



euRONATUR

Assessment

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REPowerEU and its alignment with #RED4Nature

Analysis of Commission's REPowerEU
proposal and recommendations

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Introduction

As a result of the war against Ukraine, on the 18th of May, the European Commission proposed a new package of legislation to fast forward the break away from Russian fossil fuels. EuroNatur fully recognises and supports the need for urgent acceleration of renewable energy. However, this should be done by removing inadequate bureaucratic barriers and not by weakening necessary environmental legislation.

Protecting and restoring nature is an important climate tool as is producing renewable energies, moreover, the combination of renewable energy sources (RES) and nature protection and restoration is the best chance we have to achieve climate neutrality. The assessment below provides EuroNatur's perspective of certain aspects of the European Commission's proposals compared to the vision to achieve 100% renewables in line with nature. In particular, we look to illustrate how to address the climate crisis together with the biodiversity crisis.

Saving energy

The European Commission proposes very few legal binding measures to ensure a decrease in the energy consumption of the EU. To halt the necessity of importing (Russian) fossil fuels, the energy demand must drastically decrease. The EU should not delay any further action on energy savings, in particular for increasing deep energy-saving renovations of buildings.

Commission proposal	RED4Nature alignment
Increase from 9% to 13% of the binding Energy Efficiency target to 2030 compared to 2020.	The share is too low and should be 20% ¹ to 2030 compared to 2020 to be able to reach Paris Agreement commitments.
Behavioural change to cut gas and oil demand by 5%	This is not sufficient to drastically reduce energy consumption. Regulatory measures should have been proposed in particular to further speed up building renovations, instead of focusing only on behavioural change. For example, regulatory changes that would ensure that all Member States have mapped energy performance of all their building stock.
Communication campaigns targeting households and industry	This is not sufficient and the Commission should foresee technical assistance and subsidies at a local level to increase building renovations projects in particular for low income, vulnerable and energy poor households.
Fiscal measures to encourage energy savings, such as reduced VAT rates on energy efficient heating systems, building insulation and appliances and products	This is a positive direction and further tax breaks on energy savings should be further pursued.

Diversifying supplies

The European Commission proposes to further diversify gas supplies. This is a signal for increasing further financial investments in fossil fuel projects. It is more crucial to fill the energy import gap by implementing bold measures to significantly reduce the energy demand first, and then roll out

¹ This is a comparable estimate for adapting the energy efficiency target of 45% energy savings in 2030 based on the 2007 Reference Scenario to the 2020 Reference Scenario.

sustainable renewable energy solutions. Therefore, the Commission should not focus on further diversifying gas supplies. This would mean more funding for infrastructure to increase gas supplies which just locks the EU into fossil fuels.

Commission proposal	RED4Nature alignment
Establish a 'joint purchasing mechanism' to negotiate gas purchases as EU	The EU has committed to discourage investments into fossil fuel projects in third countries. Halting fossil fuel imports from Russia must not go back on this commitment.
Legislative measures to require diversification of gas supply over time by Member States	EU Member States should withdraw from the Energy Charter, which currently allows fossil fuel investors to sue Member States in Investor-State Dispute Settlement (ISDS).
Joint purchasing of renewable hydrogen	It is important that any renewable hydrogen purchase is truly sustainable and not created from fossil fuels or from renewable energy that has destroyed nature and claimed indigenous lands.

Accelerating rollout of renewables

The European Commission recognises the need to increase renewable energies and includes a revision of the Renewable Energy Directive (EU 2018/2001) to accelerate the permitting procedures for renewable energy projects. However, they propose to deregulate environmental legislation to achieve this which is counter-productive. Instead, accelerating permitting procedures for wind and solar and related infrastructure can be done through better spatial planning, funding adequate staffing in competent authorities, and the early and full involvement of independent experts, citizens, and local authorities.

