

Accelerating the permits for onshore wind farms – - a German perspective

Welcome to our webinar!

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About the BBH group



The BBH group consists of the law firm Becker Büttner Held (BBH), the audit firm BBH AG Wirtschaftsprüfungsgesellschaft, the business consulting firm BBH Consulting (BBHC), the project developer for urban neighbourhoods BBH Immobilien and BBH Solutions.

What makes the BBH group special is our interdisciplinary advisory approach: lawyers, public auditors and tax advisors work hand in hand with engineers, business experts and IT professionals.

Together, we develop solutions tailored to suit your business needs in every situation.

- ▶ approx. 600 staff
- ▶ more than 4,000 clients

About us



Becker Büttner Held has been operating since 1991. At BBH, lawyers, auditors and tax advisors work hand in hand with the engineers, consultants and other experts of our BBH Consulting AG. We provide advice to more than 4,000 clients and are the leading law firm for the energy and infrastructure industry.

BBH is known as “the” law firm of public utilities. But we are far more than that – in Germany and also in Europe. The decentralised utilities, the industry, transport companies, investors as well as political bodies, like the European Commission, the Federal Government, the Federal States and public corporations appreciate BBH’s work.

- ▶ Accredited professionals: ca. 250; in Berlin, Munich, Cologne, Hamburg, Stuttgart, Erfurt & Brussels
- ▶ Registered representative of special interests – lobbying register at the German Bundestag – R000790

Dr. Martin Altrock



Dr. Martin Altrock provides comprehensive advice on legal issues relating to renewable energy (market and grid integration, wind power projects, solar energy, biogas, renewable fuels, power-to-X). This also includes the further development of the legal framework as well as the transformation of the energy system (with a focus on the electricity and transport sectors as well as the industrial sector) and all legal matters relating to the generation, promotion and use of hydrogen.

- ▶ Born in Kassel in 1968
- ▶ Studies of law in Heidelberg and Leiden (Netherlands), studies of administrative sciences at the German University of Administrative Sciences Speyer
- ▶ Legal traineeship at the Higher Regional Court of Karlsruhe, research associate and doctorate at Heidelberg University
- ▶ Since 2000 lawyer and since 2006 partner at BBH
- ▶ Since 2011 member of the supervisory board of Enertrag AG
- ▶ Since 2018 lecturer at Technische Universität Berlin
- ▶ Since 2020 member of the presidium of the German Hydrogen and Fuel Cell Association (DWV)

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Dr. Anna Dost



Dr. Anna Dost specialises in renewable energy law with a focus on grid expansion, the connection of renewable energy installations to the electricity grid and green hydrogen projects. She also advises on accountability requirements regarding the reduction of greenhouse gas emissions as well as greenhouse gas reduction quotas.

- ▶ 1997-2003 studies of law in Berlin and Paris II/Panthéon-Assas (Licence en droit)
- ▶ 2004-2006 Legal Traineeship with station of law firm in Tel Aviv
- ▶ 2007-2010 freelancer at an international law firm in Berlin
- ▶ 2011-2021 lawyer at a Berlin-based law firm specialising in German administrative law and international as well as real estate law
- ▶ 2012 doctorate in law (Dr. iur.) at Humboldt University of Berlin on Russian law with research in Moscow, Kazan and Yekaterinburg
- ▶ Since 2021 lawyer at Becker Büttner Held

