Joint Committee on Climate, Environment & Energy,

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30 January 2026

Re: General Scheme of the Strategic Gas Emergency Reserve Bill 2025, Security, Resilience and the Climate Act

A Chathaoirligh agus a Chomhaltaí,

Friends of the Irish Environment (FIE) makes this submission on the General Scheme for the Strategic Gas Emergency Reserve Bill 2025. It consists of two sections: a policy analysis and a legal analysis.

Policy Analysis: What does energy security mean now?

This question sits beneath this legislation, and beneath many decisions taken by governments in an unsettled world.

In 2026, energy security cannot be understood as a deeper dependence on imported fossil fuels. It must be understood as resilience: economic, geopolitical, legal and democratic. This understanding of security aligns with public expectations, reflected in the Citizens' Assembly's conclusion that "climate change must be at the centre of policy-making in Ireland", and in a societal preference for responses to risk and uncertainty that reinforce long-term resilience rather than defer it. This is not

a debate between climate ambition and security. It is a test of what genuinely makes Ireland safer in an era of disruption.

We are living through a period of geopolitical rupture in which supply chains are no longer neutral. Energy markets are volatile, infrastructure is exposed to coercion and sabotage, and dependency itself has become a strategic weakness. In that context, accelerating LNG infrastructure does not insulate the State from risk. It concentrates risk in global markets, imported supply routes and long-lived fossil assets whose consequences extend far beyond any declared emergency.

By contrast, an electricity-led system grounded in renewables, demand reduction, storage and interconnection disperses risk. It is harder to disrupt, harder to coerce and more resilient by design. This distinction between resilience and dependency mirrors the conclusions of the Citizens' Assembly, which recommended that the State "undertake a comprehensive assessment of the vulnerability of all critical infrastructure … with a view to building resilience". The Assembly did not identify new fossil fuel infrastructure as a resilience measure. Rather, its focus on vulnerability, exposure and long-term risk underscores that increasing fossil dependence is itself a source of systemic fragility. Energy security must therefore be resilience in practice, not vulnerability in disguise.

Strategic autonomy has emerged as a defining principle of modern security. Countries that cannot fuel themselves have fewer options, less freedom of action and greater exposure to events beyond their control. From that perspective, renewable generation, energy storage, and interconnection expand Ireland's choices. LNG narrows them. Describing new fossil infrastructure as "temporary" does not alter its lifespan, its emissions profile or the policy gravity it creates. Lock-in is a structural fact, not a rhetorical one.

The most serious concern raised by the Scheme, however, lies in its approach to climate governance. By deeming compatibility, compressing assessment and disapplying established planning safeguards, it effectively punches a hole in the Climate Action and Low Carbon Development Act in the name of urgency. This approach also sits uneasily with citizen expectations regarding transparency and accountability. In its recommendations, 98% of the Members of the Citizens' Assembly supported climate governance arrangements that are "resourced appropriately, operate in an open and transparent manner" and are grounded in legislation. Emergency framing

was not treated as a justification for weakened scrutiny, but as a reason for clearer justification and stronger safeguards. Climate law exists precisely to prevent short-term pressures from creating long-term harm. If it can be set aside once for energy infrastructure, it establishes a precedent that will not be easily contained.

Compliance on paper does not buy safety. Resilience does. From a security perspective, weakening climate law increases long-term risk: legal exposure, stranded assets, policy instability and erosion of public trust. None of these outcomes strengthens Ireland's capacity to respond to future crises. It should be noted that assessments of security and resilience remain subject to physical laws and ecological limits that cannot be displaced by legislative or regulatory change.

This is also a generational and democratic test. Younger people understand that infrastructure decisions taken today shape decades of risk. The Citizens' Assembly's deliberations give institutional form to this concern. Its emphasis on long-term thinking, avoidance of lock-in and intergenerational fairness reflects a considered public judgement that decisions should reduce future exposure. More recent EPA survey evidence shows that concern about climate change remains high across all groups, including among those experiencing economic pressure, indicating that expectations of action are durable rather than contingent. For many, this Scheme signals that long-term consequences are being discounted and democratic safeguards are being sidelined. Energy security that erodes public trust is not secure. Legitimacy and accountability are themselves components of resilience.

The Committee does not face a choice between climate responsibility and energy security. Nor does available evidence suggest that the public would accept delay or increased fossil-fuel reliance absent clear justification. EPA survey findings show that large majorities continue to view climate change as a high priority for Government and expect action to deliver tangible benefits, including improved quality of life. Taken together with the Citizens' Assembly's rejection of fossil-fuel expansion as a climate response, this indicates that policies which increase emissions or vulnerability without transparent explanation of their climate implications risk undermining, rather than reflecting, public attitudes. It faces a choice between short-term fixes that entrench dependency and long-term strategies that reduce exposure. Security in the twenty-first century means fewer dependencies, not new ones; cooperation, not isolation; flexibility, not lock-in.

