionary principle also points to the fact that this measure is *manifestly disproportionate* when juxtaposed with the need to ensure a high level of environmental protection in Union policies.

In light of the above, the proposed provision is incompatible with the strict protection system that the above provisions establish that seeks to preventively ensure no individual killing or disturbance, even of individual specimens, **except in strictly defined exceptional cases**, leading to an overall reduction of the level of protection of species under EU law.

The proposed provision seeks to convert the Habitats Directive's Article 16 derogation system, into the general norm, allowing routine mortality to be normalised by replacing a specimen-specific and preventive strict protection regime by a population-level and ex-post significance assessment of the killing or disturbance.

It convolutes the meaning of the terms "incidental" (Habitats Directive Article 12(4)) and "deliberate", despite the distinction made to those terms by the Directive itself. It also deviates from well-established CJEU case law, downgrading the result-based strict protection obligation into a "best-efforts" standard.

41 Directive (EU) 2023/2413 amending RED II
42 Habitats Directive, Article 12.
43 CJEU, C383/09, *Commission v France*, para 20
44 CJEU, C-461/14 Commission v Spain paras 70 – 72.
45 CJEU, C103/00, *Commission v Greece*, paras 34 - 37.
46 CJEU, Joined Cases C473/19 and C474/19 *Föreningen Skydda Skogen, paras 44 - 45*
47 *Ibid.*
48 *Ibid.*

From a compliance perspective, the most acute risk is that normalising mortality and disturbance below a "population-level significance" threshold will permit **repeated individual specimen losses and incremental degradation** of breeding sites/resting places **without triggering derogations**, thereby increasing the likelihood of local extirpation and undermining the objective of maintaining/restoring favourable conservation status (Article 2 HD), especially where populations are fragmented or already in poor status. This risk is increased given that the Birds and Habitats Directives do not differentiate on the content of the strict protection obligations (and associated prohibitions) on the basis of whether the species have already reached favourable conservation status, so the new Regulation's "acceptable damage" mechanism cannot be justified by arguing that a species is common or its conservation status is secure.

c. Strategic Sectors

One of the main novelties of the Regulation on Environmental Assessments is the introduction of a special permitting regime applicable to "strategic sectors" or "categories of strategic projects" (Article 14 and Annex). Such projects are deemed to be in the "public interest", with the authorization that they can constitute *overriding* public interest, conditional upon their full alignment with certain environmental obligations.[49] At the same time, these projects benefit from a tacit administrative approval for intermediary administrative steps of the permit-granting procedure,[50] as well as from an expedited dispute resolution timeline. These facilitations are additional to those provided for all other plans, programmes or projects covered by the EIA, SEA and Habitats Directives Article 6(3) in Articles 3 through 12 of the Regulation.

This new classification category for public interest projects seeks to expand a "beneficial" sector-specific permitting regime, previously **exceptionally reserved by means of derogation**, to the standardly applicable regime for renewable energy projects (and their associated infrastructure)[51] . This expansion could apply to an **undefined number and type of projects**, classified as such either by EU legislation or implementing legislation (Regulation on Environmental Assessments, Article 14(1). According to the European Commission, such projects may include *"data centres and AI factories or gigafactories"*, *"port infrastructure"*[52] and even *"supercomputer facilities"* or *"airports"*,[53] among others.

Given the nature of the projects likely to receive such a legal classification, it is puzzling and alarming to see that the Commission has declared that said projects fall under the special provision included in the final sentence of Article 6(4) of the Habitats Directive (which already constitutes a derogation, *cf box below)* as they allegedly *"may be considered… to serve the interests of public health and safety"*. This enables the presumption introduced in the Regulation's Annex point I to apply *even* when the project in question would adversely affect priority habitats or species. **The Commission's justifications** in its Explanatory Memorandum and the Staff Working Document accompanying the Environment Omnibus **do not convincingly demonstrate how** for-profit technological sectors and **emissions-heavy infrastructure, such as ports or airports, contribute positively to either public health or safety**, let alone to an *overriding* public interest degree. Furthermore, the presumed contribution of such sectors to the goals of "resilience and decarbonisation or resource efficiency", as required by Article 14 of the Regulation is particularly baffling.

