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Balancing Interests in Green Versus Green Conflicts: A Case Study on Renewable Energy and EU Biodiversity Protection Rules*

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Abstract

The quick expansion of renewable energy in the European Union is creating tensions with other environmental (or green) interests in EU law. The EU has amended the Renewable Energy Directive (RED III) to reduce greenhouse gas emissions and dependence on fossil fuel imports. In doing so, RED III provides for two mechanisms to promote renewable energy that indicate a change in how the EU balances different green interests. The first concept is that RED III presumes that renewables are of "overriding public interest" in the permit-granting procedure. Overriding public interest is a strict exception clause under EU environmental law to permit potentially harmful plans or projects on protected sites. The second concept is the creation of so-called renewable acceleration areas, where the idea is to deploy renewable energy installations more quickly by reducing the time required to obtain all permits and by changing the assessment procedures for renewables. Renewable energy installations in those areas shall adopt mitigation measures, and if implemented correctly, they are presumed to comply with the EU's habitats and species protection rules. This article argues that the EU's rules on habitats, species, and water protection are not always aligned with climate and energy objectives. RED III indicates an attempt to reconcile these different environmental interests with each other.

Keywords: Renewable Energy Directive, EU Environmental Law, Green on Green Conflicts, Overriding Public Interest

1. Introduction

Climate change is causing global temperatures to rise. At the same time, the ongoing war in Ukraine has highlighted the need for energy independence from fossil fuel imports. It is against this background that a rapid increase in renewable energy is seen as one of the best ways to mitigate the effects of climate change and increase energy independence. Among the various renewable technologies, offshore wind has been pointed out by the European Commission as necessary to reach the EU's climate goals as set out in the European Climate Law.[1] The Commission sees an increase of up to 300GW in offshore wind by 2050 as realistic and achievable.[2] To reach that goal, it is estimated that the offshore wind industry will require a 30-fold increase in the current installed capacity.[3]

However, the quick growth of renewable energy (e.g., offshore wind farms) can risk col-

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[1] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality 2021 (OJ L 243).

[2] European Commission, An EU Strategy to Harness the Potential of Offshore Renewable Energy for a Climate Neutral Future COM (2020) 741 Final'. The current capacity is 12GW.

[3] Ibid.

liding with other environmental goals, such as biodiversity protection. For instance, the Baltic Sea's unique biodiversity is sensitive to human-induced change. The biodiversity of the Baltic Sea has worsened over the years, which threatens the sustainable use of species and the function of ecosystems.[4] In the specific case of offshore wind farms, there is also evidence that the rapid increase in offshore energy development will intensify underwater noise, alter seabed sediments, and increase the risk of collision with bird and marine species.[5]

To promote the development of renewable energy, the EU has adopted the Renewable Energy Directive (RED). The RED has been amended twice; therefore, the current RED is commonly referred to as RED III.[6] RED III aims to, *inter alia*, set a common target for the overall share of energy from renewable sources and to make administrative burdens associated with developing renewable energy projects easier.[7] However, the promotion of renewable energy projects under RED III may give rise to so-called green versus green conflicts when those interests are balanced against the EU's extensive biodiversity legislation. EU environmental law is based on, *inter alia*, the prevention principle,[8] which aims to prevent environmental damage through the designation of protected areas, the prohibition on killing or disturbance of species, and the prevention of pollution or the deterioration of ecosystems. Key to this approach is the prior assessment of possible harmful activities for the environment.[9] RED III introduces two features that at first sight seem to contradict these high environmental safeguards. First, RED III declares in Article 16f that renewable energy is presumed to be in the "overriding public interest" in the permit-granting procedure when interests are balanced against the Habitats,[10] Birds,[11] and Water Framework Directive (WFD).[12] Second, RED III Article 15c establishes rules on so-called renewable acceleration areas (RAAs), where the deployment of renewable energy installations is subject to a changed and reduced impact assessment procedure to expedite their deployment.[13]

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[4] Lena Bergström and Jannica Haldin (eds), HELCOM (2023): State of the Baltic Sea. Third HELCOM Holistic Assessment 2016–2021. Baltic Sea Environmental Proceedings, n 194. <https://helcom.fi/wp-content/uploads/2023/10/State-of-the-Baltic-Sea-2023.pdf> accessed 2 April 2024.

[5] Ibon Galparsoro Iza and others, 'Mapping Potential Environmental Impacts of Offshore Renewable Energy' (European Topic Centre on Inland, Coastal and Marine Waters 2022) <https://doi.org/10.13140/RG.2.2.16137.72801> accessed 22 November 2024.

[6] Directive (EU) 2023/2413. However, in this text, the author will use the consolidated version named "Directive (EU) 2018/2001". This consolidated version includes the amendments made to the previous REDs.

[7] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) 2023 (OJ L 328), art. 1.

[8] See, for instance, Consolidated version of the Treaty on the Functioning of the European Union 2012 (OJ C 326), art. 191(2).

[9] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 on the assessment of the effects of certain public and private projects on the environment amending Directive 2011/92/EU 2012 (OJ L 26), art. 1(1); 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 2001 (OJ L 197), art. 1.

[10] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora 1992 (OJ L 206).

[11] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20).

[12] 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 2000 (OJ L 327); Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 16f.

[13] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 15c.

