



Better, faster, stronger

Critical raw materials and the EU’s proposal for a Regulation on speeding-up environmental assessments: risks, gaps and recommendations

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Recommendations for faster and better environmental assessments

1. Delete Article 14 and the entire Annex.

The toolbox's provisions would create more permit fragility than certainty. "Strategic" designations should not create shortcuts around environmental law. The ENVI committee rapporteur's most important proposal, the **deletion of Article 14 and the toolbox, is the right approach**.

2. Fix Article 5 and require cumulative impact assessment for project changes.

The Commission's text and the proposed amendments risk creating loopholes for project modifications and extensions. The proposed test, requiring screening only for major works with risks "similar to or greater than the original project", should be removed and replaced with the current EIA Directive standard: "**whether the change is likely to have significant effects on the environment**". Screening for project changes must also explicitly assess cumulative effects. This is already required by CJEU case law and must be stated explicitly in the Regulation.

3. Restore Article 12 as a binding obligation on authority capacity.

The 2024 Draghi report on European competitiveness identified administrative capacity as a primary dimension of permit-granting delaysⁱ. The proposal in the ENVI committee draft report to move Article 12 from an operative provision to a recital weakens one of the proposal's few useful elements. **Article 12 should remain legally binding and be strengthened** with reporting on staffing levels, expertise, procedural durations and capacity gaps. EU financing instruments should explicitly support the administrative capacity, digital tools and expert resources needed for high-quality assessments.

4. Delete Article 6 on substantive preclusion.

The Article 6 should be deleted as it would allow Member States to prevent people and NGOs from raising arguments in court if they were not first raised during the administrative procedure. This is presented as a way to reduce litigation costs and delays, but it could block legal challenges to unlawful projects, even where environmental impacts were not fully understood, information was incomplete, or the project changed during the permitting process. Similar preclusion rules have already been found incompatible with EU access-to-justice requirements and the Aarhus Convention. They are especially problematic when combined with shortened assessment deadlines, which makes it harder for the public to identify all legal and technical issues in time. Faster permitting should come from better decisions and better-resourced courts and authorities. Evidence shows that the absence of substantive preclusion is not being abused by environmental associations to bypass public participation. Instead, environmental litigation helps correct enforcement deficits and improve decision-makingⁱⁱ.

5. Delete Article 8 on species protection.

Article 8 of the proposed Regulation attempts to declare incidental harm to protected species "not deliberate" under the Habitats and Birds Directives, without amending those Directives, which is legally incoherent, where mitigation measures and best available techniques have been considered. EU nature law should remain preventive, and this would simply lower the level of protection for wildlife and normalise avoidable harm.

ⁱ Mario Draghi, *The future of European competitiveness. Part A: A competitiveness strategy for Europe*, European Commission, September 2024, p. 45, p. 50.

ⁱⁱ M. Zschiesche et al., "Wissenschaftliche Unterstützung des Rechtsschutzes in Umweltangelegenheiten in der 20. Legislaturperiode," *Umweltbundesamt*, 2025, Section 3.6 "Zusammenfassung der Ergebnisse", p. 100. <https://doi.org/10.60810/openumwelt-7781>

6. Raise the quality of applications before procedural deadlines start.

Faster procedures will not work if authorities receive incomplete or poor-quality files, one of the leading causes of delays according to the Commission's own evidence base. The Commission's proposal to impose uniform EU-wide maximum timelines in Article 7 does not account for the variation in project complexity, ecological sensitivity and administrative capacity across Member States. **The rapporteur's alternative that competent authorities communicate a project-specific timeline at the outset of scoping, calibrated against national standards from similar projects is a more workable approach. We support this direction.**

The rapporteur's draft deletes the completeness acknowledgment step in Article 7(1)(d) without replacing it with a binding mechanism. That step is where a clock-stop mechanism should sit: procedural timelines should only begin or resume once the developer has submitted a complete application, supported by adequate baseline data, alternatives analysis and mitigation information. The competent authority should issue a single comprehensive list of information gaps and suspend the clock until the developer responds. This would reduce iterative exchanges and give developers a clear incentive to invest in quality from the outset.

