

POLÍTICA VERDE, REGULAÇÃO CINZENTA: A SOBERANIA ENERGÉTICA COMO OBJETIVO PRIMÁRIO DA UNIÃO EUROPEIA

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Contextualização: O artigo avalia criticamente três regulamentos recentes da União Europeia (UE) relativos às energias renováveis, ao gás, à energia nuclear e à biodiversidade, os quais comprometem a continuidade dos objetivos ambientais da União. A análise concentra-se nos seguintes atos normativos: 1) o Regulamento Delegado (UE) 2022/1214 da Comissão, de 9 de março de 2022, que alterou a taxonomia verde para nela incluir determinadas atividades relacionadas ao gás e à energia nuclear; 2) o Regulamento (UE) 2022/2577 do Conselho, de 22 de dezembro de 2022, que estabeleceu um regime emergencial destinado a acelerar os procedimentos de concessão de autorizações aplicáveis aos projetos de energias renováveis; e 3) o Regulamento (UE) 2024/1991 do Parlamento Europeu e do Conselho, de 24 de junho de 2024, que visa à proteção e à restauração dos ecossistemas naturais, em consonância com o Pacto Ecológico Europeu e com a Estratégia de Biodiversidade da União Europeia para 2030.

Objetivos: O objetivo consiste em avaliar criticamente se esses três regulamentos preservam a coerência dos compromissos ambientais europeus ou se evidenciam uma mudança de orientação em favor da soberania energética. A análise questiona os objetivos declarados e o alegado caráter excepcional das medidas adotadas, identificando inconsistências jurídicas nos mecanismos regulatórios examinados.

Método: A pesquisa adota uma abordagem qualitativa, interdisciplinar e jurídico-dogmática, articulada com a análise de políticas públicas, mediante o exame das competências, dos instrumentos estratégicos e dos atos normativos da União Europeia.

Resultados: Conclui-se que essas recentes alterações regulatórias representam uma ruptura inequívoca com o discurso historicamente sustentado pela União Europeia em matéria de proteção ambiental, na medida em que conferem prioridade à soberania energética em detrimento de objetivos ambientais anteriormente consagrados no ordenamento jurídico europeu.

Palavras-chave: Soberania energética; Mudanças climáticas; Política energética; União Europeia; Energias renováveis.

POLÍTICA VERDE, REGULACIÓN GRIS: LA SOBERANÍA ENERGÉTICA COMO OBJETIVO PRIMORDIAL DE LA UNIÓN EUROPEA

Contextualización: El artículo evalúa críticamente tres reglamentos recientes de la Unión Europea (UE) relativos a las energías renovables, el gas, la energía nuclear y la biodiversidad, que comprometen la continuidad de los objetivos ambientales de la Unión. El análisis se centra en los siguientes actos normativos: 1) el Reglamento Delegado (UE) 2022/1214 de la Comisión, de 9 de marzo de 2022, que modificó la taxonomía verde para incluir determinadas actividades relacionadas con el gas y la energía nuclear; 2) el Reglamento (UE) 2022/2577 del Consejo, de 22 de diciembre de 2022, que estableció un régimen de emergencia destinado a acelerar los procedimientos de concesión de autorizaciones aplicables a los proyectos de energías renovables; y 3) el Reglamento (UE) 2024/1991 del Parlamento Europeo y del Consejo, de 24 de junio de 2024, que procura proteger y restaurar los ecosistemas naturales, en consonancia con el Pacto Verde Europeo y la Estrategia de la Unión Europea sobre Biodiversidad para 2030.

Objetivos: El objetivo consiste en evaluar críticamente si estos tres reglamentos preservan la coherencia de los compromisos ambientales europeos o si evidencian un cambio de orientación en favor de la soberanía energética. El análisis cuestiona los objetivos declarados y el supuesto carácter excepcional de las medidas adoptadas, e identifica inconsistencias jurídicas en los mecanismos regulatorios examinados.

Método: La investigación adopta un enfoque cualitativo, interdisciplinario y jurídico-dogmático, combinado con el análisis de políticas públicas, mediante el examen de las competencias, los instrumentos estratégicos y los actos normativos de la Unión Europea.

Resultados: Se concluye que estas recientes modificaciones regulatorias representan una ruptura manifiesta con el discurso sostenido históricamente por la Unión Europea en materia de protección ambiental, en la medida en que otorgan prioridad a la soberanía energética en detrimento de objetivos ambientales previamente consagrados en el ordenamiento jurídico europeo.

Palabras clave: Soberanía energética; cambio climático; política energética; Unión Europea; energías renovables.

GREEN POLICY, GREY REGULATION: ENERGY SOVEREIGNTY AS THE EUROPEAN UNION'S PRIMARY GOAL

Contextualization: The article critically evaluates three recent regulations by the European Union (EU) on renewable, gas, nuclear energy and biodiversity, which undermine the continuity of EU environmental goals. The analysis of regulations focuses on: 1) Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022, which makes amendments to the green taxonomy including gas and nuclear, (2) Council Regulation (EU) 2022/2577 of 22 December 2022, which offers emergency authorizations for renewable energy sources, and 3) Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024, which seeks to protect and restore natural areas, supporting the European Green Deal and the 2030 Biodiversity Strategy.

Objectives: The objective is to critically assess whether three recent regulations preserve the coherence of European environmental commitments or reveal a shift in favor of energy sovereignty. The critique questions the supposed objectives and their alleged exceptional nature, pointing out legal inconsistencies in the mechanisms.

Method: The research adopts a qualitative, interdisciplinary, and legal-doctrinal approach, combined with policy analysis, through the examination of competences, strategic instruments, and normative acts of the European Union.

Results: The article concludes that these recent regulatory changes reveal a clear break from the EU's longstanding discourse on environmental impact, as they privilege energy sovereignty over previously legislated environmental objectives.

Keywords: Energy sovereignty; Climate Change; Energy Policy; European Union; Renewable Energy.

INTRODUCTION

Historically, energy has had a fundamental role in the agenda of European countries and has been tied to economic and social development. It is worth remembering that the Economic Community of Coal and Steel (ECSC) and the European Atomic Energy Community (EAEC-Euratom) were created in the 1950s. Coal, steel, and atomic energy were the starting point for European countries coming together, since they recognized the need to adopt a shared approach to energy problems¹. This aspiration has remained intact over the years, as can be seen in the EU's² objective of creating an Energy Union³.

Thus, it is not surprising that in the current global geopolitical context, energy has become more strategic for the EU. Energy is considered to be a weapon in the current war in Ukraine, starting with Russia's attack in February 2022. In this context, the high dependence of the European energy sector on Russian energy imports⁴ has had consequences on European energy policy decisions and regulations.