Rechtsanwältin/Lawyer · Counsel

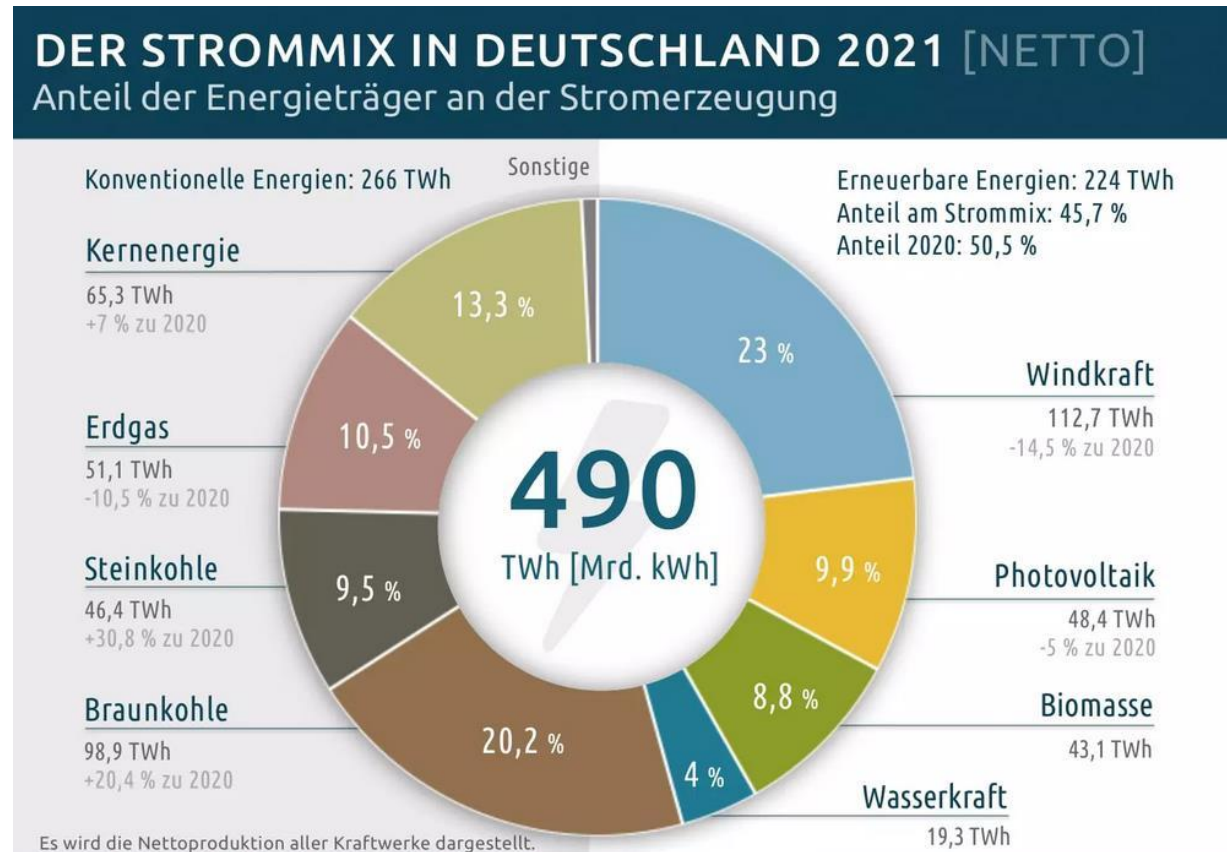
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Agenda

1. **Introduction**
2. Duration of authorisation procedures
3. Changes of planning law
4. Changes of nature conservation law
5. Changes of Building Code and Spatial Planning Act

Starting point

- ▶ Gas shortage and energy price explosion: What now? How can the energy transition finally make proper progress?
- ▶ Wind energy and solar energy as the key to transformation.
- ▶ Needs and reality do not match.