7. Invest in shared environmental baseline data.

A recurring source of delay in EIA preparation is the need to gather baseline environmental information on species, habitats, groundwater and soil conditions where existing public data are fragmented, inaccessible or not interoperable. The Commission's proposal already moves in the right direction: Article 10(3) establishes a central digital portal for environmental assessment data, and Article 10(4) requires full digitalisation and cross-border data sharing. The rapporteur's draft report strengthens this further by adding a requirement for interoperable APIs between national authorities, across Member State borders and with developers (**AM25, new Article 10(2a)**), and by empowering the Commission to adopt delegated acts on minimum technical data standards (**AM26, new Article 10(2b)**). **These amendments should be retained and strengthened** by requiring alignment with the INSPIRE Directive's core objectives and the wider EU data framework, including open data, high-value datasets, and machine-readable formats. Good data infrastructure can speed up assessments without lowering standards.

Introduction

The European Union needs to reduce pressure on critical raw materials demand while addressing supply risks. Demand reduction, material efficiency, reuse, repair, recovery and recycling must remain central to this strategy. But new mining and processing projects are also part of the picture, and they need functioning, predictable permitting systems.

This position paper looks at the European Commission's new proposal for a Regulation on speeding-up environmental assessmentsⁱⁱⁱ, published in December 2025. Will the proposed measures actually produce faster, more certain outcomes that investors need? Or will they create legal vulnerabilities that harm the environment while generating the opposite of what they promise? A recent investigation into the Commission's Strategic Projects selection process makes these questions even sharper^{iv}.

Critical raw materials: high stakes, high risks

Critical raw materials are one of the clearest examples of why faster environmental assessments must not mean weaker ones. The EU does need to reduce supply risks and diversify access to raw materials, but mining projects are among the most environmentally complex industrial activities to assess. It is precisely the kind of high-impact sector where strong environmental assessments are a fundamental risk-management tool.

Large-scale hard rock mining involves the removal of enormous volumes of material over decades, significant water use, and social and land-use conflicts with nearby communities. It can generate acid mine drainage that contaminates groundwater and surface water long after a mine closes. Mining operations typically require tailings facilities whose structural integrity is a long-term operational responsibility. When these structures fail, they have produced some of the worst environmental catastrophes in European history: the Los Frailes tailings dam collapse at the Aznalcóllar mine in southern Spain in 1998, which released toxic waste across 4 600 hectares threatening the Doñana National Park; or the failure of a tailings facility at the Baia Mare gold mine in Romania in 2000, which contaminated drinking water for over two million people across multiple countries and killed virtually all wildlife in the Tisza river. In Baia Mare's case, a subsequent task force concluded that permitting failures contributed to the accident, including a flawed original EIA, failure to assess water-balance risks, unclear responsibility for safety, and inadequate monitoring requirements^v. It is widely described as the worst environmental disaster and industrial accident in Europe since Chernobyl. These disasters were distributed failures across the full regulatory chain. Environmental assessment is one link in that chain and compressing it does not make underlying risks disappear; it simply makes them harder to identify before they materialise.

More than half of the EU's formally designated strategic projects lie within one kilometre of Natura 2000 protected areas, with eleven overlapping directly, according to a February 2026 investigation^{vi}. The

ⁱⁱⁱ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on speeding-up environmental assessments*, COM(2025) 984 final, 2025/0391(COD), 10 December 2025.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0984>

^{iv} "Critical raw materials: Doubts raised about the EU's project selection", *Table.Briefings / Europe.Table*, 13 May 2026. <https://table.media/en/europe/professional-briefing/1190-critical-raw-materials-projects-ets-reform-more-lng-from-the-us>

^v International Task Force for Assessing the Baia Mare Accident, *Report of the International Task Force for Assessing the Baia Mare Accident*, December 2000, section 1.4.4 "Regulatory oversight" and section 1.4.5 "Conclusion", available at:

https://www.fint.awsassets.panda.org/downloads/baia_mare_task_force_report_2000.pdf. The Task Force found that there were "grave reservations over the adequacy of the permitting procedures" and concluded that the accident was caused, inter alia, by "the acceptance of [an inappropriate tailings management facility] design by the permitting authorities".