The article emphasizes that European energy policy seeks to convey an environmentally-focused message with initiatives such as The European Green Deal, the EU Biodiversity Strategy for 2030, and the commitment to carbon neutrality by 2050. However, the recent regulatory changes reveal a possible turning point in which the EU privileges energy sovereignty over its stated environmental objectives. The Russian invasion of Ukraine in February 2022 clearly marks the tipping point⁵.

¹ MORENO, Á. M. Política y Derecho de las energías renovables en la Unión Europea: una visión panorámica desde la perspectiva ambiental. In: EMBID IRUJO, A. (Coord.). **Agua, Energía, Cambio Climático y otros estudios de Derecho Ambiental**. Cizur Menor: Aranzadi, 2015. p. 161-188; MORENO, Á. M. **El Derecho del Cambio Climático: Retos, instrumentos y litigios**. 1. ed. Valencia: Tirant lo Blanch, 2023.

² Throughout this paper, when I refer to the European Union, I mean the supranational entity in its current phase, with the implementation of the Treaty on European Union (TEU), also known as the Maastricht Treaty (1992).

³ EUROPEAN COMMISSION. **A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy**. COM(2015) 80 final, Brussels, 25 Feb. 2015, p. 2.

⁴ The EU imported 90% of the gas it consumes in 2021 and Russia provided more than 40% of gas consumed in the EU. In addition, 27% of oil imports and 46% of coal imports also came from Russia. EUROPEAN COMMISSION. **REPowerEU: Joint European Action for more affordable, secure and sustainable energy**. COM(2022) 108 final, Strasbourg, 8 Mar. 2022, p. 1.

⁵ EGRES, Dorottya; SÁRLÓSI, Gábor. Nuclear perceptions from radioactive blue to sustainable green: The EU taxonomy as reflection of a divided public. **Journal of Public Affairs**, v. 24, n. 1, article e2901, 2024. DOI: <https://doi.org/10.1002/pa.2901>. Accessed on: 19 Nov. 2025.; The discursive turn identified at the normative level may also be observed at the judicial level. See: COURT OF APPEAL OF THE HAGUE. *Milieudefensie et al. v. Shell plc*, case 200.302.332/01, ECLI:NL:GHDHA:2024:2100, judgment of 12 Nov. 2024. A comparable discursive turn may also be observed in certain national European climate cases, although these should not be confused with the case law of the Court of Justice of the European Union. In its judgment of 12 November 2024, the Court of Appeal of The Hague overturned the 2021 judgment by which The Hague District Court had ordered Royal Dutch Shell (RDS) to reduce the CO2 emissions of the Shell group by 45% by 2030 compared with 2019 levels through the Shell group's corporate policy (C/09/571932 / HAZA 19-379). The Court of Appeal concluded that Shell could not be bound to a 45% reduction standard, or another specific percentage, solely on the basis of a general scientific consensus

The analysis presented herein focuses on the regulations adopted by Member States and the European Parliament with the aim of achieving energy sovereignty⁶, but when viewed against a background of European environmental and climate policy, they are contradictory and environmentally regressive.

1 METHODOLOGY

This article uses a qualitative and interdisciplinary research design combining legal doctrinal interpretation and policy analysis. Using a non-experimental and observational design we critically examine recent developments in European energy policy and regulation. It integrates perspectives from law, political science, and environmental studies to explore how evolving regulatory frameworks reflect broader shifts in the EU's energy and environmental priorities.

In this article, this is achieved through three steps. Firstly, we critically examine and analyze the key stages and issues underlying the EU's competence in energy matters, particularly how these have influenced the design of its energy policy.

Secondly, we review the principal instruments of what we refer to as the European “green” energy policy. The analysis focused on the following policy instruments: A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy (COM/2015/080 final); European Green Deal (COM/2019/640 final); EU Biodiversity Strategy for 2030 (COM (2020) 380 final); “Fit for 55” (COM (2021) 550 final); Delivering the EU's 2030 Climate Target on the way to climate neutrality (COM (2021) 550 final) and Plan REPowerEU (COM (2022) 230 final).

Thirdly, we analyze the following three regulations, which we refer to as “grey” regulations: (1) The new EU taxonomy in Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022, which treats nuclear energy generation and energy generation from fossil gas as transitional economic activities transitional instead of grey, meaning they are considered to be environmentally sustainable economic activities; (2) the Council Regulation

that did not establish such a standard for each country and business sector separately (ECLI:NL:GHDHA:2024:2100, case 200.302.332/01).

⁶ Official EU documents refer to energy sovereignty primarily as the reduction of dependence on external energy suppliers. MAKAROFF, N.; KOUAM, A. Energy Council: time to set a new energy security paradigm. **Strategic Perspectives**, 29 May 2024. Available at: <https://strategicperspectives.eu/energy-council-time-to-set-a-new-energy-security-paradigm/>. Accessed on: 19 Nov. 2025.; GARATZOGIANNI, A. Reclaiming energy sovereignty: the EU's strategic response to a fragmented global order. **European Climate, Infrastructure and Environment Executive Agency**, 27 May 2025. Available at: https://sustainable-energy-week.ec.europa.eu/news/reclaiming-energy-sovereignty-eus-strategic-response-fragmented-global-order-2025-05-27_en. Accessed on: 19 Nov. 2025. However, a broader approach should also consider energy security, energy independence and strategic autonomy. ALESSIO, D. The Renewable Energy Directive III and the streamlining of environmental procedures: a paradigm shift in EU environmental policy? **Journal of Environmental Law**, article eqaf024, 2025. DOI: <https://doi.org/10.1093/jel/eqaf024>. Accessed on: 19 Nov. 2025.

(EU) 2022/2577 of 22 December 2022, accelerates authorizations for installing renewable energy sources and (3) we trace the development of The European Green Deal and the EU Biodiversity Strategy for 2030, as seen in Regulation (EU) 2024/1991 of the European Parliament and of the Council, on 24 June 2024, on nature restoration.

Colors are a recurrent instrument in the European Union's development of taxonomies. Renewable energies, for example, are classified as green, while nuclear energy has shifted from grey to green, and hydrogen is categorized as grey, blue, green, brown, turquoise, pink, or yellow, depending on its source⁷. This article employs the notion of taxonomy in a metaphorical sense to expose the emerging contradiction between environmental policies and regulatory practice: ostensibly regulatory frameworks presented as green that, upon critical examination, reveal themselves to be grey due to their environmentally regressive character⁸.

Each regulation was examined in terms of its objectives, language, and policy implications, as well as its alignment—or contradiction—with the EU's declared environmental and energy-transition goals. The analysis further considered the geopolitical context, particularly the influence of the Russian invasion of Ukraine (February 2022) on EU energy policymaking.