Current Legal Context: Article 6(4) of the Habitats Directive constitutes a derogation to Article 6(3) and thus needs to be interpreted strictly and only be applied in exceptional circumstances.[54] By pre-establishing entire categories of projects as constituting public interest, with the possibility of them to be considered as *overriding* public interest of the highest importance (ie serving public health and safety), the proposal converts **derogation** into a basic rule, with potentially disastrous impacts on Natura 2000 sites and the feasibility to achieve the objectives of the Habitats Directive. On the basis of the analysis above, given the implications of such a provision, the exceptional nature of Article 6(4) that is now being rendered the default option and the lack of an impact assessment, this measure could be in conflict with the **principle of proportionality** (TEU Article 5(4)), in the absence of an adequate evidence basis supporting the Commission's proposal, provided that this is not remedied during the legislative procedure by the co-legislators.[55]

- In the absence of an impact assessment or otherwise provided compelling evidence supporting its policy decisions, the Commission failed to provide sufficient information to enable the EU co-

49 Namely, Article 4(7) of Directive 2000/60/EC, Article 9(1), point (a), of Directive 2009/147/EC, Articles 6(4) and 16(1) of Directive 92/43/EEC.
50 Such a provision already exists for permit-granting inside RAAs, in line with RED Article 16a(6), while the Energy Infrastructure Acceleration Directive (Article 1(5)(b)) expands it also for permit-granting for projects situated outside RAAs ((new) RED 16b(3)).
51 Besides renewables for which this regime was established in Council Regulation (EU) 2022/25772 and Directive (EU) 2023/2413 (RED III), other sectors directly linked to decarbonization also subsequently received similar arrangements, through Regulation (EU) 2024/1735 (Net Zero Industry Regulation) or Regulation (EU) 2024/1252 (Critical Raw Materials Regulation).
52 Cf above *Proposal for a Regulation on speeding up environmental assesssments,* Explanatory Memorandum (Context of the proposal).
53 *Ibid*, Recitals 3 and 6.
54 *Ibid*
55 Cf CJEU, C-482/17, *Czech Republic v European Parliament and Council*, paras 118 – 119, recalling that it is EU legislature as a whole, namely the European Commission, European Parliament and Council of the European Union, that are responsible for conducting *complex assessments and evaluations* for the pursuit of the Union's policy objectives.

legislators to properly assess the on-the-ground impacts of this far-reaching measure or to assess whether it indeed constituted the least restrictive means to achieve its objectives. In case no additional information supporting the proposals is provided during the legislative procedure, *either by the Commission, or by the European Parliament and Council in their role as co-legislators*, the resulting adopted acts could be challenged in Court;

- The arbitrary association of economic sectors with enormous environmental footprint and carbon emissions with "public health and safety" is erratic, especially in the absence of sufficiently clear argumentation on the rationale behind the proposed measure;

- The broad scope of sectors which could be considered "strategic" and the legal implications this has on EU biodiversity and, subsequently, the achievement of the objectives of EU environmental policy are indicative of a lack of a fair balance and a *manifestly disproportionate* juxtaposition in the pursuit of the "competing" policy objectives.

Currently, a lot of big infrastructure projects can be considered as being projects of **overriding public interest**. Still, their acquisition of the legal status of being of "public interest" and overriding public interest in the meaning of Article 6(4) Habitats Directive happens on a **case-by-case basis** (*project-specific* and *context-dependent*),[56] after a careful consideration of the specificities and objectives of the project in question by the national authorities and at *their* discretion (on the basis of objective criteria).[57] Particular types of projects, such as those linked to the security of energy supply will nearly always fall under this category, due to their importance,[58] but still need to go through the HD Article 6(4) process (cf also below IV.b) and EIA, as even in those cases, the Member State would need to meet certain conditions prior to relying on the derogation Article 6(4) or EIA 2(4).[59]

According to the **principle of subsidiarity** (TEU Article 5(3)), for policy areas that are not falling under the Union's *"exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level"*. Environmental and energy policy fall under shared competence (TFEU Article 4(2)). A potential concern in this context could arise from the fact that the present Regulation predetermines how national authorities should evaluate which projects are deemed to be in the public interest, notwithstanding national, regional, and local specificities linked to environmental, socioeconomic and other **national priorities and conditions**.