The term "overriding public interest" is not defined in the EU's statutory legislation, and there exists no uniform interpretation of the term. The Court of Justice of the EU (CJEU) has interpreted it on a case-by-case basis, allowing plans and projects to operate on a protected site if they meet a few threshold requirements. The CJEU has, *inter alia*, interpreted that a plan or project must be more beneficial to the public than to biodiversity protection to be classified as an "overriding public interest".[14] Before derogations can be applied, the national authorities must conduct an appropriate assessment under Article 6(3) of the Habitats Directive and exclude any alternatives that could achieve the same results as the proposed project. After applying a derogation for a project, necessary compensatory measures must be implemented to maintain the overall coherence of Natura 2000.[15] The Court has been strict in its rulings, permitting only a handful of projects (e.g., a hydropower plant).[16] The CJEU has also established a broad and strict protection for species,[17] which can be difficult to reconcile in wind energy development.[18] The purpose of framing renewable energy development as being in the "overriding public interest" under RED III is to expedite the authorization of renewables.[19]

The establishment of the so-called renewable acceleration areas (RAAs) will see changes to both procedural (e.g., assessment of plans and projects) and substantive (e.g., species and habitat protection) rules for renewable energy projects. An area plan must be created for these areas. The area plan will be screened in accordance with the Strategic Environmental Assessment (SEA) Directive. An environmental impact assessment (EIA) under the EIA Directive is no longer required of individual projects. In addition, the area plan must include mitigation measures that aim to avoid or reduce negative impacts on the environment to ensure compliance with the EU's biodiversity protection rules.[20] However, the mitigation measures seem problematic in two instances. First, the CJEU has ruled that mitigation measures cannot be proposed at the screening stage, before an assessment of the project's impact on the environment has been assessed.[21] Second, to only rely on mitigation measures appears to pose challenges to the high level of species protection ruled by the CJEU.[22] Moreover, (although not discussed in more detail in this article) RAAs are advertised as *fast-track* areas in which the necessary permits shall be obtained within 24 months. Obtaining the necessary permits for a renewable energy project could, before the adoption of RED III, last up to nine years.[23] The newly introduced strict time limit in the permit-granting procedure runs

[14] Case C-182/10 *Marie-Noëlle Solvay and Others v Région wallonne*.

[15] See, for instance, Case C-239/04 *Commission of the European Communities v Portuguese Republic*.

[16] Case C-346/14 *European Commission v Republic of Austria*.

[17] Case C-103/00 *Commission of the European Communities v Hellenic Republic*.; Case C-221/04 *Commission of the European Communities v Kingdom of Spain*, para. 71.

[18] Helle Tegner Anker and Birgitte Egelund Olsen, 'EU Species Protection Law and Wind Energy: Current Challenges and Danish Experiences' (2023) 32 *European Energy and Environmental Law Review* 36, p. 46.

[19] See, for instance, Ruben Rehage and Alba Forns Gómez, 'Accelerating Authorizations vs. Public Participation in the Decision-Making Chain of Renewable Hydrogen in Germany and Spain: A Dilemma' (2024) 21 *Journal for European environmental & planning law* 297, p. 308.

[20] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 15c(1)(b).

[21] C-323/17 *People Over Wind and Peter Sweetman v Coillte Teoranta*.

[22] See, for instance, Joined Cases C-473/19 and C-474/19 *Föreningen Skydda Skogen and Others v Länsstyrelsen i Västra Götalands län and Others*.

[23] See, for instance, European Commission, 'REPowerEU Plan COM (2022) 230 Final', p. 11.

the risk of neglecting relevant environmental impacts.

The aim of this research article is to determine what the generalized assumption of presuming that all renewables are of "overriding public interest" and the elimination of individual environmental impact assessments under RED III will entail for the legal protection of biodiversity.

The article is structured into five parts. The second section analyzes how the concept of "overriding public interest" has been interpreted by the CJEU before the adoption of RED III to show how the Court has balanced interests between habitat, species, and water protection against potentially damaging projects. The third section analyzes the establishment of renewable acceleration areas and the changed procedural requirements in those areas. In section four, these green versus green conflicts are discussed in a broader context. Section five concludes the main findings of the article.

2. The Interpretation of Overriding Public Interest in EU Environmental Law

2.1 Introduction

Overriding public interest is a strict derogation clause to permit plans or projects to operate despite having been assessed to be potentially harmful to environmentally protected areas. The term "overriding public interest" is found in the areas of environmental protection, the free movement of goods,[24] and public access to classified documents.[25] In environmental law, the requirements for classifying something as an overriding public interest are laid out, with slightly different wording, in the Habitats Directive, Birds Directive, the WFD, and the Marine Strategy Framework Directive (MSFD). However, RED III declares that the planning and construction of renewable energy is presumed *ex lege* over conflicting interests. More specifically, Article 16f of RED III provides:

> By 21 February 2024, until climate neutrality is achieved, Member States shall ensure that, in the permit-granting procedure, the planning, construction and operation of renewable energy plants […] are presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in individual cases for the purpose of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1), point (a), of Directive 2009/147/EC.[26]

The CJEU has extensively discussed "overriding public interest" over the decades. At the beginning of the 21st century, most court cases were the result of infringement procedures brought by the Commission against a Member State for failure to transpose the relevant provisions into its domestic legislation. Later, national courts requested preliminary rulings from the CJEU on the applicable provisions. In most court cases, the plans or projects have often concerned infrastructure projects (e.g., motorways, wind farms, or port development) to be balanced against en-

[24] The "imperative requirement" has been developed by the CJEU as an exception to the principle of free movement of goods. The Court has recognized that public health, environmental protection, and the pursuit of legitimate goals of economic and social policy are among the requirements to justify the restriction on the free movement of goods. See, for instance, Case C-573/12 *Ålands Vindkraft v Energimyndigheten*.

[25] See, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

[26] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 16f.

vironmental protection. To understand what the impact of classifying all renewables as an overriding public interest will entail for biodiversity protection, it is necessary to analyze previous case law on the subject. The case law analysis in the following sub-chapters concerns the interpretation of the derogation clauses under the Habitats, Birds, and the WFD Directives. Although 14 of the MSFD allows the Member States to derogate from the requirement to achieve "good environmental status of the seas" for reasons of overriding public interest if it outweighs the negative effects on the environment,[27] there has so far been no interpretation of said article by the CJEU.