The focus of renewables roll-out should be on the urban and industrial areas first and then on EU land and sea outside of protected areas. "Go to" areas are important but these must be very well defined in a democratic governance process. The rule of law and existing environmental legislation remain key and are not an obstacle to progress. The EU is a region where the rule of law counts, and where citizen engagement is a key part of the process that also supports the legitimacy of EU institutions, decision-making and democracy. REPowerEU challenges this democratic freedom.

There is also a lack of recognition of geothermal in REPowerEU, in particular for heating. Furthermore, renewable hydrogen will be important when there is an oversupply of solar and wind, but it should not be the main bulk of energy supply.

Commission proposal	RED4Nature alignment
Increase the headline 2030 target for renewables from 40% to 45%	The share is too low and should be 50% to 2030 to reach a 100% renewables-based energy system by 2040.
Double solar photovoltaic capacity by 2025 and install 600GW by 2030	The total rooftop potential in the EU is 1500 TWh, which translates to 600 to 1,200GW of installed PV power – just from rooftops. 600 GW installed capacity should be achieved by 2025.
Legal obligation to install solar panels on new public and commercial buildings and new residential buildings	Good progress. However, the legal obligation should also be applied to existing buildings as well.
Doubling the rate of deployment of heat pumps, and measures to integrate geothermal and solar	Two million heat pump installations were deployed in 2021. Doubling would mean four

<p>thermal energy in modernised district and communal heating systems</p>	<p>million heat pumps. This is progress but not sufficient as at least five million new heat pumps per year should be deployed by 2025. To achieve this, the EU needs to increase its heat pump production and invest in training and educating technicians to secure proper function and use.</p>
<p>Tackle slow and complex permitting for major renewable projects and recognise renewable energy as an overriding public interest</p>	<p>Renewable energy should not be recognised as overriding public interest as there is legal precedence for how the terminology is used in environmental legislation. This, therefore, causes legal uncertainty given that projects that override public interest still need to apply environmental legislation, e.g. Article 6 of the Habitats Directive. Furthermore, the Aarhus Convention, in particular for access to justice, is being infringed by overriding all renewable energy project proposals over individual cases. Also, not all renewable energy projects are good for the environment, local communities, or add value to energy production (e.g. hydropower). Instead, the EC should focus on prioritising solar, wind and geothermal over other human pressures (such as building hotels for tourism or fishing pressure) – instead of attempting to deregulate environmental legislation.</p>
<p>Dedicated ‘go-to’ areas for renewables with shortened and simplified permitting processes</p>	<p>The development of go-to areas is a positive step. However, the Commission should have foreseen a “differentiated approach” to identifying areas for renewable energy development: “first choice areas” (priority areas for development, such as industrial sites, brown fields, and other degraded areas), “second choice areas” to be used after the space in “first choice areas” is exhausted, along-side clear no-go areas including strictly protected areas, Natura 2000 sites, and other nature reserves protected by law. Furthermore, any future spatial plans should also consider commitments to protect 30% of EU’s land and seas as well as future obligations to restore nature.</p>
<p>Simplified permitting processes in areas with lower environmental risks</p>	<p>This is deregulating environmental legislation and removing the freedom and democracy of citizens to challenge projects. Furthermore, this goes against international conventions that the EU adheres to, in particular the Bern Convention and the Aarhus Convention. Permitting process must be accelerated, however, projects should not derogate from EIA, even within go-to areas. Instead, there should be increased capacity, for example, in environment ministries, agencies and local authorities, to tackle permitting. Furthermore, they should encourage early participation of local communities to define</p>