Emergency measures should shorten crises, not extend fossil fuel reliance into the future. This submission does not ask the Committee to prefer one energy pathway over another as a matter of policy, but to ensure that whichever pathway is chosen is capable of lawful justification under binding legal standards.

Legal Analysis: Binding Constraints on Energy Security Decision-Making

The preceding sections of this submission frame the General Scheme of the Strategic Gas Emergency Reserve Bill 2025 as a question of energy security understood in contemporary terms: resilience, reduced dependency, and long-term risk management, including the role of democratic legitimacy and established decision-making processes in sustaining public trust.

Within this understanding, the ordinary planning and assessment framework is not a technical formality, but the State's ordinary mechanism for conferring democratic authorisation and discharging binding legal obligations. Departure from that framework engages legal as well as policy questions.

The legal analysis that follows examines whether the Scheme, as designed, is compatible with Ireland's binding obligations under EU law, international environmental law, and the European Convention on Human Rights, and whether legislative exemptions adopted in the name of security are capable, as a matter of law, of displacing, diluting, or pre-empting those obligations.

1. Introduction

FIE recognises that security of energy supply is a legitimate and important public interest objective, particularly in an era of geopolitical instability and infrastructure vulnerability. However, FIE is concerned that the Scheme, as currently framed, engages serious issues regarding Ireland's compliance with binding obligations under EU law, international environmental law, and the European Convention on Human Rights (ECHR).

Recent developments in European and international jurisprudence demonstrate that States may no longer lawfully approve new fossil fuel infrastructure in practice except on the basis of a rigorous, project-specific assessment of climate compatibility, including consistency with the 1.5°C temperature limit and with human-rights obligations. Legislative declarations of compliance cannot

displace these duties. Where primary legislation facilitates or predetermines approval of such infrastructure, those obligations necessarily arise at the legislative stage, insofar as the legislation itself facilitates or predetermines the authorisation pathway, not merely at later project-consenting stages.

Under EU environmental law, the legality of a project authorisation does not turn on whether consent is granted by a planning authority, a Minister, or the legislature, but on whether the procedure employed offers safeguards equivalent to those provided by the ordinary planning system.[1]

In EU law terms, the ordinary planning system constitutes the State's compliance mechanism for meeting these safeguards. Departure from that system is permissible only where the alternative legislative or ministerial procedure demonstrably provides equivalent guarantees in substance and effect.[2]

The Court of Justice has consistently held that departure from established planning procedures is permissible only where the alternative framework demonstrably provides equivalent guarantees of environmental assessment, public participation, independent evaluation, and effective judicial review. Where such equivalence is absent, authorisation is unlawful regardless of the form it takes.

2. Ireland's Binding Obligations under EU Law

Ireland is bound by a comprehensive and enforceable EU legal framework, including:

- **Article 191 TFEU**, which enshrines the precautionary principle, the principle of prevention, and the requirement to remedy environmental damage at source;
- The **Environmental Impact Assessment Directive** (2011/92/EU, as amended), which requires assessment of impacts on climate and the interaction between environmental factors;
- The **Habitats Directive** (92/43/EEC), which prohibits authorisation of projects adversely affecting protected sites unless strict derogation tests are met;

[1] Case C-128/09 *Boxus and Others* EU:C:2011:667, paras 36–43; Case C-182/10 *Solvay and Others* EU:C:2012:82, paras 44–51; Case C-43/10 *Nomarchiaki Aftodioikisi Aitoloakarnanias* EU:C:2011:253, paras 94–99.

[2] *Boxus*, paras 38–41; *Solvay*, paras 47–49.

- The **EU Climate Law** (Regulation (EU) 2021/1119), which makes the EU's 2030 emissions-reduction target and 2050 climate-neutrality objective legally binding;
- The **EU Charter of Fundamental Rights**, including Article 2 (right to life), Article 7 (respect for private and family life), and Article 37 (environmental protection).