The interpretive focus of this methodology is on identifying regulatory and policy shifts that signal a possible re-prioritization of energy sovereignty over the EU's long-standing commitment to environmental sustainability and carbon neutrality by 2050.

2 EU ENVIRONMENTAL COMPETENCES AND THEIR ROLE IN ENERGY POLICY

The issue of competence is the essential starting point of this analysis. The energy sector has played a crucial role in shaping European integration. A specific and autonomous Treaty title on energy was introduced by the Treaty of Lisbon, signed in 2007 and in force since 1 December 2009. Before then, the European Community had already developed an energy policy through other legal bases, particularly the internal market, environmental protection and trans-European networks.

⁷ INTERNATIONAL ENERGY AGENCY. **The Future of Hydrogen: Seizing today's opportunities**. Paris: IEA, June 2019. Available at: https://iea.blob.core.windows.net/assets/9e3a3493-b9a6-4b7d-b499-7ca48e357561/The_Future_of_Hydrogen.pdf. Accessed on: 19 Nov. 2025.

⁸ BRABEC, J.; MACHÁČ, J. Impacts of the EU Taxonomy implementation: a systematic literature review. **Climate Policy**, p. 1-13, 2025. DOI: <https://doi.org/10.1080/14693062.2025.2526683>. Accessed on: 19 Nov. 2025.; VANDER PUTTEN, N. Defining the Green to Make Environmental Concerns Heard in the EU? The Legal Consequences of the (unexpected) Uses of the Taxonomy. In: DUEZ, D.; RIZCALLAH, C. (eds.). **Standing Up for the Voiceless?** Brussels: Presses universitaires Saint-Louis Bruxelles, 2025. DOI: <https://doi.org/10.4000/147us>. Accessed on: 19 Nov. 2025.; GREENPEACE. **Determinación de afección ambiental para las renovables: una historia de retrocesos ambientales y democráticos**. 2024. Available at: <https://www.greenpeace.org/eu-unit/issues/climate-energy/46630/greenpeace-files-lawsuit-against-the-european-commission-to-end-gas-and-nuclear-greenwashing/>. Accessed on: 19 Nov. 2025.

The European Union was established by the Maastricht Treaty in 1992. However, express Community competence in environmental matters had already been introduced by the Single European Act. Before Lisbon, the Treaties did not contain a general autonomous title on energy, but neither did they reserve all energy regulation as an exclusive competence of the Member States. The Community acted through environmental and internal-market competences, while Member States retained substantial authority over their energy resources and policy choices.

As a result, the EU, exercising its competencies in environmental law and the internal market, began to directly regulate energy-related issues. This was the case with the legislation designed to promote the development of renewable energy across the EU, which was framed within the realm of environmental policy, in line with the EU's commitments on climate change⁹.

Accordingly, through the exercise of its environmental competence, the EU adopted Directive 2001/77/EC of 2001, which aimed to promote electricity produced from renewable sources within the internal electricity market¹⁰. This was an environmental regulation, designed to support climate change policy, with guiding objectives related to the development of renewable energy sources directly linked to the commitments made under the Kyoto Protocol.

With the entry into force of the Treaty of Lisbon in 2009 (TFEU), energy became an expressly shared competence under Article 4(2)(i) TFEU and was given a specific legal basis in Article 194 TFEU. Union energy policy must be pursued with regard to the need to preserve and improve the environment (Article 194(1) TFEU) and is therefore closely linked to the environmental objectives of Article 191(1) TFEU. At the same time, Article 194(2), second subparagraph, preserves the right of each Member State to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply. In 2008, the EU also adopted the Climate and Energy Package, comprising binding legislation and targets for 2020 on renewable energy, energy efficiency, and greenhouse gas emission reductions.

The EU continued to exercise environmental competence to regulate energy-related matters independently of the energy-specific competence conferred by the TFEU, as exemplified by Directive 2009/28/EC, which was part of the 2020 Energy and Climate Change

⁹ FREEMAN, J. The uncomfortable convergence of energy and environmental law. **Harvard Environmental Law Review**, v. 41, p. 339-421, 2017; MORENO, Á. M. Política y Derecho de las energías renovables en la Unión Europea: una visión panorámica desde la perspectiva ambiental, p. 161-188; MORENO, Á. M. **El Derecho del Cambio Climático: Retos, instrumentos y litigios**.

¹⁰ MORENO, Á. M. Política y Derecho de las energías renovables en la Unión Europea: una visión panorámica desde la perspectiva ambiental, p. 161-188; MORENO, Á. M. **El Derecho del Cambio Climático: Retos, instrumentos y litigios**.

Package adopted in 2008. This Directive's synergy with environmental policy was so profound that public financial support to renewable energy was regarded as State aid for environmental protection. It was replaced by Directive (EU) 2018/2001 within the framework of the Clean Energy for All Europeans Package, adopted under the energy competence of Article 194 (2) TFEU and explicitly linked to measures aimed at reducing greenhouse gas emissions and fulfilling the Paris Agreement commitments. Directive (EU) 2018/2001 was subsequently amended by Directive (EU) 2023/2413 (RED III), which raised the binding Union target for renewable energy in gross final energy consumption to at least 42.5% by 2030, with a collective ambition to reach 45%, and incorporated permanent rules streamlining permit-granting procedures.

Thus, based primarily on environmental competencies, the EU strategically positioned the energy sector as "serving" its commitments, and it established a common energy framework aimed at promoting renewable energy sources within the Union.

However, given the geopolitical context that exposed the EU to high vulnerability in its vulnerability in energy supply due to its dependence on Russian energy imports and the imminent need to achieve energy independence from Russia¹¹, the EU appears to have become entrapped within its environmental discursive—especially regarding climate change—that it had strategically developed to advance regulation in a sector where the EU has historically been constrained, such as energy. Consequently, the environmental discourse surrounding the EU's energy policy is the same that today constrains its actions to achieve energy independence, even leading to contradictions, as will be analyzed herein.

This study identifies and analyzes the primary energy policy instruments of the EU that we classify as "green" due to their alignment with the Union's environmental and climate objectives. Furthermore, it undertakes a critical examination of those regulations we consider "grey," owing to their regressive environmental aspects that contradict the overarching environmental discourse of the EU in the energy sector.

3 EUROPEAN "GREEN" ENERGY POLICY. PRINCIPAL INSTRUMENTS

From its inception, the European Union's energy policy has been closely intertwined with, and even conditioned by, its environmental objectives, particularly those concerning climate change. Consequently, it is not surprising that the Union's primary energy policy instruments are characterized by a pronounced environmental discourse.