	appropriate areas and projects, in particular to develop renewable energy communities and increase acceptance.
Datasets on environmentally sensitive areas as part of its digital mapping tool for geographic data related to energy, industry and infrastructure.	Data is important to be acquired and shared. However, the quality of the data is also important. Furthermore, defining sensitivity areas should be on the basis of meeting environmental legislations.
Target of 10 million tonnes of domestic renewable hydrogen production and 10 million tonnes of imports by 2030.	Renewable green hydrogen will be important when there is an oversupply of solar and wind. For 10 million tonnes of hydrogen, 400 GWh will be required, which is an additional 240,000 ha of solar panels that will be needed.
€200 million is set aside for hydrogen projects research	The focus only on hydrogen research is problematic when there is also a need to develop further research on geothermal.
Biomethane industrial partnership and financial incentives to increase production to 35bcm by 2030	Biomethane should only be waste and residues with no alternative use. Biomethane produced from dedicated crops should be excluded as this can lead to increased emissions from direct and indirect land-use change, as well as further degrade soils and increase biodiversity loss.

Reducing fossil fuel consumption

Industrial consumption of fossil fuels is hindering the EU's ability to become fossil fuel independent. Apart from transitioning to renewable energy sources, industries should also have energy and resource consumption reduction targets.

Commission proposal	RED4Nature alignment
Guidance on renewable energy and power purchase agreements	The guidance on permitting focuses on reducing the duration of the permitting granting process and how to limit citizens from litigating on the grounds of environmental impacts. However, it is not reducing the duration of assessing documents or stopping citizens from exercising their rights that will improve permitting. Instead, investing capacity and resources to analyse applications and carrying out quality monitoring and assessment of protected species and habitats would ensure that governments have the needed resources to assess the applications quicker. Furthermore, by establishing a regular process to discuss planned projects and different scenarios, stakeholders, scientific experts, and governments can adapt to consider the different needs while also growing acceptance for projects.
Legislate on the supply of critical raw materials	Legislation on the supply of raw materials is a positive and fundamental step to reduce the impact within and outside the EU. In particular, the social and environmental dimensions of sustainability have to be integrated. Further

	legislation for renewable energy production and building renovation should focus on increasing the recycling of raw materials from older products with dedicated recycling targets for critical raw materials and a monitoring framework.
Greening of Freight by increasing energy efficiency in the sector	Increasing energy efficiency of shipping is important and there should be legislation that ensures a 41% reduction ² in fuel consumption by 2030 for both new and existing ships. Nevertheless, it is also important that greening freight considers nature protection and that decisions on transporting goods along rivers does not lead to further degradation of rivers, for example, by embanking and deepening rivers. Furthermore, the EU should incentivise more local markets to reduce the use of shipping.
Increase the share of zero-emission vehicles in public and corporate car fleets above a certain size	In the short term, EU should legislate to reduce corporate travel by imposing higher taxes for fossil fuels corporate cars, thereby incentivising public transport and bicycle use. Furthermore, truck speed limits should be reduced from 90km/h to 80km/h in all Member States. Moreover, the EU should encourage the reduction of fuel consumption by establishing car free days at least once per month. In the long term, there should be regulation to require corporate car fleets, trucks, and buses to achieve 100% zero emission by 2040.

Smart Investment

Moving away from, e.g., Russian gas, while protecting nature, will need serious investments in the right direction. The Commission’s proposal to adapt the current funding stream is a positive step, however, the proposed changes are not sufficient to foresee a change in direction of spending, in particular for housing grants to support building renovations and solar PV on rooftops and increase staffing to accelerate permitting. Accelerating the roll-out of renewable energy will also require good spatial planning that is produced through sound data gathering and analysis. Further investments should be made to gather data, analyse data and produce needed maps.

Furthermore, the commission should apply the “Do No Significant Harm” principle. In the case of projects having an “overriding public interest”, as per Art 6 of the Habitats Directive, these projects would be deemed to have a significant effect on nature. It is the prerogative of the Member States to “override” the Habitats Directive when no other alternative is identified (and all aspects of the Habitats Directive have been fulfilled). This, therefore, means that renewable energy projects that are considered overriding public interest by Member States are overriding EU environmental legislation. Therefore, in accordance with the DNSH principle, these projects should not be receiving EU public money.