2.2 The Substantive Requirements of the Habitats Directive Article 6(4)

Article 6(4) of the Habitats Directive provides:

> 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, […] the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.[28]

This article in the Habitats Directive is to be understood as a derogation clause from the requirement to conduct an appropriate assessment of plans or projects likely to have a significant effect on Natura 2000 protected sites. The plan or project does not have to be located on a protected site for it to be considered harmful to the site. The CJEU said in the cases of *Waddenzee* and *Commission v United Kingdom* that an assessment is required when there is a probability or risk that a plan or project will have a significant adverse effect on a protected site.[29] Additionally, the assessment "may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned".[30] Article 6(4)(2) of the Habitats Directive adopts a stricter approach to what constitutes plans or projects of overriding public interest when the concerned site hosts a priority habitat or species. Human health, public safety, and beneficial consequences of primary importance to the environment are mentioned as the only reasons for which derogation from a negative assessment under Article 6(3) is allowed.[31] Moreover, the Commission needs to formulate an opinion in those circumstances.[32] The opinions from the Commission are optional to implement. Still, they can influence how EU law is applied in the Member States.[33]

One of the requirements to authorize plans or projects as an "overriding public interest" under Article 6(4) of the Habitats Directive is to demonstrate the absence of alternative solutions that can achieve the same result. This was con-

[27] Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy 2008 (OJ L 164), art. 14.

[28] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora 1992 (OJ L 206), art. 6(4).

[29] Case C-127/07 *Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, para. 57 and 61.; Case C-6/04 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, para. 54.

[30] Case C-164/17 *Edel Grace and Peter Sweetman v An Bord Pleanala*, para. 39.

[31] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, art. 6(4)(2).

[32] Ibid.

[33] Consolidated version of the Treaty on the Functioning of the European Union, art. 288.

firmed by the CJEU in the case of *Castro Verde*, which concerned the construction of a motorway through a Special Protection Area (SPA) for birds under the Birds Directive.[34] The protected SPA region is home to 17 Annex I protected species. The Commission argued that there were alternative solutions to the proposed project that would have had a lesser impact on the SPA. However, the Portuguese authorities rejected the alternatives presented by the Commission and did not examine other options outside the SPA. Because Portugal did not examine the options outside the SPA, it "did not demonstrate the absence of alternative solutions within the meaning of that provision".[35] Therefore, the Court ruled that by implementing a motorway project that crossed a SPA, which did not undergo an environmental impact assessment, and failed to demonstrate the absence of solutions, Portugal breached Article 6(4) of the Habitats Directive.[36]

In the case of *Commission v Italy*, an infringement procedure was initiated by the Commission against Italy for failing to adequately assess the impact of a project on a protected site. The issue in the proceeding concerned the creation of a ski corridor in a forest and the construction of a cable car for the World Alpine Ski Championship. The site hosted, *inter alia*, natural meadows and plants of "great natural quality".[37] A Special Protected Area (SPA) for birds was also designated within the proposed project area. The proposed project involved splitting the SPA to make room for ski runs.[38] The Commission brought Italy before the CJEU for breaching Articles 6(2) and (4) and 7 of the Habitats Directive and Article 4(1) and (2) of the Birds Directive.

Article 6 of the Habitats Directive must be applied in a sequential order, meaning there exists an obligation to assess the adverse environmental impacts under Article 6(3) of the Habitats Directive before a derogation under Article 6(4) can be granted. The CJEU said in this case that although the Habitats Directive does not specify a particular method for conducting the assessment, the assessment must nonetheless be carried out so that the authorities are certain that the proposed plan or project will not harm the integrity of the site. The plan or project must be refused if there are any uncertainties.[39] The best scientific knowledge in the field must be used to ensure that no doubt remains. A weighing up against the damage caused to a site by a plan or project is required to assess imperative reasons of overriding public interest.[40] More specifically, the Court said that "[k]nowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for application of Article 6(4)".[41] The authorities may only decide whether to allow a derogation from Article 6(3) of the Habitats Directive *after* determining that a proposed plan or project will have an adverse effect on the proposed site. Furthermore, the Italian authorities did not consider alternative solutions and did not adequately present compensatory measures in this case. Therefore, the CJEU ruled that Italy did not conduct a proper assessment in accordance with Article 6(3) of the Habitats Directive, and a derogation under Article 6(4) could not be authorized.

[34] Case C-239/04 *Commission of the European Communities v Portuguese Republic*.
[35] Ibid., para. 39.
[36] Ibid., para. 40.
[37] Case C-304/05 *Commission of the European Communities v Italian Republic*, para. 24.
[38] Ibid., para. 35.
[39] Ibid., para. 57–58.
[40] Ibid., para. 83.
[41] Ibid.

2.3 The Birds Directive Article 9(1) and the Habitats Directive Article 16: Derogations from Species Protection Rules

EU environmental law distinguishes between direct species protection (e.g., the prohibition on the deliberate killing or disturbance of species) and indirect species protection (e.g., protection of essential habitats). The CJEU has ruled that the killing or disturbance of species is deliberate if it is "proven that the author of the act intended the capture or killing of a specimen belonging to a protected animal species or, at the very least, accepted the possibility of such capture or killing".[42] This ruling means that the prohibition of killing or disturbing a species is broad, and developers must consider it if, for instance, wind farms might interfere with protected species.[43]

The CJEU case of *Skydda Skogen* concerned the felling of trees in a forest that would lead to the disturbance or killing of, *inter alia*, birds. The CJEU ruled for increased protection against deterioration for breeding and resting sites for species, by extending the prohibition to include non-intentional acts.[44] Moreover, the strict protection of species "applies regardless of the number of specimens of the species concerned that are present in the area".[45] However, there is no clear definition of what a "breeding or resting site" is. Advocate-General Kokott said in an opinion in case C-383/09 (*European Hamster*) that breeding and resting sites not only extend to the burrows, but also to the habitats surrounding the sites.[46] The main aim of protecting breeding and resting sites is to safeguard the ecological functionality of the sites. Therefore, associated structures and abandoned sites might be important if there is a "sufficiently high probability" that the species will return.[47] When assessing the potential deterioration of a breeding or resting site, the site's continuous ecological functionality is the decisive criterion. Precautionary measures can be taken to prevent loss of ecological functionality from harm, destruction, or deterioration.[48]

However, if the continuous ecological function cannot be ensured, a potentially damaging project on species protection can be authorized under Article 16 of the Habitats Directive. Article 16 of the Habitats Directive provides an exemption from the species protection rules of Articles 12 to 15 of the Habitats Directive, provided that the derogation fulfills at least one of the justifications listed in Article 16(1)(a–e), the absence of a satisfactory alternative, and that the derogation is not detrimental to the maintenance of the population of the species concerned.[49] In the context of renewable energy, Article 16(1)(c) is relevant, namely, "in the interests of public health and safety, or for other imperative reasons of overriding public interest".[50] Although RED III states that renewable energy is in the overriding public interest and serves public health and safety until climate neutrality is achieved, it does not address the remaining derogation require-

[42] *Commission of the European Communities v Hellenic Republic* (n 17).; *Commission of the European Communities v Kingdom of Spain* (n 17), para. 71.