Under the principle of supremacy of EU law, national legislation cannot negate, pre-empt, or dilute these obligations. EU environmental law further embeds a principle of non-regression, reflected in Articles 3(3) TEU, 11 TFEU and 191 TFEU, requiring continuous improvement in environmental and climate protection. In Ireland, compliance with these obligations is ordinarily achieved through the planning system, which embeds independent assessment, structured consideration of alternatives, public participation, and access to justice. Where legislation disapplies or replaces that framework, EU law requires the State to demonstrate that the substitute procedure provides safeguards equivalent to those removed. Legislative measures facilitating new fossil fuel infrastructure, without demonstrably stronger safeguards or compatibility assessments, risk constituting a regression in protection, particularly where existing EU and national policy is explicitly directed toward a rapid fossil fuel phase-out.[3]

2.1 Regulation (EU) 2017/1938 and the N-1 Infrastructure Standard

Regulation (EU) 2017/1938 on security of gas supply does not mandate the construction of new fossil gas infrastructure. The N-1 infrastructure standard is a capacity-resilience metric, not an infrastructure mandate. The Regulation requires Member States to adopt effective, proportionate, and least-distortive measures, explicitly prioritising demand-side response, regional cooperation, and market-based mechanisms.

Any reliance on N-1 non-compliance as justification for new fossil fuel infrastructure, therefore, requires a demonstrable assessment that non-infrastructure alternatives cannot achieve compliance, and that the chosen measure represents the least environmentally and climatically damaging option available. The Scheme does not require such an assessment.

[3] Case C-671/16 Inter-Environnement Bruxelles EU:C:2018:403, paras 56–58; Articles 3(3) TEU and 191 TFEU.

2.2 Integration of the EU Climate Law (Regulation (EU) 2021/1119)

Regulation (EU) 2021/1119 is not merely a background policy objective, but a binding legal constraint on how sectoral legislation and security-of-supply measures must be designed and justified. It makes the EU's 2030 emissions-reduction target and 2050 climate-neutrality objective legally binding and requires their integration into all relevant Union and national measures, in accordance with Article 11 TFEU.

The issue is not whether gas infrastructure is per se prohibited under the EU Climate Law, but whether the legislative pathway chosen can be reconciled with binding emissions-reduction trajectories without reliance on future, unspecified corrective measures. Legislative measures facilitating long-lived fossil fuel infrastructure must therefore demonstrate, at the point of adoption, how they are compatible with the Union's binding climate trajectory, rather than deferring that question to later policy adjustments or mitigation assumptions.

By pursuing a pathway reliant on new fossil fuel infrastructure without reconciling that pathway with the binding emissions-reduction trajectory established by Regulation (EU) 2021/1119, including the 2030 target and the objective of climate neutrality by 2050, the Scheme fails to integrate relevant EU climate objectives into its design. Such failure to integrate binding EU objectives into sectoral decision-making constitutes a recognised basis on which annulment or disapplication may arise under EU law.[4]

3. International Law and Human Rights Obligations

The European Court of Human Rights has clarified that climate change engages Article 8 ECHR and gives rise to positive procedural obligations on States in the context of fossil-fuel authorisation.

In *Greenpeace Nordic and Others v. Norway*, the Court held that, under Article 8, States are required to ensure that, before authorising petroleum production projects, an adequate, timely and

[4] Article 11 TFEU; Case C-461/13 *Bund für Umwelt und Naturschutz Deutschland* (Weser) EU:C:2015:433, paras 50–52; Case C-295/10 *Valčiukienė and Others* EU:C:2011:608, paras 46–48.

comprehensive environmental impact assessment (EIA) is carried out.[5] In the case of petroleum projects, this obligation requires, at a minimum:

- quantification of anticipated greenhouse-gas emissions, including emissions from the combustion of extracted petroleum abroad; and
- an assessment of whether the proposed activity is compatible with the State's national and international climate obligations (paras. 318–319).

While the case concerned petroleum production, the Court's reasoning is expressly grounded in the nature of fossil-fuel authorisation and its climate consequences, rather than in sector-specific regulatory features. The procedural obligations identified under Article 8 arise from the decision to authorise activities that foreseeably generate significant greenhouse-gas emissions, and from the resulting interference with private and family life, irrespective of whether those emissions arise upstream or downstream, or whether authorisation is effected through administrative decision-making or legislative designation.

The Court emphasised that the case concerned procedural obligations, rather than the substantive question whether particular projects must ultimately be refused. It accepted that States may, in principle, structure their decision-making so that a full climate assessment is undertaken at a later authorisation stage (such as the Plan for Development and Operation stage), provided that this stage offers sufficient guarantees of a genuine, comprehensive assessment and effective public participation. On that basis, the Court found no violation of Article 8 in the circumstances of the case.

This procedural obligation has since been given concrete domestic effect. In Greenpeace Nordic and Nature & Youth v. Energy Ministry (*North Sea Fields*), the Borgarting Court of Appeal

[5] European Court of Human Rights, *Greenpeace Nordic and Others v. Norway* (Application no. 34068/21), Judgment of 28 October 2025, paras 318–319 (holding that, prior to authorisation of petroleum production, public authorities must ensure an adequate, timely and comprehensive EIA based on the best available science, including quantification of anticipated greenhouse-gas emissions and an assessment of compatibility with national and international climate obligations).

overturned several oil production licences in part because combustion emissions and climate impacts had not been adequately assessed at the PDO stage.[6]

With this jurisprudence, the procedural duty to assess both global climate impacts and legal compatibility is now clearly established under Article 8.