² Transport & Environment. (2021). Decarbonising European Shipping. Technological, operational, and legislative roadmap.

Commission proposal	RED4Nature alignment
Guidance to modify and complement the RRFs in order to spend the €225 billion already available	The commission's RRF chapters are not sufficient to ensure a renewable transition with nature. In particular, they should have excluded fossil fuels, including gas, from all EU funding instruments. For example, EU funds should not be used to subsidise new fossil fuel boilers. RRFs should be adjusted to target deep renovations and plans for local and regional renewable heating and cooling as well as establishing renewable energy communities.
Increase the RRF financial envelope with €20 billion in grants from the sale of EU Emission Trading System allowances.	For the use of this, envelope specific guidance would be required.
€26.9 billion from cohesion funds can be voluntarily transferred to the RRF.	This is problematic as the cohesion funds sits within the MFF and follows thorough regulation, programming and accountability, while the RRF does not. There is no reason to move funding from cohesion funds to RRF. If this is to take place, funding should support deep renovations, renewable energy communities and local heating and cooling. It should also support data gathering, analysis and mapping.
€7.5 billion from the Common Agricultural Policy can be voluntarily transferred to the RRF	This is problematic as the CAP funds sit within the MFF and follow thorough regulation, programming and accountability, while the RRF does not. If this is to take place, then it should be specific to restoration of nature to build resilience of protected species and habitats that will be impacted by RES projects.
€3 billion to be spent on Large Scale Call of the Innovation Fund	Future large-scale calls for innovation should focus on increasing energy production that have limited impact on nature, in particular ocean and geothermal energies. Furthermore, the call should focus on innovating technology to increase the efficiency of the grid and enable interconnection of renewable energy communities.
€800 million from Connecting Europe Facility to adapt the power grid to transition needs	Grants under RRF should be used for this objective anyway. The CEF is not enough to provide the needed funding for an EU-wide smart grid. Objectives from these diverse funding opportunities should be complementary and not be meant for exclusive use in terms of objectives.

Recommendations

REPowerEU is an important document to foster the necessary decarbonisation and move away from fossil fuels, yet it fails to address the climate crisis together with the biodiversity crisis. To achieve both, the following changes need to be made:

- Accelerate 100% renewable energy rollout by:
 - o Prioritising renewable energies over other industrial sectors and human activities during the planning.
 - o Increasing the capacity of authorities to evaluate applications for permits.
 - o Prioritising areas that are already degraded for renewable energies.
 - o Mapping the sensitivity of species and habitats to human pressures including renewable energies and avoiding building renewable energies in sensitive areas including protected areas and their buffer zones.
 - o Establishing community-level stakeholder and scientific engagement to ensure that there is active input and discussion of planning scenarios and decisions.
- Fulfil the obligations of environmental legislation to protect nature by:
 - o Removing the idea that renewable energies should always be overriding public interest. This terminology causes legal uncertainty given that the term is applied differently in different cases as per the different environmental legislations.
 - o Ensuring that all projects, including those in go-to areas, will align with requirements of environmental legislation, including the Birds Directive, Habitats Directive, Water Framework Directive and Marine Strategy Framework Directive.
 - o Mitigating and compensating impacts as per environmental legislation, in particular as set out in Environmental Impact Assessments and Appropriate Assessments
 - o Deprioritising energy from woody biomass and new hydropower plants by ensuring that go-to areas focus on wind, solar and geothermal.
- Increase financial investment to
 - o Upgrade the energy grid that can enable the compatibility of solar, wind and geothermal energy, including for decentralising energy.
 - o Prioritise increasing the solar photovoltaic cell energy on buildings to improve the energy that can be produced in urban environments.
 - o Incentivise the electrification of the energy system by improving existing infrastructure and connecting rural areas.
 - o Increase staffing in permitting departments that support the roll-out of renewable energy.
 - o Finance data gathering, analysis and mapping, including the sensitivity of species, habitats and soils to renewable energies.