^{vi} "Rush for critical minerals tests Europe's resolve to protect nature", *Climate Home News*, 24 February 2026. <https://www.climatechangenews.com/2026/02/24/rush-for-critical-minerals-tests-europes-resolve-to-protect-nature/>

same investigation found that in Spain, Italy and Germany, 40% of all mineral exploration or extraction permits partially overlap Natura 2000 sites. These are the core of the EU's domestic critical raw materials strategy. Given the specific sensitivities involved, they are exactly where a thorough environmental assessment is most needed.

Environmental assessments: what they are and what slows them down

Environmental assessments are procedures carried out before a project, a plan, or a programme, is authorised, ensuring that its environmental effects are properly identified, assessed and taken into account in the final permitting decision.

Projects likely to have significant environmental effects must first undergo a screening procedure, where the competent authority determines whether a full environmental assessment is required (mandatory for certain large projects, decided case-by-case for others). If an assessment is required, the authority may carry out a scoping stage, defining the scope and level of detail of the environmental information that must be included in the environmental impact report, including which impacts, alternatives and mitigation measures must be analysed. The public must also be informed early and given effective opportunities to participate, and the results of those consultations must be taken into account.

In practice, EIAs often function mainly as disclosure instruments: they identify and present environmental impacts, without always driving a genuine comparison between different project designs or lower-impact options. This is why alternatives analysis matters. When properly used, it can help identify lower-carbon and lower-impact solutions, reduce long-term environmental liabilities, improve project design, before a final decision is adopted.

Specific obligations also arise from EU biodiversity and water law. Under the Habitats Directive, any project affecting a Natura 2000 site must demonstrate it will not harm the site's integrity. If it does cause harm, it can only proceed in exceptional circumstances: no alternatives exist, and there are imperative reasons for overriding public interest. The European Commission's guidance on the Directive states that this determination must be made case by case^{vii}; it cannot be pre-empted by a legislative label. The Water Framework Directive prohibits deterioration of water bodies unless strict derogation conditions are met.

These are core elements of environmental governance and risk management, not just administrative procedures. They are the mechanism by which risks are identified before they become environmental damage, reducing harm, improving project design, creating structured space for dialogue between developers, authorities and affected communities, and lowering the long-term legal and financial risk of the project itself.

The proposed Regulation is built on a specific diagnosis: that environmental assessment procedures are too slow, and that this slowness is itself the problem. The Commission's own 2024 EIA Implementation study reached more helpful conclusions. The study identified the primary causes of delay in procedures: *"The lack of expertise, staff, and/or resources were the most common reasons for delays, followed by the lack of quality of documentation, consultation practices and difficulties, consequences of the COVID-*

^{vii} European Commission, *Assessment of plans and projects in relation to Natura 2000 - Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*, Commission Notice (2021/C 437/01), section 3.3.2 "Examining imperative reasons of overriding public interest".

19 pandemic, and the quality of reporting”^{viii}. The substantive requirements of the EIA, Habitats, or Water Framework Directives are not identified as main causes of delay.

As discussed below, rather than addressing these structural causes, the proposed Regulation primarily seeks to compress procedural timelines. International experience suggests this approach has been tried before and has not worked. A recent study examining 50 years of mining impact assessments in Canada found no statistically significant improvement in assessment timelines under the streamlined 2012 law designed to accelerate procedures, compared to the earlier law it replaced^{ix}. The goal of faster assessments was not achieved. Instead, fragmented oversight, poor data transparency and weakened coordination contributed to delays, legal challenges and persistent conflicts. Several projects rushed through the process were later overturned by courts due to inadequate Indigenous Peoples consultation. Others, including Canada’s largest approved metal mine, remain undeveloped more than a decade after approval, because of financing and market conditions, not because of environmental rules.

Legal analysis of the Critical Raw Materials Act also highlighted that strict deadlines for scoping and permit review risk lowering the quality of environmental assessments, increasing investor uncertainty and increasing litigation^x. And if key issues are missed due to time pressure, courts may later annul permits, leading to the most time-consuming delay of all: restarting the procedure after years of litigation.

