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Regulatory Laundering: How Sectoral Re-baselining Circumvents the EIA Directive and Why the CJEU Cannot Fix It Alone

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Abstract

The article introduces „Regulatory Laundering" to expose a structural vulnerability within the EU's Environmental Impact Assessment (EIA) Directive. Because the Directive ties its screening mechanisms to the definition of a "project", a concept inherently requiring physical construction, post-consent operational modifications systematically evade environmental scrutiny. Using the aviation sector (Dublin and Schiphol airports) to illustrate this cross-sectoral loophole, the analysis shows how unassessed operational expansions are normalized through parallel sectoral frameworks that redefine the environmental baseline. This launders non-compliance into formal compliance, renders original development conditions unenforceable, and creates friction with the participatory guarantees of the UNECE Aarhus Convention. Highlighting the limits of teleological interpretation by the Court of Justice, the paper advocates a legislative realignment: the screening obligations under Article 4 must be triggered by any formal administrative or legislative act of re-baselining that materially alters assessed environmental conditions and risks significant adverse effects, independent of concurrent physical works.

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Regulatory Laundering: How Sectoral Re-baselining Circumvents the EIA Directive and Why the CJEU Cannot Fix It Alone

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1 Introduction

The EIA Directive[1] constitutes the cornerstone of the EU's environmental prevention system. Its overarching objective is to ensure that projects likely to have significant effects on the environment are subject to a requirement for development consent and a prior assessment of those effects[2]. Initially adopted in 1985[3], the EIA Directive emerged as a response to the growing awareness that environmental policy needed to address transsectoral challenges rather than merely regulating specific hazardous substances[4]. While the EIA Directive is predominantly procedural and does not dictate a definitive environmental outcome or strictly prohibit projects liable to have negative effects, it retains essential substantive elements. Fundamentally, it is structured to protect critical environmental factors, most notably population and human health[5]. To operationalize this protection, it obliges Member States to ensure that the final development consent incorporates binding environmental conditions, as well as measures to mitigate and monitor significant adverse impacts[6]. Despite this largely procedural architecture, the EIA regime remains the main vehicle for implementing the public participation rights guaranteed by the UNECE Aarhus Convention[7] during the development control stage[8].

Although it currently operates in a codified form[9], the EIA Directive's underlying architecture remains firmly anchored to the concept of a „project", strictly defined as the execution of "construction works or of other installations or schemes, other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources". This conceptual gateway exclusively governs the initiation of the EIA procedure. Despite the fundamental revision of the EIA Directive in 2014[10], this static procedural architecture increasingly fails to capture the dynamic, post-decisional reality of complex infrastructure operations. By conditioning the preventive regime on physical interventions, the system has become structurally blind to purely operational expansions. Such expansions drastically impact the environment without requiring new construction works, thereby creating a loophole that enables the evasion of the environmental conditions attached to the initial development consent.

This article identifies and defines this systemic legal challenge as "Regulatory Laundering"[11]. It is a process whereby material post-consent operational changes, unassessed under the EIA Directive, are normalised through parallel sectoral frameworks (such as noise management plans, emissions permitting, or navigational procedure updates). This effectively redefines the environmental baseline and undermines or eliminates the enforceability of the original development consent and its attached conditions. It converts what should be a strict compliance obligation into an unassessed operational gain: non-compliance is laundered via parallel sectoral frameworks into formal compliance. Operationally, Regulatory Laundering unfolds through a distinct four-step sequence:

1. Assess: The developer obtains development consent following an environmental impact assessment that establishes strict environmental conditions for specific operational parameters.
2. Breach: Operations undergo material post-consent changes or extensions, deliberately circumventing the screening obligations under Article 4 of the EIA Directive.
3. Launder: Parallel sectoral administrative procedures adopt the altered operations as the new environmental baseline, effectively erasing

1 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1–21), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ L 124, 25.4.2014, p. 1–18)("EIA Directive").

2 Article 2(1) EIA Directive.

3 Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40–48).

4 Langlet and Mahmoudi, 2016, p. 151.

5 Article 3(1)(a) EIA Directive.

6 Langlet and Mahmoudi, 2016, pp. 158, 165.

7 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted in Aarhus, Denmark in 1998 ("Aarhus Convention").