Annex I - Environmental Impact Assessment - Permitting

RePowerEU Proposal	EU Environmental legislation
<p>Article 16a Permit-granting process in renewables go-to areas</p> <p>3. Without prejudice to paragraphs 4 and 5, by derogation from Article 4(2) of Directive 2011/92/EU, and Annex II, points 3(a), (b), (d), (h), (i), and 6(c) alone or in conjunction with point 13(a) to that Directive as far as this concerns renewable energy projects, new applications for renewable energy plants, except for biomass combustion plants, including the repowering of plants, in already designated renewables go-to areas for the respective technology, co-located storage facilities as well as their connection to the grid, shall be exempted from the requirement to carry out a dedicated environmental impact assessment under Article 2(1) of Directive 2011/92/EU, provided that these projects comply with the rules and measures set out in accordance with Article 15c(1), point (b).</p> <p>By derogation from Article 6(3) of Directive 92/43/EEC, the plants referred to in the first subparagraph, shall not be subject to an assessment of their implications for Natura 2000 sites.</p>	<p>Article 4(2) of Directive 2011/92/EU (i.e. EIA Directive)</p> <p>2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:</p> <ul style="list-style-type: none"> (a) a case-by-case examination; or (b) thresholds or criteria set by the Member State. <p>Member States may decide to apply both procedures referred to in points (a) and (b).</p> <p>Annex II, points 3(a), (b), (d), (h), (i), 6(c), and 13(a) of Directive 2011/92/EU (i.e. EIA Directive)</p> <p>3. ENERGY INDUSTRY</p> <ul style="list-style-type: none"> (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I); (b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I); (d) Underground storage of combustible gases; (h) Installations for hydroelectric energy production; (i) Installations for the harnessing of wind power for energy production (wind farms); <p>6. CHEMICAL INDUSTRY (PROJECTS NOT INCLUDED IN ANNEX I)</p> <ul style="list-style-type: none"> (c) Storage facilities for petroleum, petrochemical and chemical products. <p>13. (a) Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);</p> <p>Article 6 of Directive 92/43/EC (i.e. Habitats Directive)</p> <p>3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.</p>

Assessment

Commission proposes: that projects that are screened and are likely to not have a significant effect can derogate from Article 4(2) of the EIA's Directive for the specified projects under Annex II and Article 6(3) of the Habitat's Directive.

EuroNatur assessment: the provision to not have to carry out an impact assessment if the screening shows there is not a significant effect on the environment is already applied in the Environmental Impact Assessment and Appropriate Assessment procedure and therefore the derogation is redundant and should be removed. It creates legal uncertainty by suggesting that there should be a derogation to projects in go-to areas. Furthermore, Appropriate Assessments are to be applied "if applicable" under amendment 16a(5) (see below). This terminology further creates legal uncertainty.

Commission proposes: derogation from Environmental Impact Assessments and Appropriate Assessments allowed for gas and petroleum projects – including installation carrying them and cables linking electricity as well as storage if this relates to renewable energy projects

EuroNatur assessment: If green hydrogen can include non-renewable energy, then the derogation can also apply to fossil fuels. Important that for the future of Europe, fossil fuels are not supported, including those to create hydrogen, and these should not be part of the vision or solution to tackling the climate crisis to help us reach 100% renewables.

Commission proposes: derogation from Environmental Impact Assessments and Appropriate Assessments allowed for hydropower projects if the screening says they are likely to not have a significant effect.

EuroNatur assessment: Hydropower is extremely destructive to nature, including small hydropower; new hydropower projects should not be promoted as part of the vision for 100% renewable energy; there should be no reason as to not carry out an EIA or AA for hydropower projects as these will always have a significant impact on nature.