¹¹ UE highly dependent on imported fuels, specifically solid fossil fuels and natural gas from Russia. This has left it in a situation of extreme energy vulnerability on more than one occasion. These events include: the gas crisis between Russia and Ukraine between 2006 and 2009 with a cut in gas supplies to the EU and the consequent shortage crisis, the Russian invasion of Crimea in 2014, that led to gas conflicts with Ukraine, and the resentful Russian invasion of Ukraine in 2022 with the closure of energy imports and the increase in energy prices.

This is the case of the current EU energy policy founded upon **The Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy (COM/2015/080 final)**, their vision is of the Energy Union as a sustainable, low-carbon and climate-friendly economy. The Energy Union's primary goal is to ensure EU consumers have secure, sustainable, competitive, and affordable energy and all Member States to "speak with one voice" in the energy sector. To achieve this, it focuses on five interconnected and mutually reinforcing dimensions, whose overarching goal is to promote energy security, sustainability, and competitiveness."

In the Strategy, the energy security of the Energy Union is attained by reducing their dependency on particular fuels (nuclear, oil and liquefied natural gas), energy suppliers and routes, but environmentally sustainable, based on low-greenhouse-gas-emission sources. To that end, it mandates that the EU must invest in advanced and sustainable alternative fuels, aspiring to become a global leader in renewable energy sources.

A similar observation can be made regarding the **European Green Deal (COM/2019/640 final)**, the objective of which is to address climate and environmental challenges, aiming to reorient the EU economy toward a sustainable trajectory and achieve climate neutrality by 2050. Central to this effort is the decarbonization of the energy system through the supply of clean, affordable, and secure renewable energy, complemented by the phased elimination of coal and decarbonization of gas. Key policies supporting these goals include the development of a green taxonomy to foster sustainable finance, enhancement of the EU's climate ambitions for 2030 and 2050, and the preservation and restoration of ecosystems and biodiversity.

Additionally, the Green Deal emphasizes the importance of strengthening 'green diplomacy' to influence other states, advocating for ending fossil fuel subsidies in line with G20 commitments, restricting fossil fuel financing by multilateral lenders, advancing sustainable finance, halting new coal plant construction, and reducing methane emissions.

The next instrument is the **EU Biodiversity Strategy for 2030. Bringing nature back into our lives (COM (2020) 380 final)**. Although not solely an energy policy instrument, it integrates biodiversity objectives into the green transition by prioritizing sustainable renewables, enhancing sustainability criteria within EU regulations, and aligning bioenergy frameworks with the ambitions of the Green Deal. These aspects justify its classification as an 'EU Green Policy Instrument' within this study. The Strategy prioritizes the protection and restoration of biodiversity and ecosystems, recognizing their importance for human health, economic stability, and climate mitigation. It proposes an EU Nature Restoration Plan that aims to expand protected areas, strengthen legal frameworks, address land occupation, recover ecosystems, promote sustainable renewable energy, and reduce pollution. The instrument emphasizes that effective enforcement of EU environmental legislation is central

to this strategy and advocates the fight against biodiversity loss must be underpinned by sound science prioritizing ‘green’ over ‘grey’ solutions and supporting investments in nature-based solutions.

Another instrument that can be referred to as a green policy is the **“Fit for 55”, delivering the EU’s 2030 Climate Target on the way to climate neutrality (COM (2021) 550 final)**. The Fit for 55 package comprises a set of interconnected proposals aimed at achieving a just, competitive, and sustainable transition by 2030 and beyond, in alignment with the EU’s energy and climate objectives. It sets forth an ambitious target of reducing net greenhouse gas emissions by 55% by 2030 and reaching climate neutrality by 2050, in accordance with The Green Deal. The package seeks to modernize the energy system by enhancing renewable-based electrification and, in sectors where this is more challenging—such as industry and transportation—by promoting the adoption of renewable fuels, including clean hydrogen. Additionally, it advocates for the revision of the Energy Taxation Directive to align minimum taxation rates for heating and transport fuels with the EU’s climate and environmental commitments, thereby fostering the deployment of clean fuels.

In February 2022, Russia’s military invasion of Ukraine had consequences for the European energy system. In response, in March 2022, EU leaders agreed at the European Council¹², agreed to accelerate to phase-out Europe’s dependence on Russian energy imports. The Commission proposed eliminating Russian fossil fuels by 2030 through a **REPowerEU Plan (COM (2022) 230 final)**, published on 18 May 2022. This policy subsequently evolved into binding legislation. Regulation (EU) 2026/261, which entered into force on 3 February 2026, establishes the progressive phase-out of Russian natural-gas imports and prepares the phase-out of Russian oil imports, thereby giving a more concrete legal form to the Union’s objective of energy independence¹³.

The REPowerEU Plan, which builds on measures in Fit for 55 package and The Green Deal warns that ceasing Russian energy imports could negatively impact the energy transition trajectory and the EU’s ability to achieve its climate goals.

Despite this cost, the EU advocates—apparently in contradiction with the measures outlined in the Fit for 55 package and The Green Deal—the need to: “targeted investments for security of supply in gas infrastructure and very limited changes to oil infrastructure alongside large-scale investments in the electricity grid and an EU-wide hydrogen backbone. In parallel, some of the existing coal capacities might also be used longer

¹² EUROPEAN COUNCIL. **European Council conclusions**, 24-25 March 2022. Brussels, 25 Mar. 2022

¹³ EUROPEAN PARLIAMENT AND COUNCIL. Regulation (EU) 2026/261 of 26 January 2026 on phasing out Russian natural gas imports and preparing the phase-out of Russian oil imports, improving monitoring of potential energy dependencies and amending Regulation (EU) 2017/1938. **Official Journal of the European Union**, L 2026/261, 2 Feb. 2026.

than initially expected, with a role for nuclear power and domestic gas resources too". Energy security now supersedes all previously advocated environmental and climate change goals.

In view of this new priority, the REpowerEU Plan argues for faster permitting for renewable energy projects. It proposes amending the Renewable Energy Directive operationalizing the principle of renewable energy as an overriding public interest, introduces the designation of 'go-to' areas and other ways to shorten and simplify permitting¹⁴. These proposals were largely implemented by RED III. In particular, Article 16f of Directive (EU) 2018/2001 now requires, until climate neutrality is achieved, a presumption that renewable-energy plants, their grid connections, the related grid and storage assets are of overriding public interest and serve public health and safety for the purposes of the derogations identified in that provision. Thus, the REPowerEU Plan shows a shift away from previous prevailing energy policy instruments, forcing an uneasy coexistence that places energy independence as a priority over previous environmental goals and addressing climate change.

4 EUROPEAN "GREY" REGULATION

This section proceeds to identify and critically analyze three examples of regulations adopted by different EU institutions in or around the geopolitical context created by Russia's military invasion of Ukraine in 2022, which we categorize as "grey regulations," in contrast to the Union's environmental policy. The first measure examined—the complementary taxonomy delegated act—had a preparatory and political history predating the invasion, although the subsequent energy crisis reinforced the geopolitical relevance of gas and nuclear energy. The scope of the analysis will explicitly be limited to substantiating the hypothesis proposed in this study.