8 Jendrośka, 2014, p. 128.

9 The original framework was established by Council Directive 85/337/EEC, which was subsequently amended by Council Directive 97/11/EC, Directive 2003/35/EC, and Directive 2009/31/EC, before being codified by Directive 2011/92/EU.

10 See more, e.g., Arabadjieva, 2016, pp. 159-168; and Pölönen et al., 2019, pp. 88-91.

11 The terms Regulatory Laundering and the mechanism names used in this article (Metric Capture, Metric Erasure, Legislative Laundering, and the others) follow the author's taxonomy: G. O'Brien, Regulatory Laundering: A Taxonomy of Mechanisms (Version 1.0, 2026), Zenodo, https://doi.org/10.5281/zenodo.20665084.

the metrics necessary to measure divergence from the originally assessed impacts.

4. Reset: The environmental conditions attached to the initial development consent are rendered completely unenforceable. The unassessed operational expansion is thus legally sanitized into formal compliance.

The objective of this article is to diagnose Regulatory Laundering as a structural loophole specifically within the EIA Directive. The mechanics of this circumvention will be demonstrated through concrete examples, with a particular focus on the ongoing Regulatory Laundering at Dublin Airport. Recent developments in the Court of Justice of the European Union (CJEU) jurisprudence reveal the Court's persistent efforts to rectify various implementation deficiencies across Member States, including combating the splitting of projects and enforcing rigorous screening requirements. However, the findings demonstrate that the post-consent nature of Regulatory Laundering evades even the most teleological judicial interpretation. In the contemporary infrastructural context, it is often sophisticated operational modifications rather than the initial physical execution of works that generate the most severe adverse effects on the environment and local populations. Ultimately, this limitation provokes a necessary debate not on a wholesale revision of the EIA Directive, but rather on strengthening post-consent enforceability to ensure that purely operational changes carrying significant negative environmental consequences do not escape assessment.

2 The Scope of the EIA Directive: The "Physical Works" Prerequisite and Systemic Misalignments

The legal architecture governing modifications to existing activities reveals a critical systemic misalignment within the European environmental *acquis*. Under the EIA Directive, the assessment of changes or extensions is regulated primarily by Article 4, read in conjunction with the annexes. Specifically, mandatory assessment applies to modifications meeting the thresholds in Annex I, point 24, while a screening. process is required for changes that may have significant adverse effects under Annex II, point 13(a).

However, the application of these provisions is strictly tethered to the definition of a „project". The Court of Justice of the European Union (CJEU) has consistently held that the existence of works or physical interventions is an absolute prerequisite for an activity to qualify as a project[12]. Consequently, bringing a change or extension within the scope of the EIA Directive inherently pre-supposes the existence of alterations to the physical aspects of the original project - a doctrine formally echoed in the European Commission's interpretative notice[13].

This physical prerequisite creates an internal friction with the Aarhus Convention, which forms an integral part of the EU legal order and adopts a more dynamic approach to operational modifications. Article 6(10) of the Aarhus Convention mandates that when a public authority reconsiders or updates the operating conditions for an activity, public participation provisions apply *mutatis mutandis*. Although Directive 2003/35/EC[14] aimed to align EU law with the Aarhus Convention, the structural limitation of the „project" definition remained untouched. As noted in the doctrine, while Annex I, point 22 of the Convention triggers obligations based on physical changes paralleling the EIA Directive, Article 6(10) is activated by subsequent administrative procedures, such as the renewal of environmental licenses, irrespective of physical alterations[15]. Consequently, conditioning environmental scrutiny solely on physical works directly conflicts with Article 6(10) of the Aarhus Convention. This systemic gap demonstrates an insufficient transposition of the Convention into the EIA framework, effectively depriving the public of its right to participate in decisions regarding the renewal or update of existing activities.[16]

The tension between the broad objective of environmental protection and the strict definitional constraints of the EIA Directive has been vividly illustrated through the trajectory of the CJEU jurisprudence. Initially, the Court adopted a teleological approach. In the *Kraaijeveld* case, the CJEU established that the wording of the EIA Directive indicates a wide scope and a broad purpose[17].This purposive interpretation was subsequently applied to modifications of operational parameters, but strictly within the context of concurrent infrastructure works. In the *Abraham* case, which concerned the modification of an existing airport's infrastructure, the CJEU ruled that an environmental impact assessment must encompass not only the direct effects of the works themselves but also the environmental impact liable to result from the

12 CJEU, 2011, Brussels Hoofdstedelijk Gewest and Others v Vlaams Gewest, Case C-275/09, ECLI:EU:C:2011:154, para 24.

13 Commission Notice, 2021, p. 5.

14 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17–25).