[43] Sanne Akerboom and others, 'Wind Energy Projects and Species Protection Law: A Comparative Analysis of the Application of EU Law in Five Member States' (2019) 28 *European Energy and Environmental Law Review* 144, p. 146.

[44] *Föreningen Skydda Skogen and Others v Länsstyrelsen i Västra Götalands län and Others* (n 22), para. 82.

[45] Ibid., para. 83.; Case C-441/17 *European Commission v Republic of Poland*, para. 237.

[46] Case C-383/09 *Opinion of Advocate General Kokott delivered on 20 January 2011 European Commission v French Republic (European hamster)*, para. 36.

[47] Case C-477/19 *IE v Magistrat der Stadt Wien*, para. 36.

[48] *Föreningen Skydda Skogen and Others v Länsstyrelsen i Västra Götalands län and Others* (n 22), para. 86.

[49] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, art. 16.

[50] Ibid., art. 16(1)(c).

ments. It seems reasonable to assume that the other requirements also must be met.

Wind energy development will have implications for EU species protection rules, particularly on birds and bats. Following the ruling in the *Skydda Skogen* case, the direct species protection rules may be a greater obstacle to wind energy development than Natura 2000 sites, given the wide scope for protecting individual specimens of Annex IV species and birds. The decisive criterion for Natura 2000 sites is the maintenance of the favorable conservation status. For breeding and resting sites, it is the continuous ecological functionality that is decisive. Both can provide some flexibility. However, a general non-intentional prohibition on the killing or disturbance of all wild birds is broad and difficult to mitigate when applied to wind energy installations. Given that there are usually alternative locations, especially for small-scale projects, a general derogation that applies to all renewables (i.e., overriding public interest) has been found to be an unsuitable option.[51]

2.4 The Water Framework Directive Article 4(7): Deterioration of a Water Body's Status

The EU Member States are prohibited from deteriorating the status of a water body. However, Article 4(7) of the WFD provides that the Member States will not breach the obligation to prevent deterioration from a "high" to "good" water body status when it is the result of "new sustainable development activities".[52] The following steps must be taken by the Member States' authorities not to breach the WFD: practical steps to mitigate the adverse impact on the water body, explain those reasons in the river basin management plans, the modifications or alterations must be of overriding public interest, and the activities cannot be achieved by other means.[53]

The definition of "deterioration" of a water body's status is not found in the WFD. And so, the CJEU was asked to give an interpretation of what is meant by a deterioration in the so-called *Weser Case*.[54] This case concerned the dredging of the river *Weser* in Germany. The Bund für Naturschutz Deutschland challenged the planning approval for the dredging because it believed that dredging would lead to a deterioration of the river's surface water. The Federal Administrative Court of Germany (*Bundesverwaltungsgericht*) decided to ask the CJEU for an interpretation of what is meant by "deterioration" in Article 4 of the WFD. The CJEU interpreted the deterioration of a water body's status to mean that "as soon as the status of at least one of the quality elements, within the meaning of Annex V […], falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole".[55] Further, Member States are always required to prevent deterioration when implementing a project. However, as mentioned, an exception to that is when the deterioration results from new sustainable development activities and all requirements for an exemption under Article 4(7) of the WFD are met.

[51] Anker and Olsen (n 18), p. 46.

[52] 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 2000 (OJ L 327), art. 4(7). However, this makes the exception somewhat limited in scope since few water bodies are classified as "high" in the EU.

[53] Ibid., art. 4(7)(a)–(d).

[54] Case C-461/13 *Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland*.

[55] Ibid., para. 70.

2.5 The CJEU's Balance of Environmental Interests

In this chapter, examples of cases from where the CJEU has balanced different scenarios deemed to be of overriding public interest are presented. The scenarios include, *inter alia*, renewable energy development and irrigation, highlighting how the CJEU has reasoned before the adoption of RED III.

In the case of *Marie-Noëlle Solvay and Others*, the CJEU provided a preliminary ruling to the Belgian Constitutional Court (*Cour constitutionnelle*) on questions related to, *inter alia*, Article 6(3) and (4) of the Habitats Directive. The Belgian Constitutional Court had several actions brought before it, seeking the annulment of a decree ratifying building consents based on "overriding reasons in the public interest" for construction work on Liège-Bierset Airport, Brussels South Charleroi Airport, and the Brussels-Charleroi railway. The Constitutional Court decided to stay the proceedings and refer six questions to the CJEU for interpretation. Question five of the preliminary ruling referred to the CJEU was whether Article 6(3) of the Habitats Directive could be interpreted to permit a legislative authority to authorize the abovementioned projects, even though the impact assessment was deemed to be incomplete by the Council of State and contradicted by the authorities of the Walloon Region. If answered positively, the Constitutional Court further inquired (question six) whether Article 6(4) of the Habitats Directive should be interpreted to permit the creation of infrastructure designed to host the management center of a private company and many employees to be regarded as an overriding public interest.[56]

The CJEU answered the fifth question that Article 6(3) of the Habitats Directive must be interpreted as meaning that no authority may authorize a plan or project if it is unsure of the adverse effects it will have on a protected site.[57] To the sixth question, the CJEU answered that for a plan or project to constitute an overriding public interest, within the meaning of Article 6(4) of the Habitats Directive, it must be both public and overriding. More precisely, the plan or project "must be of such an importance that it can be weighed up against that directive's objective of the conservation of natural habitats and wild fauna and flora".[58] Meaning that there is a balance of interests to be conducted on a case-by-case basis to determine which plans or projects are more important than the protection of habitats and species. Plans or projects for private companies can only be of such a nature in exceptional circumstances.[59] Whether a plan or project meets such criteria depends on an economic and social context, and on there being no alternative solutions that could achieve the same result.[60] Considering this, the CJEU ruled in this case that infrastructure construction to host a management center "cannot constitute an imperative reason of overriding public interest within the meaning of Article 6(4) of the Habitats Directive".[61]

An instance where the Court has considered the balancing of interests to justify derogations from the environmental protection rules is the diversion of a river for irrigation and to supply drinking water to the region of Thessaly, Greece. The national proceedings in Greece ruled that the diversion of a river constitutes a large project, rendering it insufficient to consider

[56] *Marie-Noëlle Solvay and Others v Région wallonne* (n 14), para. 20–24.