4.1 Modifications to the EU Green Taxonomy, including Nuclear and Gas. Commission Delegated Regulation (EU) 2022/1214

The first regulation to be analyzed is the **Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022**. This regulation amends Delegated Regulation (EU) 2021/2139, concerning economic activities in certain energy sectors, and Delegated Regulation (EU) 2021/2178, concerning the public disclosure of information on such activities. This Regulation amends the EU Green taxonomy by including activities related to nuclear energy and fossil gas as environmentally sustainable economic activities.

The development of the EU Green taxonomy commenced in 2020 with Regulation

¹⁴ These amendments were introduced by Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending directive (EU) 2018/2001, regulation (EU) 2018/1999 and directive 98/70/EC as regards the promotion of energy from renewable sources and repealing council directive (EU) 2015/652 and expressly framed in the REpowerEU Plan (item 5). **Official Journal of the European Union**, L, 31 Oct. 2023, recital 5.

(EU) 2020/852 of the European Parliament and of the Council, 18 June 2020, establishes a framework to facilitate sustainable investments. It was started in 2020 with the aim of becoming an EU-wide, technically sound classification system to identify which activities qualify as “green” or “sustainable” toward mitigating climate change (item 5). This would allow private investment to be channeled into energy, agriculture, transport, and industry and thereby increase investor confidence and awareness of the environmental impact of financial products or private fixed income issues and dispel fears about greenwashing¹⁵.

Regulation (EU) 2020/852 mandated the Commission to establish technical selection criteria to determine what activities substantially contribute to meeting environmental objectives (article 10, paragraph 3). They also determine whether economic activities are significantly opposed to any of the other environmental objectives, without mentioning nuclear or gas. Regulation (EU) 2020/852 specifies that “power generation activities that use solid fossil fuels do not qualify as environmentally sustainable economic activities” (article 19, paragraph 3).

These criteria were set by the Commission’s Delegated regulation (EU) 2021/2139 of 4 June 2021. The complementary delegated act concerning gas and nuclear energy had already been under preparation before Russia’s invasion of Ukraine; it was formally adopted as Delegated Regulation (EU) 2022/1214 on 9 March 2022 and became applicable on 1 January 2023. The invasion therefore cannot be treated as the sole cause of the amendment, although the ensuing energy crisis strengthened the strategic and political relevance of the activities covered by it. The Commission justified their inclusion by reference to the role of private investment in facilitating the transition towards climate neutrality.

In contrast to the investments the European Green Deal sought, the Commission established that certain activities related to fossil gas and nuclear energy should be considered transitional activities. They contribute to the objective of mitigating climate change when there is not technologically or economically viable low-carbon alternative (Art.10(2) of regulation 2020/852).

It clarifies – in case there was any doubt – that nuclear power is not considered a renewable energy source, as defined in directive (EU) 2018/2001 (item 6). Including these activities is limited in time and must meet specific transparency requirements ¹⁶.

¹⁵ By greenwashing, regulation (EU) 2020/852 means: ' the practice of obtaining an unfair competitive advantage by marketing a financial product as environmentally friendly when, in fact, it does not meet basic environmental requirements' (Item 11). **Official Journal of the European Union**, L 198, 22 June 2020, recital 11.

¹⁶ These requirements are set out in commission delegated regulation (EU) 2023/2485 of 27 June 2023, which amends delegated regulation (EU) 2021/2139. This establishes additional technical criteria for determining whether economic activities make a substantial contribution to mitigating climate change

This change in EU Taxonomy is presented as a tool to achieve climate neutrality by 2050. However, the goals that motivated its creation seem to have been forgotten, since this is an instrument for greenwashing, and is at risk of losing credibility. Moreover, it is regressive for a regulation to change the criteria for classifying economic activity as environmentally sustainable¹⁷, which undermines the environmental protection that had previously underpinned the EU Taxonomy (article 114, TFEU). It also abandons any precautionary principle that was previously applied to power stations that had environmental risks.

Nuclear energy has a paradoxical place in the EU. Both the closure and the continuity of nuclear plants can be seen as a means of fighting climate change¹⁸. For this same reason, the EU, European countries, and public opinion appear divided on nuclear power¹⁹. This swing between the two positions can be seen in the Commission's delegated act amending the EU green taxonomy, in force from 1 January 2023, after the EU parliament rejected (328 vs. 278 votes and 33 abstentions) the motion to consider nuclear energy and gas as environmentally sustainable activities. Nor did the council later object to the proposal. Perhaps, Germany and Spain are the most representative of this shift, where the shutdown targets for nuclear power plants have been paused.

As an example of the contradictions that we intend to highlight, Austria, supported by Luxembourg, and several environmental organizations challenged the inclusion of certain nuclear and fossil-gas activities in the taxonomy²⁰. In its judgment of 10 September 2025 in *Austria v Commission* (T-625/22, ECLI:EU:T:2025:869), the General Court dismissed Austria's action. It held that the Commission enjoyed a broad discretion when making complex scientific and technical assessments and that Austria had not demonstrated a manifest error in the classification criteria²¹.

and whether they significantly detract from other environmental objectives. It has been in force since 1 January 2024.

¹⁷ PRIEUR, M. Non-regression. In: AGUILA, Y.; VIÑUALES, J. E. (eds.). **A global pact for the environment: Legal foundations**. Cambridge: C-EENRG, 2019. p. 142-148; DURÁ-ALEMAÑ, C. J.; MOLEÓN, M.; PÉREZ-GARCÍA, J. M.; SERRANO, D.; SÁNCHEZ-ZAPATA, J. A. Climate change and energy crisis drive an unprecedented EU environmental law regression. **Conservation Letters**, v. 16, article e12958, 2023. DOI: <https://doi.org/10.1111/conl.12958>. Accessed on: 19 Nov. 2025.

¹⁸ EMBID IRUJO, A. Legislar sobre cambio climático. **Revista Aranzadi de Derecho Ambiental**, n. 48, p. 1-15, Jan./Apr. 2021.

¹⁹ EGRES, Dorottya; SARLÓS, Gábor. Nuclear perceptions from radioactive blue to sustainable green: The EU taxonomy as reflection of a divided public.

²⁰ GREENPEACE EUROPEAN UNIT. Greenpeace files lawsuit against the European Commission to end gas and nuclear greenwashing. **Greenpeace European Unit**, Brussels, 18 Apr. 2023. Available at: <https://es.greenpeace.org/es/wp-content/uploads/sites/3/2024/01/BRIEFING-TRAMITACION-AMBIENTAL-EXPRES.docx-1.pdf>. Accessed on: 19 Nov. 2025.