15 Jendrośka, 2014, p. 136.

16 Jendrośka, 2014, p. 138.

17 CJEU, 1996, Aannemersbedrijf P. K. Kraaijeveld BV and Others v Gedeputeerde Staten van Zuid-Holland, Case C-72/95, ECLI:EU:C:1996:404, para 31.

use and exploitation of the end product, including an increase in air traffic and noise[18]. However, the inclusion of these operational effects remained contingent upon the physical modification of the existing infrastructure[19].

The strict limitation of the EIA Directive's scope became fully apparent in the *Brussels Airport* case. Faced with a pure renewal of an existing permit to operate an airport without any accompanying construction works, the CJEU concluded that such renewal cannot be classified as a „project" under Article 1(2)(a) of the EIA Directive[20]. By demanding physical alterations, pure operational changes, including severe operational intensifications, remain structurally shielded from EIA requirements under this interpretation. The underlying premise of this jurisprudence has been a subject of institutional critique. Notably, during direct dialogues with the Aarhus Convention Compliance Committee (ACCC), representatives of the CJEU explicitly acknowledged that rulings such as *Brussels Airport* had overlooked the requirements of Article 6(10) of the Aarhus Convention.[21]

This systemic misalignment was prominently exposed in the *Doel* nuclear power plant case. In her Opinion, Advocate General Kokott systematically contrasted the EIA Directive's limitations with the broader concepts of "proposed activity" under the UNECE Espoo Convention[22] and "change or extension of activities" under the Aarhus Convention[23]. She emphasized that temporal or operational extensions inherently carry environmental risks, such as the increased probability of severe accidents and radioactive waste generation, regardless of whether physical construction is involved[24]. Acknowledging this friction, AG Kokott explicitly proposed a departure from the strict interpretation cemented in *Brussels Airport* case, advocating that the definition of a „project" should encompass pure temporal or operational extensions as "other interventions in the natural surroundings"[25]

Ultimately, the CJEU in *Doel* refrained from completely abandoning its physical intervention doctrine. Instead, the Court inextricably linked the statutory ten-year extension of the operational lifetime to a €700 million investment plan for safety upgrades, concluding that the operational measures and the physical upgrading works together constitute a single project[26].

This jurisprudential evolution exposes a distinct structural division between the procedural gateway of the EIA Directive and its substantive application. While the mechanism for triggering a new or revised assessment remains rigidly bound to physical interventions under Article 1(2)(a), Article 3(1) delineates the material scope of the assessment. It mandates the evaluation of direct and indirect significant effects on a comprehensive set of environmental factors, among which population and human health hold particular relevance for the operational modifications analysed in the subsequent case studies. A profound structural dissonance arises when substantial operational alterations modify the actual environmental baseline and directly impact these exact factors without executing the physical works necessary to activate the procedural gateway. This architectural configuration provides the conceptual foundation for the phenomenon of Regulatory Laundering.

3 Materializing the Regulatory Gap: The Aviation Sector as a Case Study

Building upon the jurisprudential framework established in the preceding chapters, this section demonstrates how the physical intervention prerequisite operates in practice. While the civil aviation sector provides a particularly transparent illustration, it must be noted that regulatory laundering occurs across various other sectors, including heavy industry and energy extraction. The tension between fixed terrestrial infrastructure and exponentially growing operational volumes exposes a distinct regulatory gap. The following analysis evaluates two manifestations of this circumvention mechanism: the divergence from established planning baselines at Dublin Airport and the technological baseline absorption at Schiphol Airport.

3.1 Dublin Airport: Route Reconfigurations and the Erosion of the Environmental Baseline

The operational reality at Dublin Airport illustrates a systemic conflict between environmental planning constraints and sectoral aviation regulations. The environmental baseline for the airport's expansion was established during the initial assessment phase in 2007, when the competent authority granted development consent based on an Environmental Impact Statement (EIS) - the statutory predecessor to

18 CJEU, 2008, Paul Abraham and Others v Région wallonne and Others, Case C-2/07, ECLI:EU:C:2008:133, para 43.

19 CJEU, 2008, Paul Abraham and Others v Région wallonne and Others, Case C-2/07, ECLI:EU:C:2008:133, para 40.

20 CJEU, 2011, Brussels Hoofdstedelijk Gewest and Others v Vlaams Gewest, Case C-275/09, ECLI:EU:C:2011:154, para 24.

21 Jendrośka and Bar, 2015, pp. 78-80.

22 Convention on Environmental Impact Assessment in a Transboundary Context, adopted in Espoo, Finland, in 1991 ("Espoo Convention").