[57] Ibid., para. 70.
[58] Ibid., para. 75.
[59] Ibid., para. 76.
[60] Ibid., para. 77.
[61] Ibid., para. 78.

each project in isolation. Instead, an overarching study was required to assess the environmental impacts. In 2006, Law 3481/2006 was adopted, approving the river diversion project despite it was annulled. Environmental NGOs sought the annulment of the project, challenging Law 3481/2006 before the Greek Supreme Administrative Court (*Simvoulio tis Epikratias*). The Greek Supreme Administrative Court referred, *inter alia*, the question whether projects for the diversion of water for irrigation and drinking water can constitute imperative reasons of overriding public interest under Article 6(4) of the Habitats Directive to the CJEU.[62]

The CJEU ruled that irrigation and the supply of drinking water "meet, in principle, those conditions [public and overriding] and are therefore capable of justifying the implementation of a project for the diversion of water in the absence of alternative solutions".[63] However, the Court made a notable distinction that where there are priority habitats or species, only grounds relating to human health or public safety, or beneficial consequences of primary importance to the environment, can justify an exemption. On the one hand, the Court did not consider irrigation to be related to human health or public safety. Still, it could, in some circumstances, be seen as of primary importance to the environment.[64] On the other hand, the CJEU considers the supply of drinking water to relate to human health.[65]

An example where "overriding public interest" has been used to justify the construction of renewables is the CJEU case *Schwarze Sulm*.[66] The Governor of Styria, Austria, approved the construction of a hydropower plant in 2007 and issued a decree, citing Article 4(7) of the WFD, to justify the project. In October of the same year, the Commission claimed that the Governor of Styria had decided to authorize the project under Article 4(7) of the WFD without first determining whether the project would cause a deterioration of the water body's status. Austria responded that the use of Article 4(7) of the WFD was justified for renewable energy production.[67] Despite additional information provided by Austria to the Commission over the years to follow, the Commission was not satisfied with Austria's response. A reasoned opinion was given to Austria in late 2013, reiterating the complaints that the proposed hydropower plant would breach Article 4(1) of the WFD. The Commission was again not satisfied with Austria's response and decided to initiate an infringement procedure against Austria before the CJEU.

The Commission argued, on the one hand, that the hydropower plant caused a deterioration of a surface water body from "high" to "good", and that Austria should have considered alternative sites and other forms of renewable energy sources before applying Article 4(7) of the WFD. The Commission argued that Austria had breached Articles 4(1) and (7) of the WFD.[68] On the other hand, Austria argued that the decision to authorize the project was based on specific regional and local factors, which justified the hydropower plant as a matter of overriding public interest. The Austrian authorities based their assumptions on a study conducted by the University of Graz, which outlined the objectives, advantages, and environmental impact of the project.[69]

[62] Case C-43/10 *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others v Ipourgos Perivallontos, Chorotaxias kai Dimosion ergon and Others*, para. 30–40.
[63] Ibid., para. 121–122.
[64] Ibid., para. 125.
[65] Ibid., para. 126.
[66] *European Commission v Republic of Austria* (n 16).
[67] Ibid., para. 7–9.
[68] Ibid., para. 27–33.
[69] Ibid., para. 37.

The CJEU found that the hydropower plant caused a deterioration of the water body's status from "high" to "good" (and the Austrian governor did not contest this). However, for a project to justify a derogation under Article 4(7) of the WFD, it must be determined that all practicable steps were taken to mitigate the adverse effects on the water body, the reasons behind the project were clearly explained, whether the project serves an overriding general interest or if the project's benefit on human health, human safety, or sustainable development outweighs environmental protection, and if the objectives of the project cannot be achieved by other means which are a significantly better option for the environment.[70] All the mentioned conditions must be met to justify a derogation.

The Court ruled that the reasons behind the project are "clearly satisfied in the present case",[71] because the Austrian decision from 2007 provides a detailed explanation of the reasons behind the project, its environmental impact, and the advantages it offers. The Austrian authorities conducted a weighing of the expected benefits, in which they found that the hydropower plant contributed to sustainable development, all practical steps had been taken to mitigate the adverse impacts, and the project's objectives could not be achieved by other means.[72] Therefore, the Court was of the opinion that the Governor of Styria had analyzed the project as a whole, including both the direct and indirect impacts of the WFD. The Court found that the advantages of the project outweighed the negative impact on the water body. The public interest "clearly outweighed the negative impact on the objective of non-deterioration pursued by Directive 2000/60".[73] Moreover, the Court said Member States must be allowed a certain margin of discretion to determine whether a project is of overriding public interest. The WFD establishes a framework for water protection by coordinating, integrating, and developing the overall principles and structures for water protection in the EU. The Member States are required to adopt individual measures to implement these principles and the framework of the directive. The Court added that the WFD does not aim for complete harmonization of the water rules across the Member States.[74]

Another instance where the Court has weighed the balance of interests in favor of potentially environmentally damaging projects was in a case to ensure the security of the electricity supply. In the case of *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen*, the Court was asked to interpret whether Article 6 of the Habitats Directive, in conjunction with Articles 3 and 4 of the Birds Directive, applies to "the postponement of the date of deactivation and of the end of the industrial production of electricity of a nuclear power station […]".[75] If the answer to this question is positive, the CJEU would need to answer whether Article 6(4) of the Habitats Directive could be interpreted to include the security of a country's electricity supply to be considered an imperative reason of overriding public interest.