²¹ The judgment is under appeal and should therefore not yet be presented as a final judicial settlement of the controversy. GENERAL COURT OF THE EUROPEAN UNION. Judgment of 10 September 2025, Republic of Austria v European Commission, case T-625/22, ECLI:EU:T:2025:869.

Finally, the changes in EU Taxonomy are presented as temporary (end of item 4), but it does not have a defined period. This means that it falls into a grey area of being temporarily in force indefinitely. We can see this is the case because the taxonomy appears in the technical requirements for new nuclear power sources through 2045 (4.27. Annex I). This example has no deadline. The following example does have a deadline, but it has already been extended.

The modification can also operate with extended validity. Such a period of validity is enough for its effects to last for decades, without the need to keep it in force permanently. The energy sources will continue to operate. A critical assessment of temporary measures is more important for nuclear power than other renewable energy sources (see below), because the construction and commissioning of projects is so slow that it obviously compromises the objectives set for 2050.

4.2 Emergency authorizations for renewable energy sources in Council Regulation (EU) 2022/2577

The second European regulatory measure that suggests the transition from green to grey policy is Council Regulation (EU) 2022/2577 of 22 December 2022 accelerates the deployment of renewable energy sources, extended and amended by **Council Regulation (EU) 2024/223 of 22 December 2023**. It adopts “temporary rules of an emergency nature to accelerate the permit-granting process applicable to the production of energy from renewable energy sources” (article 1). It aims to accelerate “the permit-granting process of renewable energy projects and for related grid infrastructure” (article 6). The Regulation ceased to apply on 30 June 2025. Its expiry, however, did not entail a complete return to the previous legal framework because several of its central techniques had already been incorporated into Directive (EU) 2018/2001 by RED III.

4.2.1 Competence and provisions

The first issue that stands out is the subject matter or competence within which a regulation is enacted, highlighting the cross-cutting and inseparable nature of environmental, energy, and climate regulation within the EU.

From a material perspective, the regulation makes only a few references to climate change and energy transition, yet it addresses the core aspect of its cross-cutting content: environmental impact assessment (EIA). This is a key tool in environmental law for implementing the principle of prevention, thereby ensuring the environmental viability of various types of energy.

In summary, the regulation assumes, citing reasons of energy emergency (article 122(1), TFEU), that the planning, construction, and operation of power plants and facilities

producing energy from renewable sources, as well as their connection to the grid, associated grid networks, and storage assets, are of “overriding public interest” and contribute to public health and safety (article 3). Member states may exempt such projects from EIA and other environmental requirements mandated by various directives (article 6) for a period of 18 months, which can be extended (article 10).

The regulation was enacted as an emergency measure, and apparently, its amendment was also handled as such through council regulation (EU) 2024/223, 22 December 2023. This regulation corrects the wording but more importantly, extends and partially reforms it. Few changes were made. Regarding the deadlines for obtaining authorizations for renewable energy production, the original text specified different timeframes depending on the scenario (one, three, and six months), but in the reform, all cases are now unified under a six-month period. This includes the installation of heat pumps with an electrical capacity below 50 MW, installation of solar energy equipment in a broad sense, other geothermal heat pumps, and the repowering of electricity production facilities from renewable sources.

Second, the reform includes exceptions provided by the Habitats, Birds, and Water Framework Directives for cases where negative outcomes arise and no alternative or satisfactory solution is found after assessing the impacts of the regulated actions. The adjustment is partial because, while environmental care remains subordinate to the regulation’s objectives, it now at least considers the serious consequences that have already affected or could affect the environment. This means considering alternative satisfactory solutions. This appears, ultimately, to be the purpose of the EIA, yet regulation allows this to be bypassed. This also affects the regulation’s crucial designation of renewable energy authorizations themselves as being of “overriding public interest”²².

4.2.2. Nature of the rule: more than just an exception

This is a typical emergency measure that “temporarily” lifts a ban. Yet such a measure can undermine the validity of the directive or regulation in question and, ultimately, the law itself or the legitimacy of the authority issuing it.

In fact, it was not the initial 18-month period, which expired on 30 June 2024, that suggested the need for a critical analysis, but its extension, with some modifications, for another year until 30 June 2025, by agreement of the council of ministers on 19 December 2023. This calls into question the exceptional nature of the regulation, but this is not the only

²² GARCÍA GARCÍA, S. Comentario al Reglamento (UE) 2024/223 del Consejo de 22 de diciembre de 2023 que modifica el Reglamento (UE) 2022/2577 por el que se establece un marco para acelerar el despliegue de energías renovables. **Actualidad Jurídica Ambiental**, 7 Feb. 2024. Available at: <https://www.actualidadjuridicaambiental.com/legislacion-al-dia-union-europea-energias-renovables/>. Accessed on: 19 Nov. 2025.

reason.

The Regulation has now expired and was not extended again. Nevertheless, the critical issue is not merely the duration of the emergency act, but the normalization of several of its techniques through RED III, especially the presumption of overriding public interest laid down in Article 16f of Directive (EU) 2018/2001.

The regulation applies to any applications with starting dates within its period of legal validity (article 1), meaning that as long as an application is submitted before June 30, 2025, the regulation remains in effect throughout the process. The approval and construction of such projects could take a decade or more, and this happens whether the regulation remains in force, because its function has already been fulfilled.

The changes in criteria allow for some retroactive validity, since it is extended “to all permit-granting processes that have a starting date within the period of its application and is without prejudice to national provisions establishing shorter deadlines than those laid down in Articles 4, 5 and 7” (article 1).

In short, even though the last act, the authorization, has not been made, the regulation applies with no more than the initial application. These criteria, which favor both retroactivity and extended validity, in addition to possible extension, are clear indicators of the spirit of the regulation.

It is difficult to imagine a clearer example of what Agamben (2005) calls a “typical emergency norm”, as seen from a dynamic perspective. Besides extending validity, it does not need to be permanently in force to reverse or eliminate the relationship between the principle and exception, and thus to undermine the nature of the rule. In fact, it is sufficient for the exception to apply from time to time so that the necessary projects can be requested – and even authorized – in order to configure the nature of exceptions. There is no better example than authorizations in the area of urban planning for hydraulic works during a drought or the installation of renewable energies.

The recent experience in the health sector during the pandemic has allowed almost every citizen to see and understand how an emergency rule can become permanent. Even once the emergency is over, some exceptional legal instruments or practices can remain in force without justification. This chapter seeks to highlight how the alleged climate emergency, unlike the pandemic, can hardly be considered concluded within a reasonable time frame²³.