In this regard, the legal context has materially evolved. The International Court of Justice Advisory Opinion on Obligations of States in Respect of Climate Change confirms that the Paris Agreement's 1.5°C temperature goal is the agreed primary temperature goal of international climate law and informs States' due diligence obligations.[7] The ICJ further clarified that States are obliged to prevent significant harm to the climate system, to respect, protect and fulfil human rights, and, particularly for Annex I countries, to conserve and enhance reservoirs and sinks of greenhouse gases.

Taken together, these developments indicate a sequential structure in climate adjudication. First, States must comply with procedural requirements, ensuring a rigorous, project-specific assessment of global climate impacts and legal compatibility before authorising fossil-fuel production. Secondly, where such assessments are undertaken, courts will increasingly be required to examine whether approval can be substantively justified in light of remaining carbon budgets, the 1.5°C temperature limit, and binding human-rights obligations.

While the European Court of Human Rights has not yet held that Article 8 prohibits approval of new fossil-fuel projects as such, its jurisprudence, read together with subsequent domestic enforcement and the ICJ Advisory Opinion, significantly narrows the margin of appreciation available to States and places the substantive compatibility of new fossil fuel infrastructure with climate and human-rights law firmly within the foreseeable scope of judicial review.

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[6] Borgarting Court of Appeal (Norway), *The State (Ministry of Energy) v. Nature and Youth and Greenpeace Nordic* (Breidablikk, Tyrving and Yggdrasil fields), Judgment of 14 November 2025 (English translation), pp. 25–26 (holding that the overall climate impact assessment at the PDO stage was inadequate, including because emissions from downstream combustion had not been sufficiently assessed), and p. 27 (setting aside the approvals of the plans for development and operation on the basis of those procedural deficiencies).

[7] International Court of Justice, *Obligations of States in Respect of Climate Change* (Advisory Opinion), 23 July 2025, paras 224–226 (identifying the objective of limiting global warming to 1.5°C above pre-industrial levels as the agreed primary temperature goal of the Paris Agreement) and paras 246–247 (holding that, in light of the seriousness of the threat posed by climate change, States are subject to a stringent due-diligence standard in the formulation and implementation of climate-related measures).

While advisory in form, the ICJ Opinion constitutes the most authoritative statement of States' climate-related obligations under international law and will inform the interpretation of binding obligations by domestic courts, EU institutions and the European Court of Human Rights. Advisory opinions do not create new obligations, but clarify the content, scope and interaction of existing obligations arising under treaty law, customary international law and human-rights instruments already binding on the State.

Taken together, these developments confirm that climate and human-rights obligations no longer operate solely at the level of policy aspiration, but now function as binding legal constraints on the design of legislative frameworks and on the permissibility of authorising new fossil fuel infrastructure.

4. From Emissions Impact to Legal Compatibility

FIE does not contend that emergency or accelerated legislation is unlawful as such, but that emergency measures must still be capable of lawful justification where they facilitate long-lived fossil fuel infrastructure.

Recent legal developments confirm a decisive shift in climate jurisprudence from the mere identification of emissions impacts toward an assessment of legal compatibility.

Earlier generations of environmental assessment focused primarily on the quantification and description of emissions and their likely environmental effects. While such analysis remains necessary, it is no longer sufficient. Courts increasingly require public authorities to assess whether authorisation of a proposed activity is compatible with binding climate objectives and human-rights obligations, rather than merely documenting its impacts. Recent Irish High Court jurisprudence proceeds on the basis of EU environmental law principles that are now well established, including the obligation on competent authorities to carry out their own substantive assessment and to give reasons sufficient to permit effective judicial review, reflecting the settled influence of Court of Justice jurisprudence even where individual authorities are not expressly cited.

This evolution is reflected in the sequential structure emerging from recent jurisprudence. First, States are required to comply with procedural obligations, including the conduct of a rigorous, project-specific environmental impact assessment that quantifies global greenhouse-gas emissions

and addresses their legal significance. Secondly, once those impacts are identified, decision-makers must be in a position to justify approval in light of applicable legal constraints, including climate targets and human-rights standards.

