

# ***EMERGENCY MEASURES TO ACCELERATE THE ENERGY TRANSITION: OVERRIDING PUBLIC INTEREST OF RENEWABLE ENERGIES***

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# 1. Acceleration of the deployment of renewable energies: two strategies



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## 2. Overriding public interest in the Emergency-Regulation

(Proposal for a Council regulation laying down a framework to accelerate the deployment of renewable energy, 24.11.2022, 15176/22)

**Art. 2 (1) sentence 1: planning, construction and operation of renewable energy plants and installations, their connection to the grid, the related grid itself and storage assets shall be presumed as being in the overriding interest and serving public health and safety when balancing legal interests in the individual cases for the purposes of...**

- Habitats Directive (Art. 6 Abs. 4 Directive and Art. 16 Abs. 1 lit. c Directive 92/43/EWG,)
- Water Framework Directive (Art. 4 Abs. 7 Directive 2000/60/EG)
- Birds Directive (Art. 9 Abs. 1 lit. a Directive 2009/147/EG )

**legal  
consequences**

- renewable energies have relative priority over other environmental concerns
- no justification by state authorities required in the individual cases

**Member states'  
scope of  
deviation**

**Art. 2 (1) sentence 2: Member States may restrict the application of these provisions to certain...**

- ...parts of their territory
- ...types of technologies or to projects with certain technical characteristics.

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### 3. Comparison: Emergency-Regulation and RED IV-Proposal

#### Art. 2 Emergency-Regulation

(1) The planning, construction and operation of plants and installations for the production of energy from renewable sources, and their connection to the grid and the related grid itself and storage assets shall be presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual cases for the purposes of Articles 6(4) and 16(1)(c) of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1)(a) of Directive 2009/147/EC. **Member States may restrict the application of these provisions to certain parts of their territory as well as to certain types of technologies or to projects with certain technical characteristics in accordance with the priorities set in their integrated national energy and climate plans.**

(2a) **Member States shall ensure, at least for projects which are recognised as being of overriding public interest, that in the planning and permit-granting process, the construction and operation of energy plants from renewable sources and the related grid infrastructure development is given priority when balancing legal interests in the individual case.** Concerning species protection, the preceding sentence shall only apply if and to the extent that **appropriate species conservation measures** contributing to the maintenance or restoration of the populations of the species at a favourable conservation status are undertaken and **sufficient financial resources as well as areas are made available for this purpose.**

#### Art. 16d RED IV-Proposal\*

**By [three months from entry into force], until climate neutrality is achieved, Member States shall ensure that,** in the permit-granting process, the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and 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 the individual cases for the purposes of Articles 6(4) and 16(1)(c) of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1)(a) of Directive 2009/147/EC.'

\*RED IV-Proposal: Proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 5 2012/27/EU on energy efficiency, 18.5.2022, COM(2022) 222 final

## 4. Collision with member states law?

### § 2 German Renewable Energy resources act

<sup>1</sup>The **construction and operation of installations and the associated ancillary installations** are in the **overriding public interest and serve public safety**. <sup>2</sup>Until electricity generation in Germany is almost greenhouse gas neutral, **renewable energies shall be given priority in the respective considerations of protected interests**. <sup>3</sup>[...].

## 5. Conclusion and outlook

- **Paradigm shift in acceleration legislation at EU level**
- Necessary because of the **urgency** from a climate and (currently) energy policy point of view
- EU is probably still **within the scope of the order of competences**
- **Balance needed between climate protection and protection of biodiversity and species**
- Provisions **highly complex** → could hamper the acceleration effect

***THANK YOU FOR YOUR ATTENTION!***