RePowerEU Proposal	EU Environmental legislation
<p data-bbox="163 228 768 252">Article 16a Permit-granting process in renewables go-to areas</p> <p data-bbox="163 260 1088 483">4. The competent authorities of Member States shall carry out a screening of the applications referred to in paragraph 3. Such screening shall aim to identify if any of such projects is highly likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographical areas where they are located, that were not identified during the environmental assessment of the plan or plans designating renewables go-to areas carried out in accordance with Directive 2001/42/EC and, if relevant, with Directive 92/43/EEC. The screening carried out for the repowering of projects shall be limited to the potential impacts stemming from the change or extension compared to the original project.</p> <p data-bbox="163 523 1088 740">For the purpose of such screening, the project developer shall provide information on the characteristics of the project, on its compliance with the rules and measures identified according to Article 15c (1), points (b) and (c), for the specific go-to area, on any additional measures adopted by the project and how these measures address environmental impacts. Such screening shall be finalised within 30 days from the date of submission of the applications for new renewable energy plants, with the exception of applications for installations with an electrical capacity of less than 150 kW. For such installations and for new applications for the repowering of plants, the screening phase shall be finalized within 15 days.</p>	<p data-bbox="1111 228 1507 252">Case Law - People Over Wind (C-323/17)</p> <p data-bbox="1111 260 2047 395">37. Taking account of such [mitigation] measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.</p> <p data-bbox="1111 403 1626 427">Article 11 (1) of 2011/92/EU Directive (EIA Directive)</p> <p data-bbox="1111 435 2047 667">1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:</p> <ul style="list-style-type: none"> <li data-bbox="1160 491 1637 515">(a) having a sufficient interest, or alternatively; <li data-bbox="1160 523 2047 579">(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition; <p data-bbox="1111 587 2047 667">have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.</p>

Assessment

Commission proposes: for Environmental Impact Assessments and Appropriate Assessments in go-to areas, Member States only need to screen aspects that were not already identified during the Strategic Environmental Assessments that should be carried out.

EuroNatur assessment: The proposal misunderstands the purpose of Strategic Environmental Assessments and Environmental Impact Assessments/ Appropriate Assessments. Strategic Environmental Assessments are carried out at an earlier stage for the purpose of planning and determining wider programmes. Therefore, Strategic Environmental Assessments do not check for the specific project impact, although it already helps the approval process of projects that are a part of planning and a programme where these have followed the recommendations of a Strategic Environmental Assessment. Environmental Impact Assessments are carried out when a project needs to be approved. These are reports that explain the impact of the project on humans (e.g. health), animals, plants, biodiversity, soil, water, ambient air, the climate, the landscape and cultural goods. Citizens, including those of affected neighbouring countries, may express comments and opinions on the report. This report is then evaluated by authorities when deciding whether to approve a project. Appropriate Assessments specifically look at the impact on species and habitats protected under the Birds and Habitats Directives. They are carried out at both the programming stage/planning stage and at the project level. They usually complement Strategic Environmental Assessments and Environmental Impact Assessments.

Commission proposes: Member States carry out a screening of the applications within 15 days (less than 150kW capacity) or 30 days (more than 150 kW).

EuroNatur assessment: This is an unrealistic deadline given that public authorities are already understaffed. This would mean there wouldn't be sufficient time to address all the environmental concerns in the needed details. This provision will create confusion in an already established system of screening and

assessments. Screening of projects should take place under the system already established as part of the Environmental Impact Assessment or Appropriate Assessment procedures as these ensure the participation of scientists and local communities. Such timeframes are neither justified nor proportionate. Any attempt to apply such a time frame would be an attempt to not follow science, to establish an undemocratic process and to further degrade nature.

Commission proposes: for the repowering of projects, the screening be limited only to the additional extension.

EuroNatur assessment: Screening only the additional extension completely disregards the cumulative impacts of projects that needs to be analysed on the basis of the additional effort being placed.

Commission proposes: during the screening process, Member States can already mitigate project impacts.