The European Court of Human Rights has now clarified the procedural limb of this obligation in *Greenpeace Nordic and Others v. Norway*, requiring assessment of global climate impacts and compatibility with national and international climate obligations prior to authorisation. Domestic courts have begun to enforce this standard, as illustrated by the *North Sea Fields* litigation. What remains to be tested, but is now clearly framed by the courts, is whether approvals can be substantively justified once the full climate consequences are acknowledged.

In parallel, international law has significantly narrowed the range of permissible justifications. The Advisory Opinion of the International Court of Justice confirms that the Paris Agreement's 1.5°C temperature limit is the central reference point for interpreting States' climate obligations and informs the content of due diligence duties under international law. Those duties include obligations to prevent significant harm to the climate system, to respect, protect and fulfil human rights, and, for Annex I countries, to conserve and enhance reservoirs and sinks of greenhouse gases.

Against this background, an assessment that merely inventories emissions, or that defers consideration of legal compatibility to a later stage, is no longer adequate. Once emissions are quantified, public authorities must address whether authorisation of the activity is lawful in light of remaining carbon budgets, the 1.5°C limit, and binding human-rights obligations. Failure to engage with this question risks reducing environmental assessment to a formal exercise devoid of legal consequence.

Where primary legislation facilitates or accelerates approval of specific fossil fuel infrastructure, this obligation cannot be deferred to later administrative processes. Legislative frameworks that predetermine outcomes, constrain regulatory discretion, or deem compliance in advance necessarily engage the State's obligations at the legislative stage.[8] This is particularly so where legislation disapplies the ordinary planning framework through which such obligations are normally

[8] Case C-411/17 *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* EU:C:2019:622, paras 170–173; Case C-50/09 *Commission v Ireland (Derrybrien)* EU:C:2011:109, paras 40–43.

discharged.[9] In such circumstances, the legislature cannot rely on later project-level processes to remedy defects created by the removal of established planning safeguards. Accordingly, the Oireachtas must be satisfied that the legislative scheme itself does not enable outcomes that are incompatible with EU law, the European Convention on Human Rights, or Ireland's international climate obligations. It follows that the relevant legal question is no longer whether emissions have been identified, but whether the authorisation pathway established by the Scheme permits decisions that cannot be legally justified in light of the State's climate and human-rights commitments. Where that question is left unanswered, or is displaced by legislative deeming, the resulting approvals are foreseeably vulnerable to legal challenge.

5. Legal Vulnerabilities in the General Scheme of the Strategic Gas Emergency Reserve Bill 2025

The Scheme's legal vulnerabilities arise not only under climate and human-rights law, but also from its misapplication of Regulation (EU) 2017/1938, which does not require, and does not privilege, new fossil gas infrastructure over non-infrastructure alternatives.

A further vulnerability arises from the concentration of decision-making functions within a bespoke ministerial consent framework. Where the same Minister is responsible for security-of-supply policy, designation of development, control of timelines, and final authorisation, the procedural separation and independence inherent in the ordinary planning system is materially reduced. EU courts have consistently cautioned against consent structures that predetermine outcomes or subordinate environmental assessment to policy imperatives.[10]

These vulnerabilities are exacerbated by the Scheme's reliance on legislative deeming of compliance and by the disapplication of established planning safeguards.

[9] Case C-721/21 *Eco Advocacy* EU:C:2023:477, paras 71–75; Case C-275/09 *Brussels Hoofdstedelijk Gewest* EU:C:2011:154, paras 33–38.

[10] Case C-290/15 *D'Oultremont and Others* EU:C:2016:816, paras 44–49; Case C-24/19 *A and Others* EU:C:2020:503, paras 36–41.

5.1 Weakening the "Consistency" obligation in s.15 of the Climate Act and legislative "Deeming" of Climate Compliance

Head 20(1) of the Scheme provides that, in performing their functions under the Act, the Minister and An Coimisiún Pleanála are required to act consistently with the plans, strategy, framework and objectives referred to in section 15(1) of the Climate Action and Low Carbon Development Act 2015 only "to the extent that they consider practicable", taking particular account of exceptional circumstances and the urgent and compelling necessity of securing gas supply.

This reformulation materially alters the legal character of the section 15 obligation. An objective, reviewable statutory constraint applicable to all public bodies is replaced, for the designated development, with a discretionary evaluative judgment vested in the very decision-makers responsible for advancing the project. In EU-law terms, this shift is not neutral. EU environmental law does not permit binding climate obligations to be transformed into matters of administrative opinion, nor does it allow compliance to depend on what the competent authority considers practicable in light of competing policy objectives. While the Climate Action and Low Carbon Development Act 2015, as amended, is not itself a measure of formal transposition of EU climate legislation, it constitutes the central domestic governance framework through which Ireland gives effect to, and demonstrates compliance with, its binding EU obligations to reduce greenhouse-gas emissions. The Act provides the legally enforceable structures—carbon budgets, sectoral ceilings, climate action plans and binding consistency duties—through which Ireland operationalises EU emissions-reduction targets and accounts for compliance in its engagement with EU institutions.