23 AG Kokott, 2018, paras 75, 100-101.

24 AG Kokott, 2018, para 86.

25 AG Kokott, 2018, paras 106, 111.

26 CJEU, 2019, Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres, Case C-411/17, ECLI:EU:C:2019:622, paras 64 and 71.

the contemporary EIA report[27]. The environmental assessment underpinning that consent assumed straight-ahead departure routes[28]. Also in 2007, separate consent for Terminal 2 imposed a capacity cap of 32 million passengers per annum on the airport.[29]

However, following the opening of the North Runway in 2022, a material breach of these conditions occurred as departure flight paths were significantly reconfigured. Since 2023, operations have utilized 30- and 86-degree course changes instead of the originally assessed straight-ahead routes[30]. This operational divergence drastically altered the environmental impact. Within a direct-overflight corridor, 1.5 km either side of the route (the UK DfT track-keeping swathe), the Routes Flown newly overfly 4,008 residential buildings, an estimated 13,923 residents, that an EIS-consistent straight-ahead design would not (330 buildings, 998 residents); within the wider affected corridor, 3 km either side, they newly affect 8,761 buildings (30,186 residents), against 447 buildings (1,164 residents) for the EIS-consistent design[31]. Despite this material change, no new EIA was conducted[32]. Instead, the noise regulator (ANCA) proposed replacing the pre-breach 2019 baseline with a 2023 baseline and, in an amendment titled "removing and revising" the 55 dB Lnight and 65 dB Lden criteria, relaxing the metric that quantifies the breach[33]. This Metric Erasure[34] effectively initiates what this article categorizes as the *Laundering* phase, masking a 343% increase in the noise-exposed population under the 55 dB Lnight criterion. This results in a regulatory reset where the enforceability of the original planning conditions is neutralized[35].

From a regulatory perspective, authorities classify such flight path alterations exclusively as Instrument Flight Procedures (IFPs) governed by civil aviation safety standards. Because the modification of IFPs lacks physical construction works, it evades the definition of a „project" under the EIA Directive[36]. This rigid separation of navigational procedures from the environmental planning regime constitutes a clear form of Regulatory Laundering.

Similarly, the capacity constraint was breached, with passenger numbers exceeding the 32 million cap by a cumulative 9.4 million since 2019[37]. While Advocate General Campos Sánchez-Bordona categorically confirmed that such an EIA-derived limit constitutes a relevant "operational constraint" that dictates the actual capacity of the airport and prevails over airlines' grandfather rights[38], the state apparatus resorted to primary legislation[39]. The preparation of the Passenger Capacity Bill aims to statutorily override the existing cap. This maneuver functions as a Legislative Laundering tool that sanitizes environmental non-compliance without conducting a prior assessment[40].

From a procedural perspective, the material implication of this Metric Erasure extends beyond technical non-compliance; it actively deprives the newly affected populations of their fundamental rights under the Aarhus Convention. By migrating the modification of operational flight paths from a formal EIA procedure to an obscure sectoral re-baselining,

27 An Bord Pleanála, decision PL06F.217429 (North Runway), granted 23 August 2007 on Fingal County Council planning register reference F04A/1755, on the basis of the Environmental Impact Statement (December 2004) and its Addendum (August 2005). The Terminal 2 permission PL06F.220670 was determined jointly by the Board.

28 The straight-ahead departure routing is the routing assessed in the 2004/2005 EIS (the "EIS Route"): see the EIA-Conformance Gap Analysis, O'Brien (2026), Zenodo DOI 10.5281/zenodo.19567671.

29 Condition 3 of An Bord Pleanála permission PL06F.220670 (Terminal 2): "The combined capacity of Terminal 2 as permitted together with Terminal 1 shall not exceed 32 million passengers per annum unless otherwise authorised by a further grant of planning permission."