Specifically with regards to the provision on *tacit administrative approval*, please consult ***ClientEarth's Renewable Energy for Nature and People: A Practical Guide to the revised Renewable Energy Directive*** (Chapter 8.1.6.).

Crucially, it should be noted that, in the absence of a direct amendment to Articles 6(3) and 6(4) of the Habitats Directive, the stepwise, sequential process prescribed in them still applies, also for projects being considered strategic under the proposed Regulation on Environmental Assessments. Furthermore, **the classification of a project at EU level as "strategic" does not affect the need for the projects to undergo standard national permitting procedures and comply with the rest of the applicable provisions of EU environmental legislation**.

Still, such classification, particularly for projects supported by significant public investment and hence bringing the promise of economic growth, is expected to lead to a certain "bias" in the way competent administrative authorities handle such permit applications in the current political reality. For instance, the first round of applications for recognition as "strategic projects" under the Critical Raw Materials Regulation[60] reveals that the label of ''strategic project'' affects the behaviour of competent authorities, which tend to rush assessments and derogation tests. This creates a risk of inflation of the concept of ''overriding public interest'' which would go from a carefully balanced legal exception, assessed on a case by case-by-case basis under strictly defined conditions, to a general status given by competent authorities to most ''strategic'' projects, therefore severely undermining the ability of relevant environmental Directives to achieve their objectives.

56 European Commission, *Notice: Assessment of plans and projects in relation to Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.*
57 *Ibid*
58 CJEU, C-411/17, *Inter-Environnement Wallonie*, paras 155 - 157
59 *Ibid,* paras 101 – 102, 158 – 159.
60 ***Selected strategic projects under CRMA***

d. Access to Justice

Article 6 of the Regulation on Environmental Assessments *authorizes* Member States to preclude arguments that have not been raised during the administrative stage to be raised before a court, provided that certain conditions are met. The provision is "without prejudice to the right of access to justice" and is complemented by Article 13 which reiterates the continued applicability of the Aarhus Convention, which also guarantees the right to access to justice. Crucially, the Commission acknowledges that the rationale behind this provision is to have *"a reduced number of disputes"* and *"reduced legal proceeding costs both for developers and authorities"*.[61] In practice, the provision risks barring access to judicial remedy for potentially unlawful plans, programmes or projects, perpetuating any adverse environmental or health impacts they may have.

Current Legal Context: Attempts to introduce substantial preclusion rules have been made in the past by a limited number of Member States, but the CJEU has confirmed that they are incompatible with the **right to effective remedy**, as operationalized by Article 9(2) of the Aarhus Convention

The CJEU first ruled that the EIA Directive requires that judicial review cover the full legality of the contested decision and that any restrictions to what pleas may be raised in court would not be permissible (even on grounds of legal certainty).[62] Later on, it confirmed that this requirement flows directly from obligations of the EU derived from the Aarhus Convention and its Member States (ie Article 9(2) of the Aarhus Convention), which precludes making admissibility of judicial proceedings launched by NGOs contingent upon their prior participation in the administrative decision-making procedure.[63] The same position has been affirmed by the Aarhus Convention Compliance Committee.[64] Tis prohibition of substantial preclusion has also been confirmed by the Commission itself, even being included in the Citizen's Guide to Access to Justice.[65]

The CJEU has also clarified that the guarantees under Article 9(2) Aarhus Convention are an element of the right to an effective remedy as recognized by Art. 47 Charter of Fundamental Rights.[66] Consequently, the provision is also incompatible with Article 47 Charter of Fundamental Rights.

The provision also ignores the fact that a project's technical specificities and, subsequently, its potential environmental impacts, may change significantly during the permit-granting procedure in a way that was not foreseeable in the prior decision-making process,[67] a reality that further necessitates access to justice regardless of whether certain arguments had been presented during the administrative stages.