An inevitable consequence of emergency regulation is legal uncertainty. This

²³ MARTÍN, L. Emergencia climática: desafíos jurídicos y políticos. In: AAVV. **Perspectivas jurídicas sobre cambio climático, agua y energía**: estudios en homenaje al Prof. Antonio Embid Irujo. Cizur Menor: Thomson Reuters-Aranzadi, 2024. p. 29-55.

applies to changes made to the renewable energy directive 2018/2001/EU, which involves amending previously 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 the conservation of wild birds, and directive 2011/92/EU on EIA²⁴.

4.2.3. Reversal of principles. Prevention, precaution, non-regression and legal proportionality

Depending on its scope, this regulation may end up subverting fundamental principles of environmental law²⁵. We can see the principles of prevention and precaution in EIA, which is the statute impacted by the regulation. It is impacted because it is now possible to authorize exemptions to EIA procedure established in Law 21/2013. Hence it enshrines the rebuttable presumption of overriding public interest, but notably, this goes beyond the environment and includes public health and safety. That presumption should not, however, be equated with a general legal presumption of environmental harmlessness; the applicable environmental directives and the conditions governing their derogations remain relevant.

The regulation makes it possible to omit EIA or use a simplified EIA “provided that the project is located in a specific renewable energy area” and the area has been subject to a strategic environmental assessment in accordance with the council and directive 2001/42/EC of the European parliament. However, some Member States, such as Spain begun accelerating renewable energy projects prior to this regulation by simplifying procedures and establishing deadlines through royal decrees 6/2022, 11/2022, and 20/2022. Congress later validated these decrees, revealing erratic leadership²⁶.

In other words, EIA was replaced by the *simplified procedure for environmental effects* for all renewable energy projects, with the caveat that they are not located in protected or natural areas in the Natura 2000 network or the marine environment. In view of

²⁴ DURÁ-ALEMAÑ, C. J. et al. Climate change and energy crisis drive an unprecedented EU environmental law regression.

²⁵ BANET, C.; DONATI, F. **Speeding Up Renewable Energy Permitting in Europe: Overcoming Implementation Challenges**. Brussels: Centre on Regulation in Europe, 2024. Available at: https://cerre.eu/wp-content/uploads/2024/10/CERRE_Speeding-up-Renewable-Energy-Permitting-in-Europe_FINAL.pdf. Accessed on: 19 Nov. 2025. See also: GENERAL COURT OF THE EUROPEAN UNION. CEE Bankwatch Network and Ökobüro v. Council, case T-535/23, ECLI:EU:T:2025:1021, judgment of 12 Nov. 2025, dismissing the action. An appeal is pending before the Court of Justice in case C-25/26 P.

²⁶ LOZANO CUTANDA, B. Real Decreto-ley 6/2022: el nuevo procedimiento de determinación de afección ambiental aplicable a determinados proyectos de energías renovables. **Actualidad Jurídica Ambiental**, n. 123, p. 62, 2022; VALENCIA MARTÍN, G. La autorización fotovoltaica integrada valenciana. **Actualidad Jurídica Ambiental**, n. 127, 2022; RUIZ DE APODACA ESPINOSA, A. Evaluación de impacto ambiental: la aceleración de los proyectos de generación de energías renovables aminora la exigencia de evaluación. In: GARCÍA ÁLVAREZ, G. et al. (coords.). **Observatorio de Políticas Ambientales**. Madrid: CIEDA-CIEMAT, 2023. p. 363-380.

this, Ángel Ruiz de Apodaca²⁷ concludes that, in short, we are converting authorizations or other prior, preventive assessments, such as reports on environmental impacts, into responsible covert declarations in the form of authorizations. This would be a procedure in which the peremptory nature of the deadlines would force the administration to place great trust in the legality and technical solvency of the application. Under this criterion, a 200 MW project could be approved faster than a 5 MW energy community project processed at the regional level²⁸.

Secondly, regardless of the degree to which it is recognized in European law in terms of the principle of non-regression, it is difficult to imagine a better example of environmental regression²⁹. There is no doubt about the lowering of the standards of generalized environmental protection, even in protected places, where this is especially clear. From this point of view, the regulation is an explicit reduction of the existing environmental protection standards in favor of renewable energy.

In the same sense, several authors have already pointed out that we are undoubtedly facing an unjustified regression, since options based on scientific evidence have not been sufficiently explored to affirm that the public benefit outweighs ecological damage³⁰.

The principle of legal proportionality dictates that any legal measure must be balanced and appropriate relative to the objective it seeks to achieve, employing the least restrictive means possible. By imposing this standard, proportionality serves to constrain state power, ensuring that exceptional measures remain suitable, necessary, and proportionate to their aims, and thus retain their temporary and justified character. Thus, emergency regulations risk becoming disproportionate when measures initially conceived as temporary

²⁷ RUIZ DE APODACA ESPINOSA, Ángel. Modificaciones en materia de evaluación ambiental justificadas por las necesidades de recuperación: apunte crítico. In: GARCÍA ÁLVAREZ, G.; JORDANO FRAGA, J.; LOZANO CUTANDA, B.; NOGUEIRA LÓPEZ, A. (coords.). **Observatorio de Políticas Ambientales**. Madrid: CIEDA-CIEMAT, 2022. p. 574-600; RUIZ DE APODACA ESPINOSA, Ángel. Evaluación de impacto ambiental: la aceleración de los proyectos de generación de energías renovables aminora la exigencia de evaluación. In: GARCÍA ÁLVAREZ, G. et al. (coords.). **Observatorio de Políticas Ambientales**. Madrid: CIEDA-CIEMAT, 2023. p. 363-380

²⁸ GREENPEACE. **Determinación de afección ambiental para las renovables: una historia de retrocesos ambientales y democráticos**.

²⁹ PRIEUR, M. Non-regression, p. 142-148; DURÁ-ALEMAÑ, C. J. et al. Climate change and energy crisis drive an unprecedented EU environmental law regression.

³⁰ DURÁ-ALEMAÑ, C. J. et al. "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"

become permanent³¹.

Other principles of law are inverted by the use of certain techniques such as retroactivity and extended validity, mentioned above (article 1), or in order to ensure its effectiveness, the positive effect that the regulation attributes to the lack of response on the authorization, in some cases (article 4.3).