EuroNatur assessment: As per jurisprudence, the European Court of Justice (C-323/17) has already determined that mitigating during the screening process is not appropriate as this removes specific safeguards that are required by the Habitats Directive (applied also to species protected under the Birds Directive), in particular when the cumulative understanding and knowledge of the impacts can be assessed.

RePowerEU Proposal	EU Environmental legislation
<p data-bbox="163 228 768 252">Article 16a Permit-granting process in renewables go-to areas</p> <p data-bbox="163 260 1088 544">5. Following the screening process, the applications referred to in paragraph 3 shall be authorised from an environmental perspective without requiring any express decision from the competent authority, unless the competent authority adopts an administrative decision, duly motivated and based on clear evidence, that a specific project is highly likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity of the geographic area where they are located that cannot be mitigated by the measures identified in the plan or plans designating go-to areas or proposed by the developer for the project. Such decision shall be made available to the public. Such projects shall be subject to an assessment in accordance with Directive 2011/92/EC and, if applicable, to an assessment under Article 6(3) of Directive 92/43/EEC, which shall be carried out within six months following the screening decision.</p>	<p data-bbox="1111 228 1637 252">Article 6 of Directive 92/43/EC (i.e. Habitats Directive)</p> <p data-bbox="1111 260 2047 368">3. [...] In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.</p> <p data-bbox="1111 376 1447 400">Case Law - Waddenzee (C-127/02)</p> <p data-bbox="1111 408 2047 576">42. As regards Article 2(1) of Directive 85/337, the text of which, essentially similar to Article 6(3) of the Habitats Directive, provides that ‘Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment ... are made subject to an assessment with regard to their effects’, the Court has held that these are projects which are likely to have significant effects on the environment (see to that effect Case C-117/02 Commission v Portugal [2004] ECR I-0000, paragraph 85).</p> <p data-bbox="1111 584 2047 692">43. It follows that the first sentence of Article 6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that there be a probability or a risk that the latter will have significant effects on the site concerned.</p> <p data-bbox="1111 700 2047 1094">44. In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by Community policy on the environment, in accordance with the first subparagraph of Article 174(2) EC, and by reference to which the Habitats Directive must be interpreted, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned (see, by analogy, inter alia Case C-180/96 United Kingdom v Commission [1998] ECR I-2265, paragraphs 50, 105 and 107). Such an interpretation of the condition to which the assessment of the implications of a plan or project for a specific site is subject, which implies that in case of doubt as to the absence of significant effects such an assessment must be carried out, makes it possible to ensure effectively that plans or projects which adversely affect the integrity of the site concerned are not authorised, and thereby contributes to achieving, in accordance with the third recital in the preamble to the Habitats Directive and Article 2(1) thereof, its main aim, namely, ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora.</p>

Assessment:

Commission proposes: applications can only be rejected by authorities if there is clear evidence that a specific project is highly likely to have significant effects.

EuroNatur assessment: This process is a much different process that is currently in place to screen projects under the EIA directive and Habitats Directive – which has been further applied under case law by the European Court of Justice (C-127/02). In particular, case law applies the precautionary principle meaning that unless you can prove through an assessment that you do not have an impact on the environment then authorisation cannot be given. The Commission’s proposal reverts the burden of proof to the authorities and not to the project applicants.

Commission proposes: the project is considered to not have an environmental impact if there is no response by the Member State and therefore does not need to undertake an EIA.

EuroNatur assessment: the Aarhus Convention is explicit that a decision by the Member State needs to be taken for citizens to be able to access justice. In giving a “silent green light” – this amendment would infringe on the democracy of citizens and their right to justice as transposed in Article 11 of the Environmental Impact Assessment Directive.

