

## VIEWPOINT

# Climate change and energy crisis drive an unprecedented EU environmental law regression

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## Funding information

MCIN/AEI, Grant/Award Numbers: PID2020-113808RA-I00, IJC-2019-038968

## KEYWORDS

biodiversity conservation, climate change, environmental policies, non-regression principle, renewable energy

Evidence indicating that human-induced climate change has caused widespread adverse impacts on nature and people is overwhelming (IPCC, 2022). Transitioning to a renewable energy production model is essential to reduce fossil fuel use and greenhouse gas emissions (Gielen et al., 2019). Unfortunately, renewable energy production is not exempt from adverse biodiversity impacts (Serrano et al., 2020). Here, we urge that considering the promotion of renewable energy leads to a worrying environmental law regression, which could severely compromise biodiversity protection.

The European Union's strategies against climate change and biodiversity degradation have gained wide international recognition, showing that economic policies and resource consumption may be in tune with protecting the natural heritage. To prevent backtracking on the worldwide progress in environmental laws, the Rio+20 Summit in 2012 coined the non-regression principle: the regulation should not be revised if this means going backwards concerning the levels of environmental protection achieved

previously (Prieur, 2019). However, the recent EU climate and energy policies have compromised biodiversity protective legislation.

The recently presented proposal to amend Directive 2018/2001/EU by Directive 2022/0160/EU (COD), as part of the REPowerEU plan to foster the EU's renewable energy infrastructure, is a good example. This new regulation seeks to expedite permit-granting procedures after identifying “go-to” areas for renewable energy deployment, including shorter deadlines to deal with dossiers, simplifying or suppressing dedicated environmental impact assessments, and reduced controls by environmental administrations. This emerging regressive environmental regulatory paradigm has been reinforced by the European Council Regulation, 2022/2577 (2022), which establishes a framework to accelerate the development of renewable energies by reducing administrative procedures and establishing the—risky—presumption that renewable energy installations are of overriding public interest and contribute to public health and safety. This will immediately allow such

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projects to benefit from a simplified assessment of the specific exemptions provided in the relevant EU environmental legislation. Moreover, the European Council Regulations do not require transposition into the legislation of each Member State but are directly binding.

The Directive 2018/2001/EU amendment would create significant legal uncertainty and internal conflicts between EU laws, as it implies in practice amending more consolidated EU laws, such as Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Directive 2009/147/EC on conservation of wild birds and Directive 2011/92/UE on environmental impact assessment. Importantly, the legal basis that the Council adopted to amend Council Directives is Article 122 of the Treaty on the Functioning of the European Union (TFUE), which is designed to adopt emergency measures in the face of severe difficulties in the supply of certain products, especially in the field of energy, and not to amend environmental Directives for which the TFUE establishes protocols that include the participation of the European Parliament, the body of democratic representation of citizens.

This new amendment establishes several measures to avoid harming biodiversity. However, while the installation of renewables is accelerating, the knowledge of their impacts and how to avoid them has not progressed at the same speed (Serrano et al., 2020), particularly concerning synergistic and cumulative effects and the real effectiveness of mitigation mechanisms and biodiversity offsets to guarantee no net loss of biodiversity and ecosystem services. For example, methods to estimate allowable mortality resulting from wind turbine collisions currently used in several European countries may severely underestimate population losses in vulnerable bird populations (Schippers et al., 2020), and risk assessment studies conducted on wind farms have shown a weak ability to predict the number of fatalities (Ferrer et al., 2012). There are also significant uncertainties about the consequences of relaxing environmental regulations for renewable energy development outside the Natura 2000 network and other protected areas designated for biodiversity conservation (Pérez-García et al., 2022).

Therefore, we expect detrimental effects on different taxa due to the expansion of renewable facilities, particularly on birds and bats, but also on other less-known groups, such as insects (Voigt, 2021). These impacts can erode the viability of entire populations of threatened species, as shown by bird mortality in wind farms (Carrete et al., 2009) and habitat loss caused by solar plants in low-cost marginal soils of high ecological value (Palacín et al., 2023). Furthermore, new hydropower developments alter the continuity and connectivity of European rivers (Wagner et al., 2019), such as pumped hydropower systems needed to store the energy produced by wind and

solar facilities (Gurung et al., 2016). Marine ecosystems may also be widely impacted: offshore renewable energy installations that are poorly designed may cause multiple detriments, from habitat loss and collisions to noise and electromagnetic fields (Inger et al., 2009). Overall, the new facilities for energy production need a wide transmission and distribution system whose adverse effects on biodiversity have been widely described (Sánchez-Zapata et al., 2016). Thus, the amendments to the relevant EU Directive open the door to a disproportionate deterioration of species and ecosystems and are, in fact, an example of unjustified regression. We support this statement given that no compelling technical or scientific evidence demonstrates that the benefit to other public interests outweighs the ecological damage, nor other potential alternative options have been exhausted. Therefore, we encourage all actors involved, from scientists to environmental managers, policymakers and civil society, to establish an evidence-based dialogue on where and how renewable energies should be deployed. For example, more efforts are needed to unambiguously set out the cases in which infrastructures could be exempted from regular environmental impact assessments.

Paradoxically, although climate and biodiversity conventions were born together, the former might jeopardize large-scale biodiversity conservation. Furthermore, recent sanitary, economic, and energy crises add a new setback to this scenario, primarily exacerbated by the war in Ukraine (e.g., Morales et al., 2022). The rapid shift in the EU environmental legislation paradigm tends to become institutionalized at the local, state, and EU levels, with the added consequent risk of legal uncertainty and legitimate mistrust. The recent EU Biodiversity Strategy for 2030 concludes that “protecting and restoring biodiversity is the only way to preserve the quality and continuity of human life on Earth” (EU Commission 2020, COM/2020/380). While we applaud this spirit, we think the urgency should not overshadow what is important. The fight against climate change cannot become a driver of biodiversity loss. Achieving this goal will require urgent norms to safeguard the non-regression principle of environmental legislation.

#### **AUTHOR CONTRIBUTIONS**

All authors contributed to the ideas, writing, and editing of this paper.

#### **CONFLICT OF INTEREST STATEMENT**

The authors declare no conflict of interest.

#### **DATA AVAILABILITY STATEMENT**

Data sharing not applicable to this article as no datasets were generated or analyzed during the current study.

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**How to cite this article:** Durá-Alemañ, C. J., Moleón, M., Pérez-García, J. M., Serrano, D., & Sánchez-Zapata, J. A. (2023). Climate change and energy crisis drive an unprecedented EU environmental law regression. *Conservation Letters*, *16*, e12958. <https://doi.org/10.1111/conl.12958>