Articles 11 and 191 TFEU require that environmental protection, including climate mitigation, operate as legally enforceable constraints integrated into decision-making. The precautionary principle, in particular, requires prior, objective assessment of environmental risk and legal compatibility, especially where impacts are cumulative, long-term and scientifically complex, as is the case with new fossil fuel infrastructure. A statutory test framed by reference to subjective practicability reverses that logic by presuming that climate consistency may yield to urgency without the need for prior verification.

The Court of Justice has consistently held that environmental assessment obligations must be effective in substance and capable of influencing the legality of the decision ultimately taken.

National frameworks that weaken the legal consequences of inconsistency with environmental objectives, or that insulate departures from those objectives from meaningful judicial review, deprive EU environmental law of its practical effect. A standard turning on what the decision-maker "considers practicable" is inherently resistant to verification and collapses judicial review into deference, undermining the requirement of effective judicial protection.

Head 20(2) then provides that the designated development is deemed to be in compliance with the Climate Action and Low Carbon Development Act 2015. Such legislative deeming is legally ineffective where it purports to substitute for, or pre-empt, the substantive assessment required by EU law.

Under Articles 3(3) TEU and 11 TFEU, environmental protection and climate mitigation constitute constitutional objectives of the Union and must be integrated into the definition and implementation of national measures adopted within the scope of EU law. Compliance with climate obligations cannot be reduced to a declaratory legislative formula. It must be demonstrated through a genuine, evidence-based evaluation capable of ensuring a high level of environmental protection in substance and effect. Courts will examine whether the substantive content of the State's obligations has in fact been satisfied, not whether compliance has been asserted by statute.

These defects are compounded by the disapplication of the Planning and Development Acts. The ordinary planning framework operates alongside the Climate Act as a core component of Ireland's EU-law compliance architecture, embedding objective assessment, public participation, independent scrutiny and judicial review. Where that framework is removed, EU law requires the State to demonstrate that the substitute legislative scheme provides safeguards equivalent in substance and effect. Legislative deeming of compliance does not provide such equivalence and instead undermines the practical effectiveness of EU environmental law.

Similar conclusions follow under the European Convention on Human Rights. As clarified by the European Court of Human Rights in *Greenpeace Nordic and Others v. Norway*, Article 8 ECHR requires a genuine, project-specific assessment of global climate impacts and of compatibility with national and international climate obligations prior to authorisation of fossil-fuel-related activities. A legislative declaration of compliance cannot cure the absence of such an assessment, nor can it insulate subsequent approvals from judicial scrutiny.

Where national legislation itself facilitates, accelerates or structurally predetermines approval of climate-significant infrastructure, the procedural obligations under Article 8 are engaged at the legislative stage. In such circumstances, the legislature must itself ensure that the statutory framework permits only outcomes that are compatible with climate and human-rights obligations. A deeming clause cannot defer that responsibility to downstream administrative processes.

Where primary legislation weakens objective climate-consistency obligations that form an integral part of the State's mechanism for complying with EU emissions-reduction law and international climate and human rights law obligations, deems compliance in advance of assessment, and removes distinct consent stages through legislative fiat, it does not defer the State's obligations under EU law and the ECHR; it engages them directly. In such circumstances, the Oireachtas must itself be satisfied, on the basis of a demonstrable and reasoned assessment, that the legislative scheme permits only outcomes compatible with Articles 3(3) TEU, 11 TFEU and 191 TFEU, and with Article 8 ECHR.

Failure to do so renders both the legislation and decisions taken under it foreseeably vulnerable to disapplication or annulment.

5.3 Absence of a 1.5°C Compatibility Assessment

The Scheme does not require any assessment of whether the proposed development is compatible with:

- the 1.5°C temperature limit under the Paris Agreement;
- Ireland's remaining carbon budget;
- the binding emissions-reduction trajectory under EU law; or
- Ireland's obligations under Article 8 ECHR in the context of climate change.

This omission is no longer legally neutral. Recent jurisprudence makes clear that, once emissions are identified and quantified, public authorities must be capable of explaining how approval of the project can be legally justified in light of applicable climate constraints. An assessment framework that omits this question is structurally ill-suited to lawful justification of meeting that requirement.

The European Court of Human Rights has identified the absence of a proper climate assessment as a procedural defect capable of rendering approvals unlawful, as subsequently confirmed in the

North Sea Fields litigation. At the same time, the Advisory Opinion of the International Court of Justice clarifies that the 1.5°C temperature limit is the central reference point for assessing States' due diligence obligations and for determining whether conduct gives rise to significant harm to the climate system.