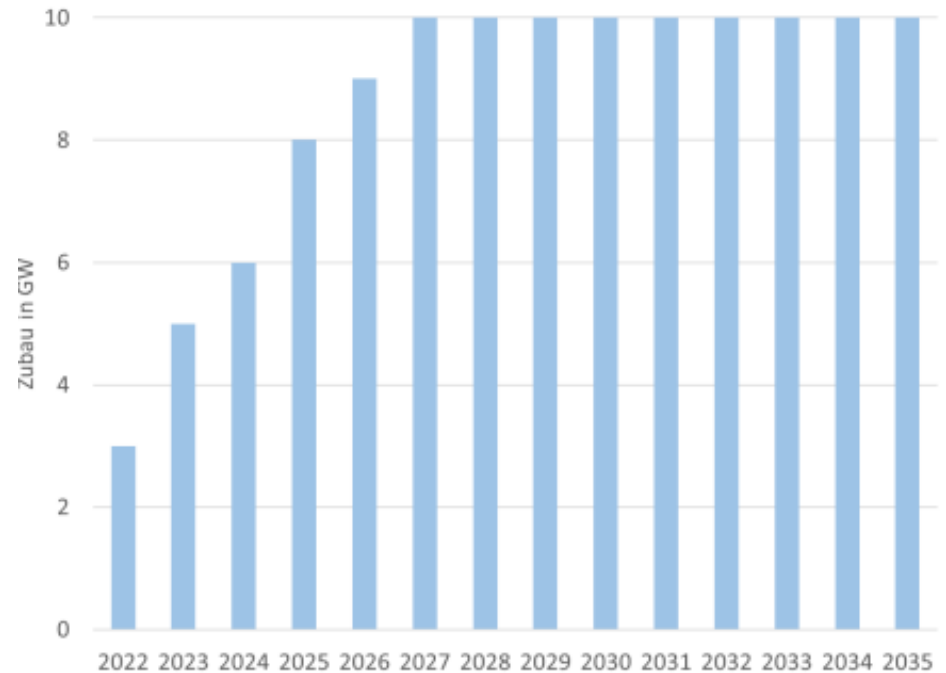


„Electricity mix 2021: Electricity production in Germany [net]“
 (Source: STROM-REPORT.de)

Starting point

- example wind turbines

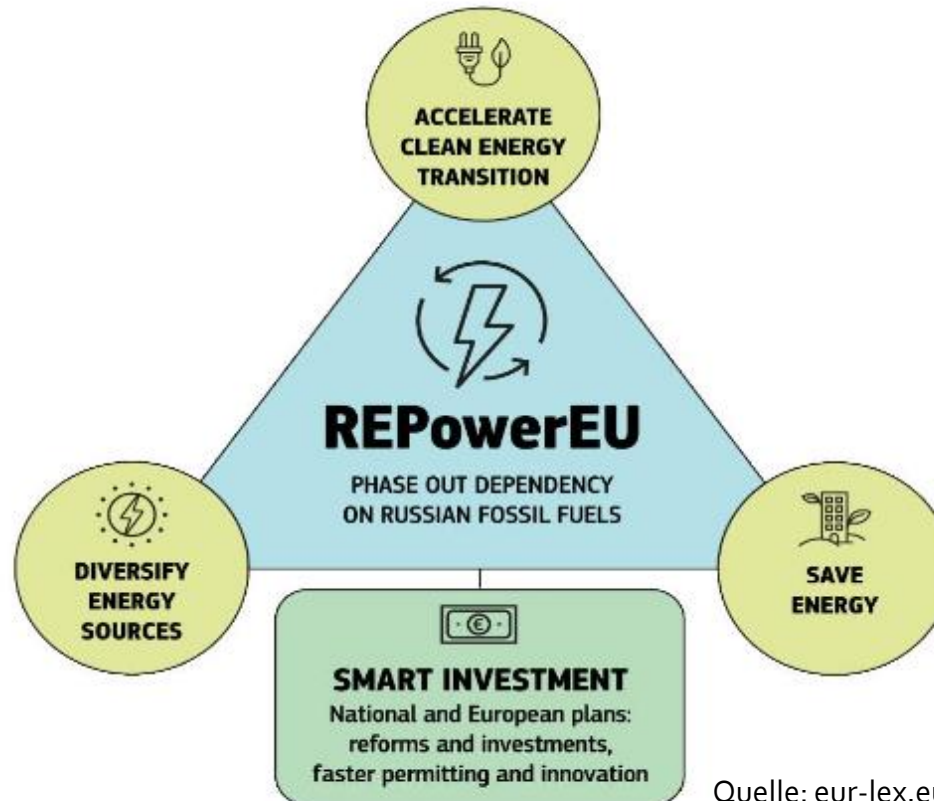
- ▶ The EEG 2023 defines ambitious targets for the **expansion of renewable energies, in particular wind energy**
- ▶ From 2025, the annual expansion rates are to be increased to **10 GW**, which means
 - a total of around 115 GW from wind energy in 2030,
 - 157 GW in 2035 and
 - 160 GW in 2040 and beyond



Expansion targets for onshore wind by 2035
(Source: BMWK)

EU law - RePowerEU

- ▶ The „**RePowerEU**“ programme as been added as a political impulse and aims to unite foreign and energy policy concerns