30 AirNav Ireland, Standard Instrument Departure charts for Dublin (EIDW), Irish Aeronautical Information Publication, AD 2.24, compared against the straight-ahead departure assessed in the 2004/2005 EIS (Figure 16.1). The flown procedures turn 30° at the departure end of the runway and up to 86° in total at approximately 400 ft AGL: see the EIA-Conformance Gap Analysis, O'Brien (2026), Zenodo DOI 10.5281/zenodo.19567671.

31 O'Brien, Gareth (2026). EIDW EIA-Conformance Gap Analysis (population exposure), v1.0. North Runway Technical Group. Zenodo. DOI 10.5281/zenodo.19567671, §4.2.3 (newly counts).

32 Daa plc, decision on internal review of AIE request 2607, 26 May 2026: "No additional record corresponding to a separate 'new environmental impact assessment' has been identified." (The environmental assessments daa points to are the 2020/2021/2023/2024 EIARs of the North Runway Relevant Action and of the routes flown after the February 2023 change, none of which is a design-stage assessment of the IFPs against the EIS-assessed routing.).

33 Aircraft Noise Competent Authority, SEA Screening Report for the Review of the Noise Abatement Objective, Dublin Airport (Logika Consultants, Ref 12128C-01, 6 January 2026), s.2.2.2.

34 The terms Regulatory Laundering and the mechanism names used in this article (Metric Capture, Metric Erasure, Legislative Laundering, and the others) follow the author's taxonomy: G. O'Brien, Regulatory Laundering: A Taxonomy of Mechanisms (Version 1.0, 2026), Zenodo, https://doi.org/10.5281/zenodo.20665084.

35 Aircraft Noise Competent Authority, A Review of the Effectiveness of Aircraft Noise Mitigation Measures at Dublin Airport during 2024 (the Noise Mitigation Effectiveness Review Report 2024, published annually under the Aircraft Noise (Dublin Airport) Regulation Act 2019), Table 2 (Noise exposure data 2019 and 2024), p.23: the number of people exposed to aircraft noise above 55 dB Lnight rose from 1,533 (2019) to 6,791 (2024), a 343% increase.

36 CJEU, 2011, Brussels Hoofdstedelijk Gewest and Others v Vlaams Gewest, Case C-275/09, ECLI:EU:C:2011:154, para 24.

37 Joint Committee on Transport (Dáil Éireann), Official Report, 18 March 2026, p.9 (evidence of a witness for the St Margaret's and The Ward community): "Since 2019, DAA has handled 9.4 million more passengers than permitted by its planning permissions. This amounts to €213 million earned from unauthorised development." See also daa traffic statistics (36.4 million passengers in 2025; daa press release, 16 January 2026).

38 AG Sánchez-Bordona, 2026, paras 54-55 and 88-89.

39 General Scheme of the Dublin Airport (Passenger Capacity) Bill 2026, published 3 February 2026.

40 General Scheme of the Dublin Airport (Passenger Capacity) Bill 2026, Head 4(5) (declaring that the passenger cap is not an operating restriction within Regulation (EU) No 598/2014), Head 4(6) (Ministerial power to revoke planning conditions), and Head 12 (exemption from the Climate Action and Low Carbon Development Act 2015).

the public is first denied the right to early and effective participation in the environmental decision-making process, as guaranteed by Article 6(4) of the Aarhus Convention. Consequently, because this regulatory reset generates no formal EIA screening decision, it removes the administrative target necessary for the affected public to subsequently challenge the legality of that measure. This effectively extinguishes their right to access to justice under Article 9(2) of the Aarhus Convention[41].

3.2 Schiphol Airport: Operational Expansion Masked by Technological Baseline Absorption

The tension between comprehensive environmental assessments and sectoral aviation rules is perfectly illustrated by the regulatory practices at Schiphol Airport. Between 2003 and 2019, passenger volumes grew from approximately 40 million to 71.7 million - a 79% increase - without triggering a fresh EIA[42]. Because this operational expansion occurred without the "physical interventions" required to activate Annex I (point 24) or Annex II (point 13(a)) of the EIA Directive, the assessment of noise impacts defaulted entirely to sectoral frameworks, specifically Regulation (EU) No 598/2014[43]. This Regulation mandates a "Balanced Approach" to noise-related operating restrictions, prioritizing noise reduction at the source and operational procedures before imposing capacity limits.

