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The Stress Test of the Birds and Habitats Directives

The Commission has announced that it will carry out a stress test of the Birds and Habitats Directives during 2026. According to the Commission, the objective of the stress test is to screen the Birds and Habitats Directives to ensure that they remain fit to achieve their objectives in the most cost-efficient way, in particular by identifying opportunities to reduce the administrative burden of their implementation.

As part of the stress test, the Commission will conduct both an open public consultation and a targeted consultation with Member States and stakeholders. ***Finnish Energy welcomes the stress test and is pleased to contribute with the following messages.***

General remarks

Nature-related considerations have become increasingly important in the energy sector. Projects involving the use of land or water areas, such as wind-, solar- and hydropower projects, as well as energy transmission and distribution infrastructure, are strongly subject to nature-related assessment and permitting requirements. Nature legislation is taken into account in spatial planning, project permitting and the obligations applicable to all kinds of activities that may affect nature values. ***Predictable procedures under nature legislation are therefore essential for green transition projects. However, current procedures are not aligned with the objective of accelerating the green transition.*** Finnish Energy welcomes the stress test and any legislative work that may follow from it.

The Birds and Habitats Directives provide the foundation for the protection of natural habitats and species. Although the Directives have been in force for a long time, ***the characteristics of natural science linked to the precautionary principle continue to create challenges for predictable and smooth administrative procedures.*** In addition, the judgments by EU and national courts continue to evolve interpretation and sometimes also national legislation. Most recently, national legislation was amended to define more precisely the measures by which forest management is not considered prohibited under the Birds Directive.

Nature protection requirements also arise from several other pieces of legislation. The requirements related to the status of water bodies under the Water Framework Directive require consideration of aquatic habitat types and aquatic species. The preparation of the implementation of the Nature Restoration Regulation is currently at an active stage, and national restoration plan and related

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legislation will also affect the energy sector. In addition to the habitats and species protected under the Birds and Habitats Directives, Finland has various nationally protected areas and species. Overall, the legislative framework creates an unpredictable operating environment for project developers.

The coherence of legislation and targets should be improved

Green transition projects, in particular renewable energy generation and energy transmission and distribution infrastructure, are essential from the perspective of EU and Finnish climate, competitiveness and industrial policy as well as security of supply and resilience. ***The Birds and Habitats Directives should consistently take into account the need to enable projects of strategic importance or overriding public interest.*** A cross-cutting principle should be that ***those projects can be carried out on the basis of an overall assessment, without the need for burdensome derogation procedures.***

Recent EU legislation and legislative proposals have, to some extent, recognised the strict requirements arising from the Birds and Habitats Directives and have sought to facilitate the implementation of certain projects. The Renewable Energy Directive already includes important exemption. The broader exemption is proposed by the Environmental Omnibus initiative. While these developments are welcome, ***Finnish Energy emphasises that the necessary changes should be set directly into the Birds and Habitats Directives*** in order to ensure the clarity and coherence of the legislative framework.

The nature of scientific knowledge and the uncertainty related to it must be accepted

A key challenge is that scientific knowledge on habitats and protected species is often incomplete and may change over time. The effects of climate change, noise or other disturbance, and changing conditions such as hydrological changes are often difficult to assess accurately. Assessing impacts on mobile species involves significant challenges. So it is not possible to produce absolute scientific certainty regarding the impacts of a project, particularly at the planning stage. In practice, uncertainty is often interpreted against the project. ***The application of the precautionary principle should therefore remain proportionate and reasonable.***

The scope and depth of the assessments required from project developers should be clarified. It should be clear that the responsibility of project developers is limited to assessing the impacts of their activities, and that they cannot be expected to carry out basic scientific research on habitats or species.

The prohibition of deterioration concerning Natura 2000 sites must be reasonable

From the project developer's perspective, Natura sites create uncertainty at several phases. The screening threshold, the conduct of an appropriate assessment and the conditions for project approval/derogation all involve complex scientific and legal questions.

The threshold for the "likely to have a significant effect" criterion is low and open to interpretation. Both likelihood and significance have been interpreted through the precautionary principle. This easily leads to an obligation to carry out an assessment and create a need for

derogation. The need to consider indirect and cumulative effects also makes the rules apply more easily. For Natura sites, the assessments should be carried out in relation to all conservation objectives of the site. A single Natura 2000 site may have several conservation objectives, both habitats and species. ***The assessment and permitting requirements should be made lighter. As noted above, they should allow for reasonable uncertainty and focus on matters that are relevant beyond the localized or point-specific occurrence. It should be clarified that deterioration of nature values may be allowed where, on the basis of an overall risk-based assessment, the deterioration does not have a significant impact on the objectives of the Directive.***

An animal species that moves over a large area may also be one of the conservation objectives of a Natura 2000 site. For these species, it is unclear and unpredictable how their presence affects projects outside Natura 2000 sites. In most cases, project developers are willing and able to avoid Natura sites, but ***the possibilities for carrying out projects outside Natura areas should be made clearer.***

Designation of Natura 2000 sites and their conservation objectives must follow updated and confirmed data

The designation of sites (SCI/SAC and SPA) and the setting of conservation objectives determine how the obligations under the Directives apply. ***The criteria for defining these sites and objectives should be clearer than they are at present. The presence of species in the area should be confirmed over a sufficiently long period of time.*** The development of each site should be monitored and, where necessary, it should be possible to amend the conservation objectives through a smooth procedure. Sites based on insufficient or outdated information may lead to requirements that are not relevant or are not cost-efficient. For example, a species that constitutes a conservation objective may have disappeared completely from the site before the planned project.

Species protection must focus on population level

Strict species protection is disproportionate and cost-inefficient for most species. It creates a very heavy administrative burden for project development through assessment and derogation procedures. In species protection, ***the focus should be on the population level rather than on individual specimens.*** The possibility for species to avoid a project area should also be taken into account.

The strict prohibitions concerning the deliberate killing and disturbance of species and the deterioration of breeding sites and resting places may, if interpreted literally, prevent almost any activity in natural areas. In particular, ***activities related to renewable energy generation, as well as investments in and maintenance of energy transmission and distribution infrastructure, should be regarded as not involving deliberate harmful effects.*** This is particularly important in the maintenance situations described below.

In some activities or structures, habitats for species covered by the Directives may emerge either intentionally or unintentionally. At present, the Directives protect these new habitats and breeding sites in the same way as natural areas. Protection in such sites often creates delays or even obstacles for necessary actions. The Directives do not currently encourage operators to create new habitats, as they may fear that such habitats would become subject to permanent strict protection. ***Even***

temporary habitats in close vicinity to human activities can be valuable. The Directives should recognise this and facilitate the creation of new habitats without imposing strict protection requirements on them.

Planned maintenance activities and exceptional or sudden circumstances

The maintenance of energy transmission and distribution networks requires vegetation management in line corridors. For electricity networks, this is necessary for safety and security of supply. Vegetation along lines must be managed both as part of planned maintenance and to repair damage after exceptional situations, such as storms or heavy snow loads. Seasonal restrictions also have greater consequences in northern regions with shorter working seasons. ***The Directives should allow such activities to be carried out without conflicting with the Directives.***

Updating species lists and improving access to data

The process for amending species lists, or moving species from one annex to another, should be made more flexible. More responsive mechanisms would help ensure that the Directives reflect current knowledge on species status and conservation needs.

For project developers, it is essential that species data are up to date and accessible. Public results of surveys carried out by different operators should also be easily available and usable, as this would support better planning, reduce duplication of work and improve the quality of assessments.

Yours sincerely,

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