What are the changes in the proposed Regulation?

The Regulation introduces **several problematic or insufficient measures**:

- **Binding EU-wide deadlines** for every stage of the process: 60 days for screening, 30 days for scoping, between 30 and 90 days for public consultation, 90 days for the final reasoned conclusion. (Article 7)
- A **loosened trigger for project changes**: extensions or modifications to existing projects would only require a full assessment if they involve "major works with risks similar to or greater than the original project." There is no explicit requirement to assess cumulative effects over the lifetime of the operation. (Article 5)
- **Restricted access to justice**: Member States could prevent arguments from being raised in court if they were not first raised during the administrative permitting stage. Similar preclusion rules have been tried before at national level and the CJEU found them incompatible with the Environmental Impact Assessment (EIA) Directive and the Aarhus Convention^{xi}. (Article 6)
- A **reinterpretation of species protection**: incidental killing of protected birds and other species is declared "not deliberate" under the Habitats and Birds Directives if mitigation measures are applied and best available techniques considered. This conflicts with the established interpretation of those Directives, which treat species protection as preventive in nature^{xii}. (Article 8)

^{viii} Collection of information and data on the implementation of the revised Environmental Impact Assessment (EIA) Directive (2011/92/EU) as amended by 2014/52/EU: Final report, European Commission, DG Environment, Publications Office of the European Union, 2024, p. 26. Available at: [2024_Implementation_of_the_revised_EIA_Directive_\(2011-92-EU\)_amended_by_2014-52-EU.pdf](#)

^{ix} Westwood et al., "Unearthing trends in environmental impact assessments for mines and quarries across Canada", *FACETS*, 2025, 10: 1-22. <https://doi.org/10.1139/facets-2025-0114>

^x Pölönen, I., "How to avoid missteps of accelerated EIA and permitting? – Reflections on the proposal for the EU’s Critical Raw Material Act", *The Center for Climate Change, Energy and Environmental Law*, 11 October 2023. [How to avoid missteps of accelerated EIA and permitting? – Reflections on the proposal for the EU’s Critical Raw Material Act - The Center for Climate Change, Energy and Environmental Law](#)

^{xi} CJEU, C-137/14, *Commission v Germany*, and CJEU, C-826/18, *LB and Others v College van burgemeester en wethouders van de gemeente Echt-Susteren*.

^{xii} CJEU, C-383/09, *Commission v France*

- A **“toolbox for strategic sectors or categories”**: projects designated as strategic under the Critical Raw Materials Act or future sectoral legislation can be presumed to be of overriding public interest under biodiversity and water law, benefit from tacit approval when authorities miss deadlines, and have their court cases handled on an expedited basis. (Article 14 and Annex)

The European Parliament's ENVI committee rapporteur's draft report was published on 22 May 2026^{xiii}. Its most significant proposal is the deletion of Article 14 and the entire Annex, removing the toolbox. The arguments against its provisions are strong, and their removal must be defended. However, the draft leaves important gaps and other elements could be strengthened to make environmental assessments genuinely faster and better.

The weakness behind the “strategic” label

The first CRMA strategic projects selection raises serious questions about how robust the “strategic” label really is. In our feedback on the CRMA Strategic Project application template^{xiv}, we already warned that the designation gives projects access to fast-tracking and therefore must be based on strong safeguards, transparency and verification^{xv}. Yet the template in the proposal was overly generic, risking Strategic Projects being recognised without demonstrating high sustainability performance or alignment with EU requirements on environmental protection. It relied heavily on self-declared information from project promoters, with limited verification, vague environmental questions, and no clear requirement for quantitative data, or public disclosure of supporting documentation.

Those concerns now look even more serious. According to a May 2026 investigation, eleven projects added to the final 2025 list, including controversial lithium projects such as Barroso in Portugal and Jadar in Serbia, had reportedly failed expert assessments only two weeks earlier, before being included after Member State consultations in the Critical Raw Materials Board^{xvi}. The Commission has refused access to key documents and expert opinions, despite legal challenges and transparency requests. Now, if strategic status can be granted through an opaque process that doesn't reflect experts' assessments, and that status then facilitates justification for overriding public interest, tacit approvals and expedited litigation, the label stops being a quality filter based on thorough technical assessment and becomes a procedural shortcut based on political influence.