It should be noted that the absence of substantial preclusion rules has been proven *not* to have any negative impact on the duration of a court case linked to project permitting.[68] In other words, the introduction of Article 6 is not expected to have any measurable, positive effects on the acceleration of litigious cases linked with plans, programmes or projects regulated by the present proposal.

Confusingly, the Commission itself acknowledges that the actual cause of delays are associated with *"legal disputes where the national procedures are slow and inefficient may lead to protracted legal proceedings*".[69] Furthermore, there are no indications of "abusive" litigation, with members of the public "strategically" withholding arguments only to circumvent the public consultation process and present them before a court.[70] Instead, it risks undermining a mechanism that ensures that the permit-granting procedure and operation of such projects is aligned with EU environmental law, perpetuating the unhindered continuation of illegal activities that will no longer be able to be adjudicated.

In line with the above, the provision risks posing a **major procedural barrier**, effectively restricting access to justice for the public concerned (in the meaning of Aarhus Convention's Article 2(5)), particularly when examined in light of the deadlines for the processing of environmental assessments introduced in Article 7 of the Regulation on Environmental Assessments. Given the particularly short maximum timeframe for the completion of the environmental assessments of complex permit-granting procedures (especially in the case of *joint assessments* or large-scale projects), it could be particularly challenging for the public concerned to undertake all relevant analyses in order to determine how the proposed project, for which the permit is being sought, could adversely affect them or their legitimate interests.

61 European Commission, *Commission Staff Working Document accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Simplifying for Sustainable Competitiveness*, p 26
62 CJEU, C137/14, *Commission v Germany*, paras 79–81.
63 CJEU, C826/18, *LB and Others v College van burgemeester en wethouders van de gemeente Echt-Susteren*, paras 55–59.
64 ACCC/C/2012/76, para 68.
65 European Commission, Notice on Access to Justice in Environmental Matters, paras 121-122; Citizen's Guide to Access to Justice (p.13).
66 CJEU, C-243/15, *Slovak Bears II*, paras 54-5.
67 Cf above, *LB and others*, para. 58
68 Umweltbundesamt, ***Wissenschaftliche Unterstützung des Rechtsschutzes in Umweltangelegenheiten in der 20. Legislaturperiode Band I***, p 24.
69 Cf above, Staff Working Document on Simplifying for Sustainable Competitiveness, p 26.
70 Cf above *Umweltbundesamt*, p 25.

IV. Grids Package – Energy Infrastructure Acceleration Directive[71]

a. Exclusion of "large areas" from RAAs

New RED Article 15c(6) (Energy Infrastructure Acceleration Directive, Article 1(2)) introduces a limitation to Member States' spatial planning decision-making with regards to the designation of Renewable Acceleration Areas (RAAs). Specifically, it discourages (effort-based obligation) Member States from excluding certain "large" areas from being considered as RAAs for "environmental reasons", unless Member States can prove that the projects for which the RAA will be designated will have *"irreversible damage in the area which cannot be mitigated or compensated"* during the relevant assessments under the EIA and Habitats Directives.

Current Legal Context: According to RED Article 15c, Member States may exclude areas from the RAA designation if they fall under one of the categories prescribed in Article 15c(1)(a)(ii), namely those areas located in Natura 2000 sites, nationally protected areas, major bird and marine mammal corridors, which benefit from an automatic exclusion, as well as on the basis of their sensitivity, pursuant to an assessment (in line with Article 15c(1)(a)(iii).[72]

In its current formulation, the provision adopts a purely ecological approach, whereby **areas are excluded due to their environmental sensitivity**, in line with one of the constitutive characteristics of the RAAs, namely the fact that projects contained therein are *"not expected to have a significant environmental impact, in view of the particularities of the selected area"* (RED Article 15c(1)(a) chapeau).