The Court ruled that "the objective of ensuring the security of electricity supply in a Member State at all times" meets the conditions of demonstrating a public and overriding purpose.[76] However, the Court further clarified that the only grounds capable of justifying a derogation from the protection of priority habitats and

[70] Ibid., para. 61–66.
[71] Ibid., para. 68.
[72] Ibid., para. 74.
[73] Ibid., para. 80.
[74] Ibid., para. 70.
[75] Case C-411/17 *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres*, para. 58.
[76] Ibid., para. 157.

species under Article 6(4)(2) of the Habitats Directive are, for instance, a public safety ground that aims to "nullify a genuine and serious threat of rupture".[77]

Earlier case law before the CJEU regarding "overriding public interest" has more often concerned balancing economic interests against environmental protection rather than competing environmental interests (e.g., motorways, infrastructure construction for a management center, and modifications to a ski run). However, legal conflicts between different environmental interests are becoming more probable as the effects of climate change and biodiversity loss become more visible. Based on the case law analyzed, the prioritization of renewable energy projects over other competing interests has been noticed before the adoption of RED III. Particularly, in the case of *Schwarze Sulm*, the Court said that the promotion of renewable energy "is a high priority" for the EU.[78] Projects of a "public" nature seem to refer to projects that benefit a large proportion of the civilian population, for example, by supplying a region with drinking water, constructing sustainable development activities, or securing the electricity supply in a Member State. Parallels can be drawn to renewable energy projects, given their contributions, *inter alia*, to mitigating climate change, creating job opportunities, and securing access to green energy. Because of their contribution to several key areas of public interest, renewable energy projects are seen as "overriding" over purely environmental protection interests. However, because the exemptions under RED III are framed as lasting until climate neutrality is achieved, they are becoming more normalized. Advocate-General Kokott noted in the *Inter-Environnement Wallonie* case that predictable developments (e.g., climate change or an increase in energy demand) cannot be claimed retroactively to justify derogations because they do not meet the required threshold of urgency.[79]

3. Renewable Acceleration Areas and Their Legal Implications on EU Environmental Law

RED III obliges Member States to accelerate the deployment of renewable energy,[80] with the aim of expediting the green transition. First, Member States need to identify the regions that contribute to the EU's 2030 energy goal. Second, the national authorities shall designate one or more sub-areas for the installation of renewable energy infrastructure by 21 February 2026. RED III identifies two types of sub-areas. One area is referred to as Renewable Acceleration Areas (RAAs). One or more renewable energy sources (e.g., offshore wind) can be deployed on these RAAs. The acceleration areas have different assessment requirements and stricter time limits (e.g., the gathering of all necessary permits for offshore wind development shall not exceed 24 months)[81] to facilitate the deployment of renewable energy installations.[82]

[77] Ibid., para. 158–159.

[78] *European Commission v Republic of Austria* (n 16), para. 73.

[79] *Case C-411/17 Opinion of Advocate General Kokott delivered on 29 November 2018 Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres Request for a preliminary ruling from the Cour constitutionnelle*, para. 152.; Alessio Devis, 'The Renewable Energy Directive III and the Streamlining of Environmental Procedures: A Paradigm Shift in EU Environmental Policy?' (2025) 37 *Journal of Environmental Law* 443, p. 22.

[80] See, for instance, Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 3(1).

[81] Ibid., art. 16a(1).

[82] The other area is called grid and storage areas, which aim to support and complement RAAs. This text focuses on RAAs.

RED III defines RAAs as "sufficiently homogenous land, inland water, and sea areas where the deployment of […] renewable energy sources is not expected to have a significant environmental impact".[83] The designation process shall consider land, inland waters, and sea areas. Priority shall be given to artificial and built islands, and all necessary tools and datasets shall be utilized to identify areas where renewable energy projects would have a minimal environmental impact.[84] This includes all Natura 2000 areas, areas under national protection schemes, and major migratory routes for birds and mammals.

According to Article 16a(3) of RED III, the plans for the RAAs are subject to a Strategic Environmental Assessment (SEA) under the SEA Directive rather than an Environmental Impact Assessment under the EIA Directive. The difference between a SEA and an EIA is the aim and scope for how renewables are deemed to affect the environment. The SEA screens the area plan,[85] while an EIA assesses the environmental implications for individual projects.[86] RED III stipulates in Article 15c(1)(b) that the plans designating RAAs shall contain appropriate mitigation measures to avoid, or, where this is not possible, reduce the adverse environmental impacts significantly. Those measures shall be targeted to the area's specificities, the type of renewable energy technology used, and the area's identified environmental impact. It is mandatory under RED III to establish mitigation measures for plans designating RAAs.[87] If the mitigation measures are implemented correctly, renewable energy projects are exempted from an EIA under the EIA Directive, and it is presumed that they comply with, *inter alia*, the prohibition on the deliberate killing or disturbance of species.[88]

There exists no case law regarding RAA's yet, but the implementation of mitigation measures at the screening stage appears to pose challenges regarding earlier case law. In the case of *People Over Wind & Sweetman v Coillte*, which concerned the laying of cables connecting a wind farm to the electricity grid in the catchment of a Special Area of Conservation (SAC) in Ireland, had so-called protective measures to the SAC been proposed by the defendant (Coillte). As a result of these protective measures, Coillte determined that an appropriate assessment under Article 6(3) of the Habitats Directive was not required. The Court drew an analogy between "protective measures" and "mitigation measures" by interpreting those concepts as "denoting measures that are intended to avoid or reduce the harmful effects of the envisaged project on the site concerned".[89] In its judgment, the Court said that measures intended to avoid or reduce the harmful effects of a project on a protected site should not be considered at the screening stage.[90] Doing so would risk depriving the appropriate assessment of its purpose and risk circumvent the safeguards provided by the Habitats Directive.[91] However, as mentioned,

[83] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 15c.

[84] Ibid., art. 15c(1)(a)(i)-(iii).

[85] 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, art. 2(a).

[86] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 on the assessment of the effects of certain public and private projects on the environment amending Directive 2011/92/EU, art. 2(1).

[87] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 15c(1)(b).

[88] Ibid.

[89] *People Over Wind and Peter Sweetman v Coillte Teoranta* (n 21), para. 26.

[90] Ibid., para. 40.

[91] Ibid., para. 37.

