



PORTUGAL **RENEWABLE ENERGY SUMMIT** 2025



2-3 OUT
CULTURGEST LISBOA



Overriding public interest in renewables

Biodiversity & Social Acceptance


PORTUGAL
RENEWABLE
ENERGY SUMMIT
2025



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Biodiversity & Social Acceptance | Overriding public interest in renewables



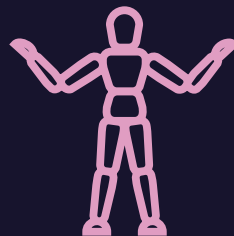
Embracing the polarities



State of play



Goal

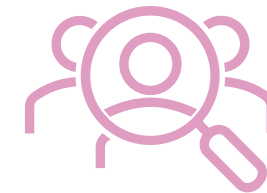


Germany as a
frontrunner



Lessons learned /
Key challenges

State of play | RED III Directive

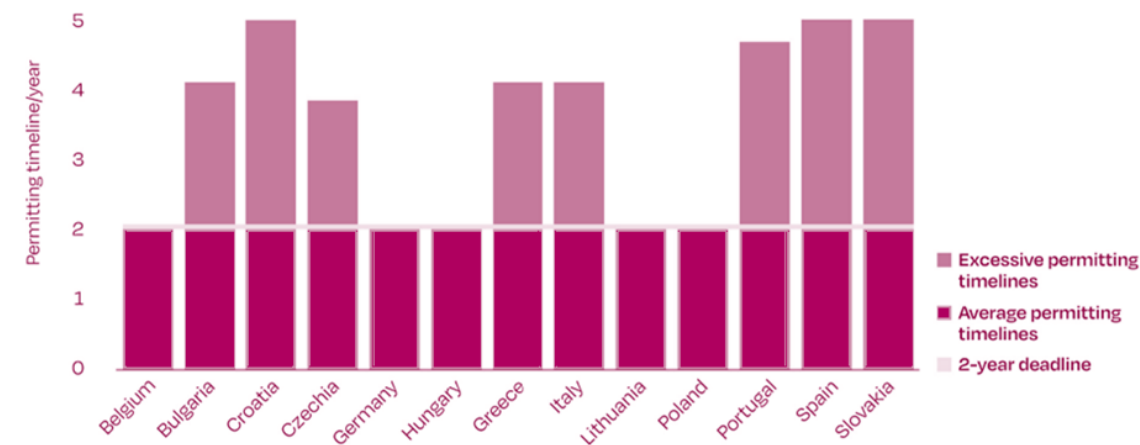


Comparison between the transposition rate per dimension across Member States between 2023 and 2025

	2023	2025
Single contact point & digitalisation	50%	67%
Deadline for permit granting	25%	52%
Acceleration areas	38%	14%
Overriding public interest 	31%	67%
Simpler rules for Repowering	38%	42%
Acceleration on artificial structures	25%	48%
Positive silence	44%	43%
Simple notification for small-scale PV (for grid connection)	75%	67%
RES Mapping areas	N/A	33%

 Upgrade  Downgrade

Permitting timelines across EU Member States



 SolarPower Europe

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Comparison between 2-year deadline as set out in RED III and the current average permitting timelines for large scale solar PV in number of Member States.

Goal | overriding public interest, a change of paradigm



Article 16 F | Overriding public interest

(...) until climate neutrality is achieved, Member States shall ensure that, in the permit-granting procedure, the planning, construction and operation of renewable energy plants, the connection of such plants to the grid, the related grid itself, and storage assets **are presumed as being in the overriding public interest** and serving public health and safety **when**

balancing legal interests in individual cases for the purposes of Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC (conservation of natural habitats and of wild fauna and flora), Article 4(7) of Directive 2000/60/EC (community action in the field of water policy) and Article 9(1), point (a), of Directive 2009/147/EC (conservation of wild birds).

Member States may, in duly justified and specific circumstances, restrict the application of this Article to certain parts of their territory, to certain types of technology or to projects with certain technical characteristics in accordance with the priorities set out in their integrated national energy and climate plans submitted pursuant to Articles 3 and 14 of Regulation (EU) 2018/1999 (Governance of the Energy Union and Climate Action).

Member States shall inform the Commission of such restrictions, together with the reasons therefor.