A potential inconsistency with the **principle of coherence** (TFEU Article 7 and Better Regulation Guidelines) of the newly proposed provision could be argued, considering it is in *manifest contradiction* with the rest of RED Article 15c and with Articles 3(1) of the Habitats Directive and 3(2)(a) of the Birds Directive.[73] While these provisions provide clearly defined ecological criteria for determining what type of activity can be allowed in a certain area, the new provision obfuscates how Article 15c(1)(a)(iii) is applied, particularly in cases of large Natura 2000 sites, or large ecologically sensitive areas. For the latter cases, assessing Member States' compliance will pose significant challenges, perpetuating land use conflicts. The exclusion of large Natura 2000 sites or large ecologically sensitive areas could result in significant irreversible ecological damage, which would have been avoided under the current regime of RAA 15c(1)(a). Furthermore, violations of the *principle of coherence*, as well as of the **precautionary principle** can be raised. There is also a profound contradiction with the wording of 6(3) of the Habitats Directive and 2(1) of the EIA Directive.

Finally, this provision represents a deviation from well-established case law regarding the burden of proof as well as the threshold and likelihood of occurrence of damage that would trigger the exclusion of the areas from an RAA. Under the current regime, a project could go ahead only after it has been ascertained that it would not have any adverse impacts on the site,[74] with even a mere likelihood of significant adverse impacts being enough to trigger (at the very least) a screening.

From the outset, the choice of particularly **vague terminology** ("large areas", "environmental reasons") that is neither defined anywhere in the proposal, nor is consistent with any of the terms used in any related laws, raises major concerns on its implementation. Both terms are highly subjective and – in the absence of further specification – risk being abused.

71 While an impact assessment has been technically undertaken (***Commission Staff Working Document Impact Assessment Report***), the argumentation followed in it is paradoxical. According to the Energy Infrastructure Acceleration Directive's *Explanatory Memorandum* and *Impact Assessment Report*, the policy interventions, only examined in their entirety and not individually, are justified since "climate change" and "air pollution" are two drivers of biodiversity loss and accelerating the deployment of renewable technologies would reduce their pressure on biodiversity, while any other environmental concerns are dispelled by a mere reference to the fact that the measures *"are designed not to decrease the level of environmental protection"*. It goes on to signal that environmental impacts vary widely depending on the *type* of technology; despite this acknowledgement, the proposal *(deletion of RED Article 16f, Energy Infrastructure Acceleration Directive, Article 1(8))* eliminates Member States' authorisation to restrict the *overriding public interest presumption* for certain project types and does not propose any additional measures to reflect technology-specific impacts.

72 For a more detailed analysis of the currently applicable regime on RAAs, please consult ClientEarth, *Renewable Energy for Nature and People: A Practical Guide to the revised Renewable Energy Directive* (February 2025).

73 For more on the principle of consistency, cf *Baldon Avocats* Chapter 1.1.5.

74 For example, cf above Waddenzee, paras 59 – 67.

In line with the general principle of legal certainty, EU law rules need to be clear, precise and predictable,[75] characteristics missing from this provision.

Furthermore, the provision restricts Member States' own spatial planning discretion when designating RAAs, particularly in the face of other legitimate national priorities which may fall under the meaning of (undefined) "environmental reasons".

Current Legal Context: EU environmental (TFEU Article 191(1)) and energy (TFEU Article 194(1)) policies both fall under shared legislative competence (TFEU Article 4(2)), whereby the EU must respect the ***principle of subsidiarity*** (TEU Article 5(3)). In this case, the measure restricting which areas can be excluded from the RAAs (and for which reasons) directly impinges upon Member States' discretion to determine their own national priorities and spatial planning arrangements (including on land use allocation).

As long as a Member State is able to deliver the renewable energy targets included in their National Energy and Climate Plans (NECPs)[76] making use of RAAs, any additional restrictions placed upon them by the EU legislator risk creating an imbalanced implementation of the RED vis-à-vis other national priorities and obligations, a fact that also raises concerns on the *necessity* of the measure.

A similar concern could be raised for the deletion of the subsidiarity clause of RED Article 16f (Energy Infrastructure Acceleration Directive, Article 1(8)). This provision removes the option for Member States to restrict the presumption that *all projects covered by the RED are presumed to be in the overriding public interest* (with the exception of limited cultural heritage grounds). For context, under the previous version, States retained the discretion to limit the presumption in line **with their own national priorities and other** discretionary **considerations**, from restrictions on the basis of *type of technology*, *technical characteristics* of a project (i.e. for industrial scale projects overloading the social/environmental carrying capacity of a certain area) or *territorial/geographical concerns* (i.e. areas destined for the pursuit of other, non-energy, development plans, such as urban expansion), in full alignment with the principle of subsidiarity of TEU Article 5(3).