In this context, an authorisation pathway that does not require decision-makers to confront the compatibility of new fossil fuel infrastructure with the 1.5°C limit and with binding human-rights obligations is foreseeably vulnerable to legal challenge. The absence of clear, enforceable criteria prevents structured reasoning, meaningful public participation, and effective judicial review, and risks reducing environmental assessment to a formal exercise divorced from legal consequence.

Where such omissions are embedded in primary legislation, they cannot be remedied at a later administrative stage without reopening the legislative choice itself. The Scheme therefore creates a systemic risk that approvals will be granted under a framework that does not permit legally adequate justification, exposing the State to avoidable and foreseeable legal challenge.

5.4 Emergency Framing, Necessity and Proportionality

Emergency measures under EU law and the ECHR must satisfy strict tests of necessity, proportionality, and temporality. Although the Scheme frames the development as an emergency and transitional measure, proportionality must be assessed by reference to the operational lifespan of the infrastructure, not only the duration of the emergency that justified its initiation.

The infrastructure contemplated by the Scheme:

- is long-lived and likely to operate well beyond 2035–2040;
- risks locking Ireland into continued fossil fuel dependence;
- lacks enforceable sunset or decommissioning provisions;
- undermines claims of necessity and proportionality over time.

European courts have shown increasing scepticism toward emergency justifications for fossil fuel infrastructure that creates long-term lock-in effects. Infrastructure that generates long-term fossil fuel dependence cannot credibly be assessed as avoiding significant harm without lifecycle and cumulative analysis, a requirement increasingly recognised across EU environmental decision-making frameworks.

These proportionality defects are compounded by the Scheme's failure to comply with Regulation (EU) 2017/1938, which requires that N-1 compliance be achieved through the least-distortive and most proportionate measures available, including demand-side and regional alternatives, before recourse to new infrastructure.

6. Implications for this Bill and Future Legislation

FIE does not contend that Ireland may disregard energy-security obligations. Rather, compliance with EU law and the ECHR requires that security-of-supply measures be designed and assessed in a manner that demonstrably minimises fossil fuel lock-in and is compatible with climate and human-rights objectives.

In this context, the characterisation of infrastructure as "emergency" or "temporary" cannot displace the need to assess its full operational lifespan. Long-lived fossil fuel infrastructure adopted in response to short-term security concerns creates a foreseeable risk of stranded assets and regulatory inconsistency, and may constitute a regression in environmental protection contrary to Articles 3(3) TEU, 11 TFEU and 191 TFEU, where it entrenches emissions pathways incompatible with binding EU climate objectives.

Any legislation facilitating fossil fuel infrastructure must therefore:

1. Require a project-specific climate-compatibility assessment, not merely an emissions inventory;
2. Explicitly assess consistency with:
    - the 1.5°C temperature limit,
    - EU climate targets, and
    - human-rights obligations;
3. Address fossil fuel lock-in through enforceable mechanisms such as:
    - clear sunset clauses, and
    - binding decommissioning requirements;
4. Avoid reliance on legislative deeming clauses as substitutes for compliance with EU and international law.

Failure to do so exposes the State to legal challenge at domestic, EU, and European human-rights levels.

Considering that one of the apparent intentions of the Bill is to accelerate the process of developing a strategic gas reserve, it is ironic that rather than relying on the established regulatory framework for evaluating such projects, it proposes a series of legislative changes raising major issues under EU and international law, which will undoubtedly be aired in the courts.

7. Committee Stage Implications and Required Actions

Legislative scrutiny is most effective where legal defects are identified and addressed before enactment, rather than through subsequent litigation. In light of the foregoing analysis, FIE submits that the Joint Committee on Climate, Environment and Energy has a critical constitutional and legal role in ensuring that the Strategic Gas Emergency Reserve Bill 2025 is brought into compliance with Ireland's binding obligations under EU law and the European Convention on Human Rights before it proceeds further in the legislative process.

The deficiencies identified above do not concern matters of policy preference, but arise from structural features of the Scheme that prevent compliance with binding procedural and substantive legal obligations, as set out in Sections 3 to 5 of this submission. The Committee's scrutiny function is therefore directly engaged.

In particular, the Committee is urged to require the following amendments, each of which flows directly from the legal analysis above:

(a) Removal of provisions weakening climate protection standards in current legislation

Consistent with the analysis in Sections 4 and 5.1, the Committee should require amendment of the Bill to remove any provision which seeks to rewrite the consistency test, which, by virtue of s.15 of the Climate Action and Low Carbon Development Act, 2015 (as amended), all public bodies must meet in the exercise of their functions.