RED III Article 15c obliges Member States to establish mitigation measures for renewables when the plan is adopted.[92] This obligation requires that mitigation measures are proposed before an assessment of the project's implication on the environment has been established. RED III reverses the order established by the Habitats Directive and the case law cited by considering mitigation measures at such an early stage.

Because individual EIAs are no longer required, only anticipated risks are considered under RED III. An EIA would be a more suitable instrument for addressing a project's environmental effects, as it is tailored to the specific project. Under the SEA procedure, the area plan must be sufficiently detailed to cover all aspects. However, the plan needs to be approved by the permit-granting authority, who can request an EIA, and an appropriate assessment (if applicable), to be conducted for individual renewable energy projects if it deems the plan to be "highly likely to give rise to significant unforeseen adverse effects in view of the environmental sensitivity […] that cannot be mitigated by the measures identified in the plans designating acceleration areas or proposed by the project developer".[93] Conducting an EIA after the developer submits the application will create longer timelines to complete the project application, because the location that the developer chose might not be suitable.[94] RAAs are advertised as *fast-track areas* for implementing renewables. It is difficult to see how sending the application back and forth will make the speeding-up process for renewables more time efficient.

The changed environmental assessment procedures shall not apply if the RAA is likely to have a significant effect on another Member State's land or sea territory, or where a Member State that is likely to be affected, so requests, according to Article 7 of the EIA Directive.[95] The Commission recommends that Member States avoid identifying RAAs that can cause cross-border conflicts.[96] This is to ensure compliance with public international law. The due diligence obligation to prevent environmental harm requires Member States to conduct an EIA if an activity is likely to cause significant transboundary environmental damage to other EU Member States or third states.[97]

4. Balancing Interests in Green Conflicts

Drawing on the analysis above, protecting habitats and species has previously been the focus for the EU. Recent legislative developments indicate a prioritization of climate action and renewable energy target goals. Conflicts among different environmental objectives (i.e., how best to achieve environmental protection) are becoming more common than conflicts between environmental and, for instance, economic objectives. The ongoing crises stemming from the changing geopolitical landscape and climate change

[92] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 15c.

[93] Ibid., art. 16a(5).

[94] Melina Malafry, 'Renewable Energy Activities – Overriding the Interest of Biodiversity?' in Mattias Dahlberg and others (eds), *De Lege: Hållbarhet ur ett rättsligt perspektiv* (Iustus förlag 2022).

[95] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 16a(3).

[96] Directorate-General for Energy, 'Commission Staff Working Document – Guidance on Designating Renewables Acceleration Areas' <https://energy.ec.europa.eu/document/download/af3927a5-3b82-42f0-89547b9fdc567e43_en?filename=SWD_2024_333_2_EN_autre_document_travail_service_part1_v1.pdf> accessed 11 June 2025.

[97] For instance, *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226*, para. 29; *Pulp Mills on the River Uruguay (Argentina v Uruguay) [2010] ICJ Rep 4*, para. 101.

have raised tensions between the interests of the green transition and biodiversity protection. On the one hand, Article 191(2) TFEU provides that EU environmental policies "shall aim at a high level of protection" based on, *inter alia*, the preventive and precautionary principles.[98] The principles in Article 191(2) TFEU aim to prevent specific sources of environmental damage (e.g., GHG emissions) but impede the alignment with climate change mitigation infrastructure development.[99] The Habitats Directive does not distinguish between projects that reduce CO_2 emissions and other projects. The Habitats Directive treats all projects the same, even when some also promote environmental interests. Laws protecting the local environment are more directly applicable to project applications.[100] On the other hand, Article 191(1) TFEU also provides that the EU's environmental policies shall contribute, *inter alia*, to combating climate change, which has given the EU a strong mandate to adopt far-reaching policies in this field.[101] To this end, the European Climate Law and RED III have different aims than biodiversity protection rules: to achieve an overall target for limiting temperature increases and to promote the use of renewable energy, respectively.[102]

RED III institutionalizes the strict derogation regimes in EU environmental law by presuming all renewables are of overriding public interest and serve public health and safety. Despite this presumption, it is only one of the requirements for permitting damaging projects. An exemption from the appropriate assessment under Article 6(3) of the Habitats Directive still requires a thorough assessment,[103] the exclusion of other feasible alternatives, and the adoption of compensatory measures.[104] The CJEU has applied similar reasoning to derogations granted under the Birds Directive and the WFD.[105] The Nature Directives and the WFD and their respective provisions remain in force. For sites hosting priority habitats or species, only projects relating to human health, public safety, or beneficial consequences of primary importance for the environment are mentioned in the second subparagraph of Article 6(4) of the Habitats Directive as grounds for derogation.[106] In the context of renewable energy development, the CJEU has ruled that only a serious and genuine threat to the minimum energy supply qualifies as grounds for such derogation.[107] The derogation clauses in said directives are intended as a last resort when all other options have been exhausted.

Article 6(4) of the Habitats Directive sets a high threshold for classifying plans and projects of overriding public interest. The CJEU ruled in the case of *Marie-Noëlle Solvay and Others* that

[98] Consolidated version of the Treaty on the Functioning of the European Union, art. 191(2).

[99] Alison Hardiman, 'Climate, Energy – and Environment? Reconciliation of EU Environmental Law with the Implementation Realities of EU Climate Law' (2022) 12 *Climate Law* 242, p. 249.

[100] See, for instance, ibid.

[101] Consolidated version of the Treaty on the Functioning of the European Union, art. 191(1).

[102] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality. However, it is mentioned in the recitals of the regulation that climate mitigation and adaptation targets also help to protect biodiversity, indicating a link between the different environmental interests.

[103] *Commission of the European Communities v Italian Republic* (n 37).

[104] *Commission of the European Communities v Portuguese Republic* (n 15).

[105] *European Commission v Republic of Austria* (n 16).; *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others v Ipourgos Perivallontos, Chorotaxias kai Dimosion ergon and Others* (n 62), para. 120.

[106] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, art. 6(4). The Commission also needs to formulate an opinion in those circumstances.