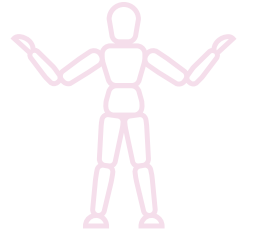
Goal | overriding public interest, a change of paradigm



Article 16 F | Key Points

1. Renewable energy equals Overriding Public Interest (OPI)
2. Presumed benefits to public health and safety
3. Exceptions must be rare, justified, and reported to EU

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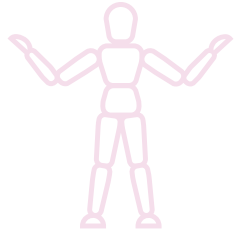
Legislation overview

- **EU level:** TEN-E; RED III; Net Zero Industry Act; Nature Restoration Act
- **National transposition:** e.g. Renewable Energy Act/Renewable energy plants – 2022; Offshore Wind Energy Act/renewable energy plants – 2022; Energy Industry Act/grid – 2023; Building Energy Act/e.g. for thermal insulation – 2023]
- **“Länder” level:** e.g. § 1 para. Hessen Energy Act; Bavarian Climate Act; Lower Saxony Climate Act

Background

- **2009:** Energy Networks Expansion Act
- **2011:** Grid Expansion Acceleration Act
- **2013:** Federal Requirement Plan
- **2022:** impact of the Ukraine conflict accelerating energy restructuring

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Main goal: streamline permit granting process/simplify administrative decisions/reversal of burden of proof

- Simplify the permit process by prioritizing legal interests in favor of renewable energy
- NOT to address local opposition (NIMBY).

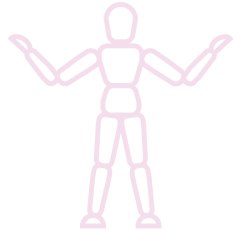
Legal shifts: Anchoring public interest in German law

- Renewables defined as OPI in federal law (§2 Renewable Energy Act/EEG, Wind Energy at Sea Act/WindSeeG)
- Courts now apply OPI broadly: *“Only exceptional cases can block renewables”* (OVG Münster)
- Explicit priority over competing interests (e.g. species, landscape, neighbours)
- Linked to constitutional climate protection (Art. 20a GG)

1 legal concept / 2 purposes

- **Clarifying undefined terms** like “overriding public interest”, “public health”, and “safety” in individual decision for renewable infrastructure projects
- **Rebuttable presumption**: In § 2 EEG 2023, binding public interest in renewables, requiring authorities to prioritise them unless exceptional opposing interests exist. OPI does not affect subordinate legal standard

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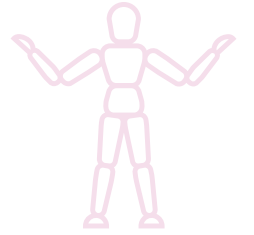
Practical impact: Faster, simpler permitting & fewer disputes

- **Example:** onshore wind approvals doubling to 7.5 GW in 2023
- **Judicial streamlining:** non-critical objections often dismissed
- **Species protection:** priority for renewables enables easier exemptions (Section 45 BNatSchG, e.g. bat/bird impacts mitigated, not blocked)
- **OSW:** court confirmed OPI outweighs habitat concerns if proper mitigation applied (Cologne & Butendiek case)
- Quantitative results, supported by cases proving project acceleration and issue resolution via OPI, especially with clear biodiversity mitigation

Case law: legal balancing in action

- **OVG Münster 2022, Brandenburg wind project:** Local opposition & environmental NGO challenge dismissed, as turbines fulfill climate goals and are by law OPI. Exception only for highly atypical cases (major threats, not visual impact)
- **Butendiek Offshore Wind:** Nature conservation group's case dismissed; EU/EEG law's OPI standard prevailed
- **VGH Mannheim case:** Courts reject challenges arguing renewables aren't climate-relevant—law gives OPI status, discussion “irrelevant”
- **Courts confirm that the German regulation is compatible with European Environmental Law**

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Engaging with biodiversity & social acceptance

- OPI prioritises **population-level species protection**, not individuals (recommended by EREF, reflected in case law)
- Biodiversity protection still critical:
 - **Mitigation measures** (shutdown regimes, monitoring, relocation)
 - Enhanced **transparency**—public and NGOs involved early but fewer veto powers
- Social acceptance:
 - Local **compensation schemes**, revenue sharing, information campaigns
 - NIMBY concerns reduced via stronger legal certainty and better project design

Within the acceleration and infrastructure areas there is an exemption from EIA, Natura 2000 assessments and some Bird Directive obligations. In this case, no exemption decision (OPI) is needed

Lessons learned / Key challenges



Lessons learnt and European trends

- OPI streamlines permits, lowers risk, but requires robust mitigation/legal clarity
- Germany's "*exception only for rare cases*" standard accelerates investments, reduces market uncertainty
- Still risk of lower scrutiny—must balance with biodiversity/health safeguards
- Stakeholder involvement vital: Early dialogue, clear compensation, transparent processes

Recommendations for Portugal

- **Prioritise statutory clarity:** enshrine OPI for renewables in national law
- **Design projects with biodiversity and social acceptance in mind:** mitigation, information, local benefits
- **Learn from German success:** robust legal standards, focused judicial interpretation, use of artificial structures for rapid deployment
- **Monitor** case law and engage with EU networks
- Special rules for **litigation** targeting renewable projects: mediation, arbitration, starting at a second level

Be bold and ambitious: embrace polarity!



Anaïs Nin

"And the day came when the risk to remain tight in a bud was more painful than the risk it took to blossom."

Antun Branko Šimić's

"Man, be careful not to walk small under the stars."



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