4.3 Regulation (EU) 2024/1991 on Nature Restoration: Weakening the ambition of the European Green Deal and the EU Biodiversity Strategy

The final regulation addressed here is the **Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024** regarding nature restoration. It modifies regulation (EU) 2022/869, part of the Biodiversity Strategy 2030—or what remains of it— and The Green Deal which aims to gradually improve the condition of various types of protected habitats across the EU and restore them until reaching a favorable conservation status³². The Regulation entered into force on 18 August 2024. Its implementation has since advanced: Commission Implementing Regulation (EU) 2025/912 established the uniform format for national restoration plans, and Member States must submit their draft national restoration plans by 1 September 2026.³³

Regulation (EU) 2024/1991, approved on June 24, 2024, and published a month later, was reduced in scope from the original draft proposed by the European Commission in June 2022 (COM/2022/304 final). The final version incorporated an article related to renewable energy (article 6). In line with council regulation (EU) 2022/2577 (22 December 2022), which establishes a framework for accelerating the deployment of renewable energies, these projects benefit from reduced environmental oversight under the Nature Restoration Law to avoid delays in implementation, consistent with the urgent objective of achieving energy independence.

Thus, under the exceptions to the obligations for continuous improvement and preventing deterioration outside Natura 2000 areas established in this regulation, renewable energy projects are presumed to have *overriding public interest*. Member States may exempt

³¹ ONDŘEJEK, P.; HORÁK, F. Proportionality during Times of Crisis: Precautionary Application of Proportionality Analysis in the Judicial Review of Emergency Measures. **European Constitutional Law Review**, v. 20, n. 1, p. 27-51, 2024. DOI: <https://doi.org/10.1017/S1574019624000051>. Accessed on: 19 Nov. 2025.

³² GARCÍA GARCÍA, S. Ya está aquí el Reglamento de Restauración de la Naturaleza: Reglamento (UE) 2024/1991 del Parlamento Europeo y del Consejo de 24 de junio de 2024 relativo a la restauración de la naturaleza y por el que se modifica el Reglamento (UE) 2022/869. **Actualidad Jurídica Ambiental**, 4 Sept. 2024. Available at: <https://www.actuallidadjuridicaambiental.com/legislacion-al-dia-union-europea-restauracion-de-la-naturaleza/>. Accessed on: 19 Nov. 2025.

³³ EUROPEAN COMMISSION. Commission Implementing Regulation (EU) 2025/912 of 19 May 2025 laying down rules for the application of Regulation (EU) 2024/1991 as regards a uniform format for the national restoration plan. **Official Journal of the European Union**, L 2025/912, 20 May 2025.

them from proving there are no less harmful alternative solutions, provided that the projects have undergone an EIA or strategic environmental assessment (SEA; article 6) – a requirement that can be easily circumvented. Article 6 therefore does not itself create a general exemption from EIA or SEA; the critical issue is the presumption of overriding public interest and the possibility of dispensing with the alternatives test within the specific derogation regime of the Nature Restoration Regulation.

This is evident from the decisions of the European Court of Justice, which allow member states, when invoking risks to energy supply security, to exclude energy projects from EIA or SEA requirements (as was the case with nuclear energy) and, even if the project may impact a protected area, allow it to proceed, even in areas with priority natural habitats or species³⁴.

The regulation recognizes that “considering such plants as being of overriding public interest and, where applicable, limiting the requirement to assess less damaging alternative solutions would allow such projects to benefit from a simplified assessment as regards the derogations to the assessment of overriding public interest under this regulation” (item 38).

Once again, we see a regulation with a scope that diverges from the European policy strategy it is based on, where environmental discourse takes a back seat to energy sovereignty, which, in this case, is prioritized outright over biodiversity.

FINAL CONSIDERATIONS

The European energy policy oscillates between environmental protection, climate change, mitigation and energy sovereignty, relying on concepts such as green transition, energy transition, energy security and decarbonizing, among others.

It is evident that, beyond how the regulations are presented, they follow the same pattern. They are framed as measures for energy or ecological transition and backed by a “green” policy, however, the regulations look more “grey” than “green”. This makes evident that energy sovereignty is the primary objective, surpassing climate change mitigation and sidelining environmental protection.

The discursive turn becomes even more evident in the new taxonomy for gas and

³⁴ Judgment of the Court (Grand Chamber) of 29 July 2019 (request for a preliminary ruling from the Cour constitutionnelle — Belgium) — Inter-Environnement Wallonie ASBL, Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres (Case C-411/17), (Case C-411/17), ECLI:EU:C:2019:622. For a national European example, rather than EU case law, see COURT OF APPEAL OF THE HAGUE, Milieudefensie et al. v. Shell plc, case 200.302.332/01, ECLI:NL:GHDHA:2024:2100, judgment of 12 Nov. 2024, which overturned the 2021 order requiring Shell to reduce group-wide CO₂ emissions by 45% by 2030 relative to 2019. The distinction between national case law and case law of the Court of Justice should be maintained.

nuclear energy, Regulation (EU) 2022/1214, which were reclassified as transitional, green, or low-carbon. This change is purely semantic. Unlike the case for renewable energies, where the legal framework changes while retaining terminology, in the case of gas and nuclear energy, the change in nomenclature leads to a legal shift.

Regulation (EU) 2022/2577, designed to accelerate approval processes for renewable energy installations, ceased to apply on 30 June 2025. When contextualized, it nevertheless raises doubts about both its declared objectives and the supposedly exceptional nature of its techniques. Although renewables may be considered “green” from an emissions perspective, the presumption of overriding public interest has allowed them to be practically exempt from even the most basic environmental standard, namely EIA. This is a stark regression in environmental protection standards. While it cannot be claimed that the significant surge in renewable energy between 2022 and 2025 occurred entirely without EIAs, it is equally plausible to attribute this increase to specific exemptions within this regulation. Moreover, the incorporation of the overriding-public-interest presumption into Article 16f of Directive (EU) 2018/2001 demonstrates that a mechanism first associated with the emergency response has become part of the ordinary regulatory framework.

The European Green Deal and the Biodiversity Strategy 2030 are losing regulatory strength, gradually weakened by the Regulation (EU) 2024/1991 on nature restoration, leaving it far from its original ambitious goals, raising doubts about its effectiveness. This represents yet another indication of the shifting trajectory and the growing gap between a discourse striving to remain green and a regulatory framework that is increasingly grey.

The supposedly exceptional or temporary nature of the accelerated authorization processes and the reclassification of gas and nuclear energy in the EU taxonomy is inherently questionable due to their duration, retroactive applicability, and extended validity. These concerns grow when viewed in the context of the weakening, dissolution, or deviation from the EU’s three major environmental initiatives: the European Green Deal, the Biodiversity Strategy, and the Regulation (EU) 2024/1991 on nature restoration.

The shift from green to grey was significantly accelerated by Russia’s invasion of Ukraine in 2022. The adoption of Regulation (EU) 2026/261 confirms that the reduction of external energy dependence has moved from political strategy to binding legislation. In the current geopolitical context, it appears reasonable that the most ambitious regional bloc in environmental policy and climate change mitigation should recalibrate its priorities, considering energy sovereignty as the EU’s primary goal. Yet it would be desirable to achieve greater coherence between political discourse, policy design, and regulatory implementation.

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