REPowerEU Commission proposal	EU environmental legislation
<p>Article 15c (1) point b Establish appropriate rules for the designated renewable go-to areas, including on the mitigation measures to be adopted for the installation of renewable energy plants, co-located energy storage facilities, as well as assets necessary for their connection to the grid, in order to avoid or, if not possible, to significantly reduce the negative environmental impacts that may arise. Where appropriate, Member States shall ensure that appropriate mitigation measures are applied to prevent the situations described in Articles 6(2) and 12(1) of Directive 92/43/EEC, Article 5 of Directive 2009/147/EEC and Article 4(1)(a)(i) and (ii) of Directive 2000/60/EC. Such rules shall be targeted to the specificities of each identified renewable go-to area, the renewable energy technology or technologies to be deployed in each area and the identified environmental impacts. Compliance with such rules and the implementation of the appropriate mitigation measures by the individual projects shall result in the presumption that projects are not in breach of those provisions without prejudice to paragraphs 4 and 5 of Article 16a. Where novel mitigation measures to prevent as much as possible the killing or disturbance of species protected under Council Directive 92/43/EEC and Directive 2009/147/EEC, or any other environmental impact, have not been widely tested as regards their effectiveness, Member States may allow their use for one or several pilot projects for a limited time period, provided that the effectiveness of such measures is closely monitored and appropriate steps are taken immediately if they do not prove to be effective.</p>	<p>Article 3 EIA directive 3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:</p> <ul style="list-style-type: none"> (a) a description of the project comprising information on the site, design and size of the project; (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects; (c) the data required to identify and assess the main effects which the project is likely to have on the environment; (d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects; (e) a non-technical summary of the information referred to in points (a) to (d). <p>Article 2 Habitats Directive 2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.</p>

Assessment

Commission proposes: apply mitigation measures in go-to areas, then it is assumed that the project does not breach environmental legislation.

EuroNatur assessment: mitigating impact is an important step; however, this should not replace avoiding and minimising as much as possible the impact. The Commission’s proposal does not use a hierarchy of first avoiding the impact and then mitigating where it cannot be minimised.

Annex II - Overriding Public Interest & Access to Justice

REPowerEU Commission proposal	EU environmental legislation
<p>Article 16d - Overriding public interest</p> <p>By [three months from entry into force], until climate neutrality is achieved, Member States shall ensure that, in the permit-granting process, the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself and storage assets are presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual cases for the purposes of Articles 6(4) and 16(1)(c) of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1)(a) of Directive 2009/147/EC.'</p>	<p>Article 6 (4) of Directive 92/43/EEC (Habitats Directive)</p> <p>4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.</p> <p>Article 9 (2) of the Aarhus Convention</p> <p>2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned</p> <ul style="list-style-type: none"> (a) Having a sufficient interest <p>or, alternatively,</p> <ul style="list-style-type: none"> (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, <p>have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.</p>

Assessment

Commission proposes: Member States treat renewable energy as an overriding public interest for permitting, planning and construction when considering individual environmental cases

EuroNatur assessment: overriding public interest is applied by environmental legislation through different mechanisms. In the context of the Habitats Directive, the term explicitly refers to exemptions made for projects that will have a significant effect on protected species and habitats when no other alternative solutions have been identified and Member States would also need to apply compensatory measures to ensure coherence of the protected species and habitats that would be impacted. Therefore, overriding public interest is applied at the end of a process where Member States have to attempt everything else before deciding that there is nothing else that can replace a project that will have significant harm. Therefore, the text creates legal uncertainty in the application of overriding public interest. Furthermore, in applying overriding public interest, this should also exempt Member States from applying EU public funding towards the project as this would otherwise contradict the Do No Significant Harm principle.

Commission proposes: Member States choose renewable projects over individual environmental legal cases

EuroNatur assessment: the proposal does not fulfil the obligations of the Aarhus Convention, in particular regarding access to justice. It determines that all renewable energy projects should override any individual legal cases that are presented and therefore denies individuals the ability to a fair and just trial when challenging a permit, plan, or any other decisions on renewable energy.



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