At the same time, a default prioritization of those projects when balancing competing legal interests is introduced, further sidelining the effectiveness of the Article 6(4) test.

All in all, this provision is expected to generate multiple conflicts with a host of domestic (and EU transposing) legislations, potentially leading to **unnecessary delays** or additional **administrative burden** for renewable energy projects in RAAs, as well as a proliferation of **judicial challenges** against them. This is against the spirit of the concept of RAAs, which have been introduced in order to ensure the expedited and unhindered function of energy installations situated in them.[77] At the same time, it is bound to lead to **increased ecological fragmentation**, contrary to what is required under the Habitats Directive and the Nature Restoration Regulation[78] and notwithstanding the fact that land use change is the primary driver of biodiversity loss in the EU.[79]

b. Restriction of the "no alternative satisfactory solutions" test

In line with the changes to Article 16g of the revised RED introduced by the **Energy Infrastructure Acceleration Directive (Article 1(9))**, the test of whether *alternative satisfactory solutions for a project adversely affecting a Natura 2000 site* exist is considered met only under very specific and highly restrictive conditions, whereby an alternative needs to be of: ***identical* capacity, *identical* technology, *identical* timeframe, and *no significantly higher costs*** in order to be deemed "satisfactory".

75 CJEU, C-72/10, *Criminal proceedings against Costa*, para 74.
76 Articles 3 and 14 of Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council.
77 Directive 2023/2413, Recital 26.
78 Article 10 of the Habitats Directive and Articles 4(7), 4(10), 5(5), 5(8) and 9(4) of the Nature Restoration Regulation.
79 European Environment Agency (EEA), *Europe's Environment 2025: Biodiversity and* Ecosystems (2025), Thematic Briefing 1.6: Land use and land take.

In reality, this is an attempt to render permanent an already inapplicable *"temporary rule of emergency nature"* of the Council's Emergency Regulation on short-term renewables' acceleration, adopted in 2022.[80]

Current Legal Context: Under the present framework, **Article 6(4) of the Habitats Directive** functions as a *narrow derogation* from the strict, but flexible regime established by Article 6(3). The application of Article 6(4) is permissible only where **(i)** no feasible alternative solutions exist, **(ii)** imperative reasons of overriding public interest justify proceeding, and **(iii)** where compensatory measures ensure the overall coherence of the Natura 2000 network. This exceptional character is reflected both in Commission Guidance and in consistent CJEU jurisprudence. The Commission itself has highlighted that alternatives examined must be substantive and meaningful and that feasible alternatives "*might involve alternative locations or routes, different scales or designs of development, or alternative processes*."[81] This is line with the Habitats Directive's preventive logic—ensuring that damaging options are not chosen where other, less harmful solutions exist, in a provision that operationalises the **principle of prevention**.[82] At the same time, the CJEU has repeatedly confirmed the strict application of the derogation in Article 6(4), as exemptions "are to be interpreted in a strict manner".[83] Crucially, it has ruled that economic considerations "*are not of equal importance to the objective of conserving natural habitats and wild fauna and flora*" and **cannot**, on their own, "*be a determining factor in the choice of alternative solutions*".[84] Moreover, the Court requires a genuine **balancing exercise**: the evaluation of alternatives and of imperative reasons of overriding public interest must be weighed against "*the damage caused to the site by the plan or project under consideration*".[85] Taken together, these principles ensure that Article 6(4) acts as a **last-resort mechanism**, preserving the Directive's central aim of maintaining and restoring Natura 2000 sites at a favourable conservation status.

Against this legal backdrop, the proposed changes fundamentally weaken Article 6(4). By diluting the alternative solutions test and allowing economic or administrative convenience to dominate decision-making, the proposed reforms would **invert the Directive's logic**. Instead of serving as a safeguard triggered only in exceptional cases, Article 6(4) now risks becoming a broad permission pathway, **allowing projects to proceed even when less damaging alternatives are available and irrespective of the severity of ecological harm**.