It should also recommend the removal of any provision that purports to deem compliance with climate law, as such provisions would render the relevant legal obligations completely ineffective in any case to which they apply.

As demonstrated above, legislative declarations of compliance cannot substitute for the procedural obligations required by EU law and Article 8 ECHR, nor can they insulate subsequent decisions from judicial review. Retaining such provisions would embed a foreseeable legal defect at the legislative stage.

(b) Reconciliation of security-of-supply measures with binding EU climate law

In line with Sections 2.1, 2.2 and 5.3, the Committee should ensure that any reliance on Regulation (EU) 2017/1938 (the N-1 infrastructure standard) is expressly and demonstrably reconciled with Regulation (EU) 2021/1119 (the EU Climate Law).

This requires that the Bill itself reflect the obligation to pursue least-distortive, proportionate measures compatible with the EU's binding emissions-reduction trajectory, rather than setting up energy security as a justification automatically capable of displacing climate constraints.

(c) Retention of the ordinary planning framework as the presumptive consent route

Consistent with EU law, the Committee should require that any strategic gas infrastructure be assessed and authorised through the established planning system, subject to accelerated timelines where necessary. EU law permits expedition and prioritisation within ordinary planning procedures; it does not permit their replacement with a bespoke ministerial consent regime lacking equivalent safeguards.

(d) (If the above recommendations are not followed) mandatory climate-compatibility assessment at the legislative stage

As established in Sections 3.1, 3.2, 4 and 5.2, EU law requires that the legislature engage in an explicit assessment of whether authorisation of the proposed infrastructure is compatible with:

- the 1.5°C temperature limit under the Paris Agreement;
- Ireland's remaining carbon budget; and
- Ireland's obligations under Article 8 ECHR.

Where primary legislation facilitates or accelerates approval of fossil fuel infrastructure, this assessment cannot lawfully be deferred to later administrative processes without reopening the

legislative choice itself. Absent such an assessment, the Scheme establishes an authorisation pathway that creates a material risk that lawful justification will not be possible

8. Conclusion

This submission identifies clear and foreseeable incompatibilities between the General Scheme of the Strategic Gas Emergency Reserve Bill 2025 and Ireland's obligations under EU law and the European Convention on Human Rights. These incompatibilities arise at the level of legislative design and cannot be deferred to later administrative or consenting processes. At their core, they arise from the Scheme's departure from the ordinary planning procedures through which EU environmental law is presumptively complied with, without ensuring that equivalent safeguards are provided.

Failure to address these matters would risk enacting legislation that is foreseeably incompatible with EU law and the European Convention on Human Rights. Such incompatibility would arise not from legal uncertainty, but from identifiable and avoidable defects in legislative design, exposing the State to predictable legal challenge.

The Joint Committee on Climate, Environment and Energy has a decisive role in determining whether these defects are addressed before the Bill proceeds further. Failure to do so would arise from a conscious choice to proceed notwithstanding identified risks, undermining the integrity of parliamentary scrutiny in an area of great climate and environmental sensitivity.

FIE urges the Committee to exercise its scrutiny function accordingly.

We are content for this submission to be published in full and for FIE to be identified, subject to the redaction of our contact details.

Please acknowledge receipt.

Yours faithfully,

Tony Lowes
Friends of the Irish Environment

Annex I

Friends of the Irish Environment CLG (FIE) is a non-governmental charity formed in 1997 by a group of environmental activists from across Ireland, with the company limited by guarantee established in 2001, towards the following goals:

- monitoring the full implementation of European law and assisting in its development,
- advocating for changes in the Irish planning laws,
- encouraging the implementation of the right to full public participation and access to justice,
- supporting individuals, local groups, and the wider public in understanding environmental issues, and
- seeking the proper implementation of environmental and planning laws to support sustainable communities, including pursuing concerns and cases in both the built and natural environments.

In recent years, FIE has taken legal action to hold the Irish Government accountable for meeting national and international commitments to reducing carbon emissions, including the "Climate Case Ireland" on the adequacy of the Government's Mitigation Plan. [11]

FIE conducts policy research, advocacy, and public awareness campaigns alongside litigation. As an independent and principled environmental advocate, FIE strives to be both challenging and cooperative, effective yet respectful. A commitment to fact-finding, truth-telling, integrity, and transparency drives FIE. FIE is a member of the Irish Environmental Network and the European Environmental Bureau. [12, 13]

11 https://www.ejiltalk.org/the-supreme-court-of-irelands-decision-in-friends-of-the-irish-environment-v-government-of-ireland-climate-case-ireland

12 https://ien.ie

13 https://eeb.org