Given all the benefits of the “strategic” label, the projects should be exemplary and held to a higher standard. The opacity surrounding the process and these revelations raises doubts as to whether that standard can currently be met.

^{xiii} European Parliament, ENVI Committee, “Draft report on speeding-up environmental assessments” rapporteur Emma Wiesner, 22 May 2026. Available at: https://www.europarl.europa.eu/doceo/document/ENVI-PR-788874_EN.pdf

^{xiv} European Commission, *Critical Raw Materials Act – Commission Implementing Act establishing a strategic project application template*, Have Your Say initiative, July-August 2025. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14719-Critical-Raw-Materials-Act-Commission-Implementing-Act-establishing-a-strategic-project-application-template_en

^{xv} ECOS, Feedback on European Commission initiative *Critical Raw Materials Act – Commission Implementing Act establishing a strategic project application template*, 4 August 2025. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14719-Critical-Raw-Materials-Act-Commission-Implementing-Act-establishing-a-strategic-project-application-template/F3588804_en

^{xvi} “Critical raw materials: Doubts raised about the EU's project selection”, *Table.Briefings / Europe.Table*, 13 May 2026. <https://table.media/en/europe/professional-briefing/1190-critical-raw-materials-projects-ets-reform-more-lng-from-the-us>

Beyond critical raw materials: a precedent for everything labelled “strategic”

The toolbox provisions (overriding public interest presumption, tacit approval, expedited litigation) in the Annex of the European Commission's proposal apply wherever existing or future EU sectoral legislation designates sectors or categories of projects as strategic. The Commission's explanatory memorandum already lists potential beneficiaries, such as airports and data centres. The principle being embedded here is that a political priority label reduces the standard of environmental scrutiny. Once established, it is available to any sector with sufficient political weight to secure a "strategic" designation. This leads to a very large and expanding category of projects. The CRMA selection controversy described above is a dangerous precedent for how that designation power will be exercised.

The ENVI committee draft report's proposal to delete Article 14 and the Annex is the right approach: the Regulation should not create a horizontal shortcut based on vague and politically charged labels.

The loophole for project changes: phased expansion and cumulative effects

Another consequential provision is Article 5, on when changes and extensions to existing projects require an EIA. Under the proposal, such changes only trigger a full assessment if they involve "major works with risks similar to or greater than the original project", with no requirement to assess cumulative impacts. This is a much higher bar than under the current EIA Directive, where changes or extensions to Annex I or Annex II projects must be screened where they may have significant adverse effects on the environment, and a full assessment follows where likely significant effects are identified. Moving the test from whether a modification may have significant environmental impacts to whether it is at least comparable in risk to the original project is a poorly adapted threshold. The proposed test should be removed and replaced with the current EIA Directive standard: "whether the change is likely to have significant effects on the environment".

Phased mine expansion is standard industry practice: a pit dug deeper, a facility extended, a tailings pond enlarged. Each individual change might fall below the threshold for a full assessment. The CJEU has also repeatedly required authorities to assess cumulative effects in the EIA context and warned that the objectives of the EIA Directive cannot be circumvented through the splitting of projects^{xvii}. Article 5 creates a structural risk that cumulative effects will be overlooked by facilitating the fragmentation of assessments for project modifications and extensions, but also that significant individual impacts from successive modifications may never receive a full assessment in the first place. For extractive projects near protected areas, operated across decades, this is a gap that would predictably be exploited through the normal logic of phased development.

The ENVI committee's draft report does not fix this gap. On the contrary, its amendment to Article 5 expands the examples of categories of project changes that bypass full EIA, adding modifications made for "emissions reduction, energy and resource efficiency or environmental performance" alongside the Commission's existing "decarbonisation" category. A mine could expand its capacity under the label of energy efficiency, or enlarge a tailings pond under environmental performance, without triggering a full assessment. For extractive projects in or near Natura 2000 sites, the costs of getting this wrong are not recoverable.

^{xvii} CJEU, C-2/07, *Paul Abraham and Others v Région wallonne and Others*