Such an approach **defeats the objectives of the Habitats Directive** of reaching and maintaining favourable conservation status (FCS) for the Union's protected habitats and species.[86] It erodes the preventive function of Article 6(3), undermines the effectiveness of Natura 2000 site conservation measures, and disregards the CJEU's clear insistence on strict interpretation, ecological primacy when balancing interests, and robustness of the comparative assessment. It would permit precisely the outcome the Directive seeks to prevent: the progressive degradation of Natura 2000 sites through routine reliance on derogations, as a rule, rather than avoidance of harm.

Links with the Industrial Accelerator Act and TEN-E Regulation

Some of the above measures deemed particularly damaging to the environment or potentially inconsistent with the EU Treaties have been used in other recent legislative proposals. A summarized version is presented below:

Industrial Accelerator Act[87]

A regime similar to that of the RED's Renewable Acceleration Areas (RAAs) is envisaged for industrial acceleration areas (Article 29). As under the RED, it will be the plans designating the industrial acceleration areas that undergo an SEA and an appropriate assessment, rather than individual projects situated therein (29(5) and 31(2)). That being said, the industrial acceleration area designation is inconsistent with RAAs designation (RED 16a(3)), by failing to exclude certain areas from being considered as industrial acceleration areas due to their ecological sensitivity or legal status (ie Natura 2000 sites or nationally protected areas), in Article 29(3). Instead the designation of industrial acceleration areas only needs to "take into account" such areas (29(3)(b)), while ensuring that only

80 Article 3a of Council Regulation (EU) 2022/2577of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy.
81 Commission Notice, Guidance document on the strict protection of animal species of Community interest under the Habitats Directive (2021/C 496/01).
82 TFEU, Article 191.
83 CJEU, C239/04, *Commission v Portugal*, para 35),
84 CJEU, C399/14, *Grüne Liga Sachsen eV*, para 77
85 CJEU, C304/05, *Commission v Italy,* para 83.
86 Habitats Directive, Article 2.
87 *Pending Publication of the proposal.*
88 As above, for more on the applicable permit-granting regime of RAAs, please consult For a more detailed analysis of the currently applicable regime on RAAs, please consult ClientEarth, *Renewable Energy for Nature and People: A Practical Guide to the revised Renewable Energy Directive* (February 2025).

areas where the deployment of industrial activities is not expected to have significant environmental impact (29(3)(a)) are included. Contrary to an earlier version of the (unpublished) Industrial Acceleration Act, there is currently no provision on mitigation measures, but the aggregated baseline permit (Article 31(1)) is expected to include reference to area-specific mitigation measures, by analogy to the "mitigation rulebook" of the RED.

TEN-E Regulation Amendment[89]

Article 7 of the Commission's proposal on the amended TEN-E Regulation introduces an automatic presumption of overriding public interest for all electricity infrastructure projects covered by TEN-E, while simultaneously expanding the list. At the same time, it introduces exemptions from relevant environmental assessments under the EIA and Habitats Directives for all projects included in Member States' National Development Plan, for which an SEA and – if applicable – an appropriate assessment have been undertaken. Furthermore, it introduces a presumption of compliance with Birds & Habitats and Water Framework Directive provisions, when mitigation measures have been adopted and reduces the scope of the screening stage of the assessment only for cases when the project is highly likely to give rise to significant adverse effects that were not identified during the assessment(s) of the National Development Plan, or in case of likely transboundary effect. Alarmingly, there is even a possibility not to implement mitigation measures and use compensatory measures of monetary nature instead, in direct contravention to the mitigation hierarchy, deriving from the combined interpretation of the fundamental principles of TFEU 194(2). Finally, the proposal follows the same very restrictive interpretation of alternatives as in (new) RED Article 16g (Energy Infrastructure Acceleration Directive, Article 1(9)).

89 Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure, amending Regulations (EU) 2019/942, (EU) 2019/943 and (EU) 2024/1789 and repealing Regulation (EU) 2022/869.

Reckless Risk-taking

An evaluation of recent EU legislative proposals on permit-granting and environmental assessments

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