[107] *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres* (n 75), para. 157–159.

plans or projects for private companies may be considered only if a public interest is demonstrated.[108] RED III provides that renewable energy projects serve *public* health and safety. In this instance, one can assume that private energy companies fulfill the requirement to demonstrate a public purpose. However, the requirement to exclude all alternatives that achieve the same result will likely prove the most challenging for renewable energy developers. Small-scale energy projects typically have alternatives, as they can be achieved using other renewable energy sources (which are plentiful). As earlier court cases in this context have concerned large projects, it is safe to say that large projects will benefit from the relaxed derogation regime.

Green conflicts typically center around where to place a renewable energy project. For example, many factors contribute to the location of a renewable energy project at sea, including defense, fishing activities, shipping lanes, and mining for raw materials. The obligation to exclude all alternatives at sea might be different because certain activities are difficult to relocate.[109] Because some renewable energy projects, for example, wind farms, require significant physical space, it is not evident that such space at such a scale will be readily available. To this end, strategic planning is essential for balancing diverse interests. RED III emphasizes the importance of maritime spatial planning (MSP) by encouraging Member States to build upon their existing MSPs. Integrating renewable energy into MSPs has been pointed out as a tool to, *inter alia*, balance different uses of the sea.[110] However, the large degree of discretion given to the Member States in the MSP Directive, although in line with the principle of subsidiarity, risks signaling a weak legal protection for the marine environment.

The notion behind the changed assessment procedure for renewable energy installations inside acceleration areas is to deploy renewables faster. Areas should be identified where the deployment of renewables would not pose a significant environmental risk. Mitigation measures aim to ensure compliance with the Nature Directives and the WFD. Therefore, at first glance, it might seem that nature is not at risk. However, because mitigation measures are to be established at the screening stage, it implies a reversed order for when such measures should be considered. The broad species protection rules might make it difficult to apply appropriate mitigation measures for wind energy installations. Also, it would have been easier to anticipate the possible environmental impacts if an EIA remained applicable in RAAs. A change in legal reasoning to prioritize renewable energy development can be noticed in this regard.

The Commission identifies slow environmental assessments across the SEA, EIA, Habitats, Birds, and Water Framework Directives as a central obstacle to increasing the amount of renewable energy installations in the EU. To that end, the Commission has recently presented a proposal for a regulation to speed up environmental assessments for renewable energy installations.[111] The logic of the proposal is similar to that of RED III, where simplified environmental

[108] *Marie-Noëlle Solvay and Others v Région wallonne* (n 14), para. 76–77.

[109] Jan Darpö, 'Will European Biodiversity Be Sacrificed on the Green Transition Altar…?' (2024) 2 *Nordisk Miljörättslig Tidskrift* 7, p. 21.

[110] Niko Soininen, Kaisa Huhta and Seita Vesa, 'Offshore Wind Power through the Lenses of EU Climate, Energy and Environmental Law – Between Climate Aspirations, Market Competition and Environmental Impact' (2025) 56 *Ocean Development & International Law* 505, pp. 523–524.

[111] European Commission, 'Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Speeding-up Environmental Assessments COM/2025/984/Final'.

assessment procedures, strict time limits, and mitigation measures to comply with species protection rules shall ensure that renewable energy installations are deployed faster to mitigate the effects of climate change.[112] This proposal makes it clear that the EU's priorities are increasingly focused on climate change mitigation rather than biodiversity conservation.

By declaring all renewables as an "overriding public interest" and changing the assessment procedures for renewables inside acceleration areas, the EU legislator hopes to reconcile the inconsistencies in the environmental directives (in particular, the Habitats and EIA Directives) with climate and energy goals. However, there are a few examples where a notion of alignment with the different environmental interests can be noticed. The Nature Restoration Regulation (NRR) emphasizes in recital 68 that biodiversity restoration should consider the need to deploy renewable energy (and vice versa).[113] Other notable examples include the Soil Monitoring Law, the Forest Regulation, and the Land Use, Land Use Change and Forestry (LULUCF) Regulation, all of which provide for the intrinsic link between climate change and biodiversity loss.[114] The framing of renewables to be "overriding" indicates an urgency to meet the EU's energy targets of 2030 and 2050. The Green Transition will not have the desired effects if it undermines other green interests. Climate change mitigation and halting biodiversity loss are two intertwined objectives. One should not be prioritized over the other.

5. Conclusions

This article has analyzed how the term "overriding public interest" has been interpreted to apply to plans or projects deemed to conflict with the high level of environmental protection for habitats, species, and water provided by, *inter alia*, the precautionary principle. Balancing green interests is becoming more common in environmental litigation. It is no simple task to prioritize one green interest over the other, but the changed realities of Russia's invasion of Ukraine and the looming threat of climate change served as the cataclysm for the EU to prioritize renewable energy development over biodiversity protection. The term "overriding public interest" has been a strict, case-by-case exception that allows projects deemed to harm the local environment to operate. However, this exemption is in force "until climate neutrality has been achieved",[115] making the derogation practically permanent. Because renewable energy provides directly applicable benefits to humans and biodiversity, the EU legislator assumes that renewable energy serves an overriding public interest.

The establishment of Renewable Acceleration Areas is an attempt to reconcile environmental protection with renewable energy development by obligating Member States to prioritize the deployment of renewable energy in areas with minimal environmental impacts. However,

[112] Ibid., art. 4, 7, and 8.

[113] Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration 2024 (OJ L 2024/1991), recital 68.

[114] Directive (EU) 2025/2360 of the European Parliament and of the Council of 12 November 2025 on soil monitoring and resilience (Soil Monitoring Law) 2025 (OJ L 2025/2360), art. 1; Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation 2023 (OJ L 150), recital 4; Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework 2023 (OJ L 107), recital 12.

[115] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), art. 16f.

the way renewable energy is treated in said areas differs from how the CJEU has interpreted the establishment of environmental safeguards. RED III obliges Member States to adopt appropriate mitigation measures at the screening stage, but case law has ruled that such measures should be proposed only after an assessment of the project's environmental implications.[116] Moreover, the revised assessment requirements make it more challenging to determine a project's environmental implications.

[116] *People Over Wind and Peter Sweetman v Coillte Teoranta* (n 21).