The mechanism by which this expansion was absorbed lies in the structure of the Dutch noise-enforcement system rather than in the Balanced Approach itself. Schiphol's noise limits are enforced as modelled values at a fixed set of calculation points under the Luchthavenverkeerbesluit Schiphol. Because the governing metric is an annual energy average at those points, a reduction in the noise emitted by each aircraft, achieved as airlines autonomously renew their fleets with quieter types, creates headroom within the same contours. Further movements can then be added without the modelled values at the calculation points being exceeded. The technological improvement is in effect absorbed into the reference scenario rather than counted as an active mitigation of the noise borne by the population beneath, so that a quieter fleet finances additional flights instead of reducing the impact on the ground.[44]

This absorption is a distinct mechanism of Regulatory Laundering, which may be termed Metric Capture: compliance is demonstrated against modelled values at theoretical calculation points rather than against the actual cumulative impact of increased flight frequencies on the population beneath[45]. Commission Decision (EU) 2025/519 must be cited here with care, because it does not establish what a first reading might suggest. That Decision did not review an expansion at Schiphol. It reviewed a Dutch proposal to restrict operations through an annual cap of 478,000 movements intended to reduce noise, and its findings concern whether that restriction was proportionate and non-discriminatory toward aviation, not whether a baseline had been manipulated to authorise growth[46]. Its value to the present argument is in fact greater. In reasoning that autonomous fleet renewal could at last be counted toward noise reduction once a movement cap was in place, the Commission expressly accepted the premise that, absent such a cap, those improvements "would be neutralised by traffic growth." The Commission thereby acknowledged, in its own words, the very mechanism described here: without a binding limit on movements, a quieter fleet yields no reduction in the noise actually borne on the ground, because the headroom it creates is consumed by additional traffic.

The Schiphol case exposes an asymmetry in the way EU law treats airport noise. Operating restrictions are subject to a demanding procedure: a Member State must consider less restrictive measures first, identify "the most cost-effective" combination, and ensure that any restriction is "not more restrictive than is necessary," non-discriminatory and not arbitrary[47]. No equivalent procedural gate stands in front of operational growth. Expansion within an existing physical consent triggers neither a fresh EIA, for want of physical works, nor any Balanced Approach review, which engages only when a restriction is introduced. Operational noise growth therefore falls between the two regimes, scrutinised by neither, while the dedicated noise instrument's procedural energy is directed entirely at the conditions for restraining

41 Jendrośka, 2014, p. 130.

42 Royal Schiphol Group, annual traffic statistics: approximately 40 million passengers in 2003 (the year the Polderbaan opened) rising to 71.7 million in 2019.

43 Regulation (EU) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC (OJ L 173, 12.6.2014, p. 65–78).

44 The Schiphol noise objective is measured against a baseline scenario that incorporates "autonomous developments," including the autonomous renewal of airline fleets with quieter aircraft: Commission Decision (EU) 2025/519, recitals 15-16 and 23. The enforcement of noise limits as modelled values at fixed calculation points is a feature of the Luchthavenverkeerbesluit Schiphol (LVB).

45 The Schiphol system enforces modelled noise at fixed calculation points under the Luchthavenverkeerbesluit Schiphol (LVB), rather than assessing cumulative single-event exposure on the affected population.

46 Commission Decision (EU) 2025/519 of 5 March 2025 on the process of introducing operating restrictions at Schiphol Airport in accordance with Regulation (EU) No 598/2014, OJ L, 18.3.2025, p. 1.

47 Regulation (EU) No 598/2014, Article 5(3) (consideration of noise reduction at source, land-use planning, operational procedures, and operating restrictions only "not as a first resort," with a view to "the most cost-effective measure") and Article 5(6) (measures "shall not be more restrictive than is necessary," and operating restrictions "shall be non-discriminatory ... and shall not be arbitrary").

aviation. Decision (EU) 2025/519 is a live demonstration of the restriction side of that asymmetry: a full Commission review of a Member State's noise-reduction plan, with no symmetric instrument anywhere reviewing the noise burden of growth.

Crucially, this sectoral maneuver systematically strips the EIA framework of its *effet utile*. By converting a technological environmental gain into operational capacity, the practice contravenes the teleological foundation of EU environmental law. According to Recital 14 of the EIA Directive, the assessment of a project's environmental effects is fundamentally intended to safeguard human health and contribute to a better quality of life. Following this rationale, technological advancements, such as quieter aircraft, should directly reduce the existing environmental burden on residents. Utilizing these advancements merely to authorize more flights within the same noise contours illustrates how highly technical, sectoral frameworks can be exploited to mask the physical expansion of environmental externalities and circumvent the rigorous assessment of cumulative effects. Furthermore, by shifting the evaluation of these operational expansions into opaque, algorithmic modeling exercises, this sectoral absorption effectively excludes the affected public from the decision-making process. Just as with Dublin's flight path reconfigurations, this Metric Capture strips citizens of their participatory rights under the Aarhus Convention, presenting them with an operational fait accompli that entirely evades public environmental scrutiny.

4 Conclusions

The diagnosis of Regulatory Laundering reveals a structural vulnerability within the EIA Directive. It demonstrates how the overarching objectives of European environmental law, specifically the pursuit of a high level of protection, the preventive principle, and the polluter pays principle enshrined in Article 191(2) TFEU[48], can be neutralized by post-consent administrative adaptations. The circumvention of environmental obligations examined in this article is driven by a systemic pursuit of operational expediency. By confining the procedural gateway of the environmental impact assessment strictly to physical interventions, the statutory framework remains structurally incapable of capturing substantial reconfigurations of actual environmental effects that occur purely in the operational phase. When material operational alterations are executed without concurrent construction works, the EIA Directive is rendered incapable of maintaining its preventive function. This limitation allows unassessed environmental burdens to be regularized through parallel sectoral re-baselining.

This architectural limitation exposes the boundaries of judicial enforcement. While the CJEU consistently deploys a teleological methodology to safeguard the broad scope of the EIA Directive, jurisprudential interventions cannot unilaterally cure structural legislative gaps. The analytical necessity to link operational modifications to physical interventions, as observed in recent case law, highlights a systemic friction. It inadvertently confirms that purely operational changes remain beyond the explicit textual reach of the EIA Directive, even when generating severe environmental externalities. Consequently, the enforcement mechanism descends into an unsustainable pattern of ad-hoc rectifications. Judicial interpretations target individual compliance failures, while national authorities continually identify alternative sectoral or legislative pathways to insulate operational expansions from prior environmental scrutiny.

To preserve the effectiveness of European environmental law without initiating a wholesale revision of the EIA Directive, the conceptual direction of future discourse must focus on redefining the triggers for the screening process under Article 4. While current jurisprudence strictly demands physical alterations, a progressive interpretation should advocate that any formal administrative or legislative act of re-baselining, which materially alters the metrics or environmental conditions established in an initial assessment and carries a demonstrable risk of significant adverse environmental effects, must conceptually constitute a change or extension under Annex II, point 13(a). Independent of concurrent physical works, the material modification of regulatory baselines should act as a distinct threshold activating environmental scrutiny.

This conceptual realignment is vital to uphold the democratic guarantees of the Aarhus Convention. The Convention does not merely grant the public a passive right to be informed of environmental alterations. It guarantees the right to early and effective participation in the decision-making process when all options are open. Crucially, it secures the subsequent right to access to justice to challenge the substantive and procedural legality of those decisions. If material operational changes are normalized through parallel sectoral procedures that evade EIA screening, the public is confronted with a *fait accompli*. This practice effectively extinguishes both their participatory rights and their legal standing. Synchronizing the regulatory baseline with Article 4 screening ensures that these procedural rights remain effective and enforceable in strict accordance with Article 6(10) of the Aarhus Convention throughout the operational lifetime of projects falling within the scope of the EIA Directive.

[48] Consolidated Version of the Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016, p. 47.

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elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

Three organisations currently share the organisational work of the network: Öko-Institut, Technische Hochschule Bingen (TH Bingen) and sofia, the Society for Institutional Analysis, located at the Darmstad University of Applied Sciences. The person of contact is Prof. Dr. Roller at TH Bingen.

elni Review

The elni Review is an English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review (info@elni.org) in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review is published by Öko-Institut, TH Bingen and sofia.

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researches, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

elni publishes a series of books entitled “Publications of the Environmental Law Network International”. Each volume contains papers by various authors on a particular theme in environmental law and in some cases is based on the proceedings of the annual conference.

elni Website: elni.org

The elni website www.elni.org contains news about the network. The members have the opportunity to submit information on interesting events and recent studies on environmental law issues. An index of articles provides an overview of the elni Review publications. Past issues are downloadable online free of charge.

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