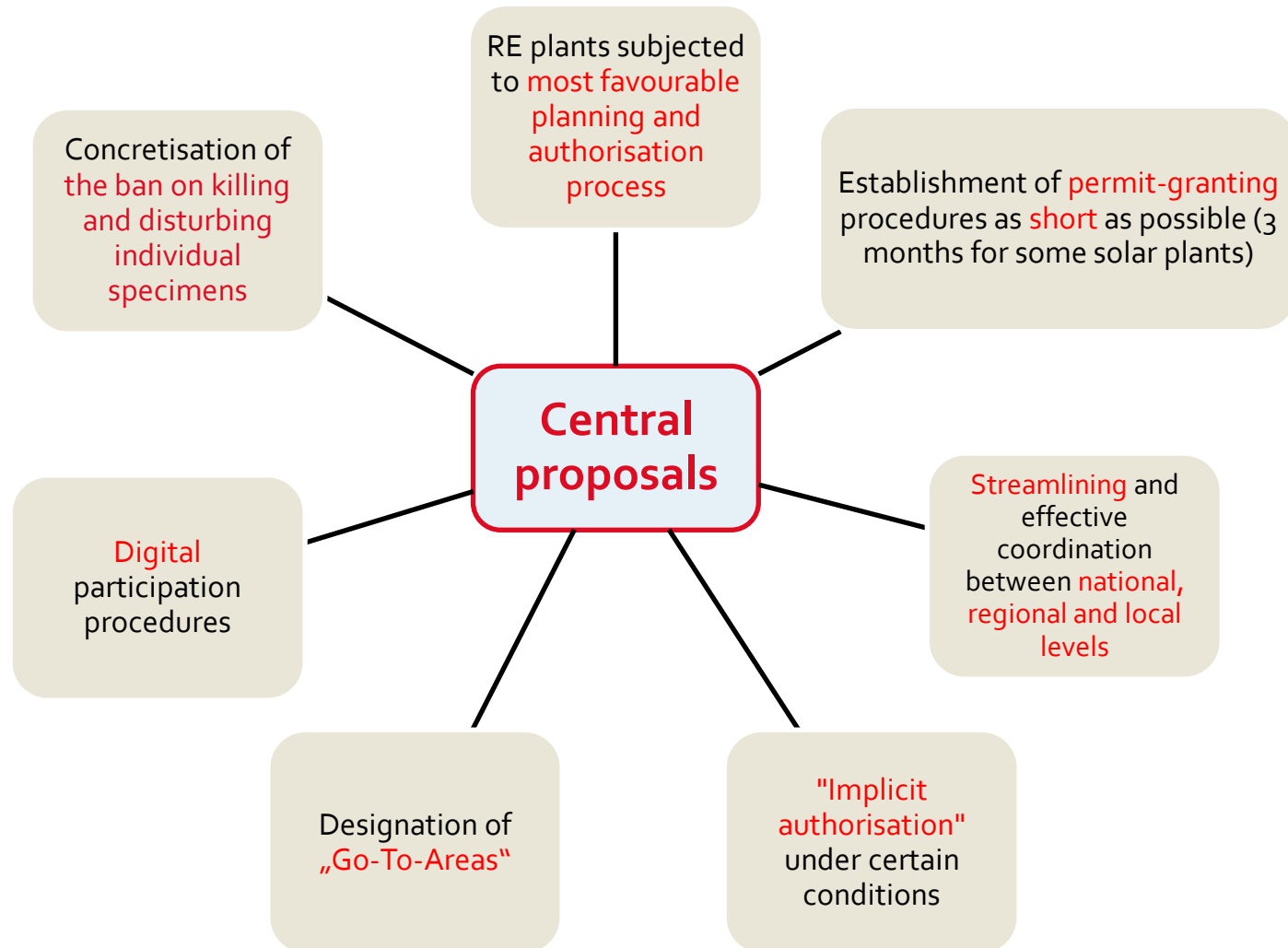


Quelle: eur-lex.europa.eu – RePowerEU Plan

EU - RePowerEU

- ▶ The programme should enable the EU - also in response to the war in Ukraine - to reduce its dependence on fossil fuel imports by
 - **diversifying its energy supply,**
 - **Saving more energy,** and
 - **Accelerate** the **expansion of renewable energies**
- ▶ To this end, existing targets will be adjusted (e.g., for energy efficiency) and new instruments will be introduced.

Recommendations of EU COM

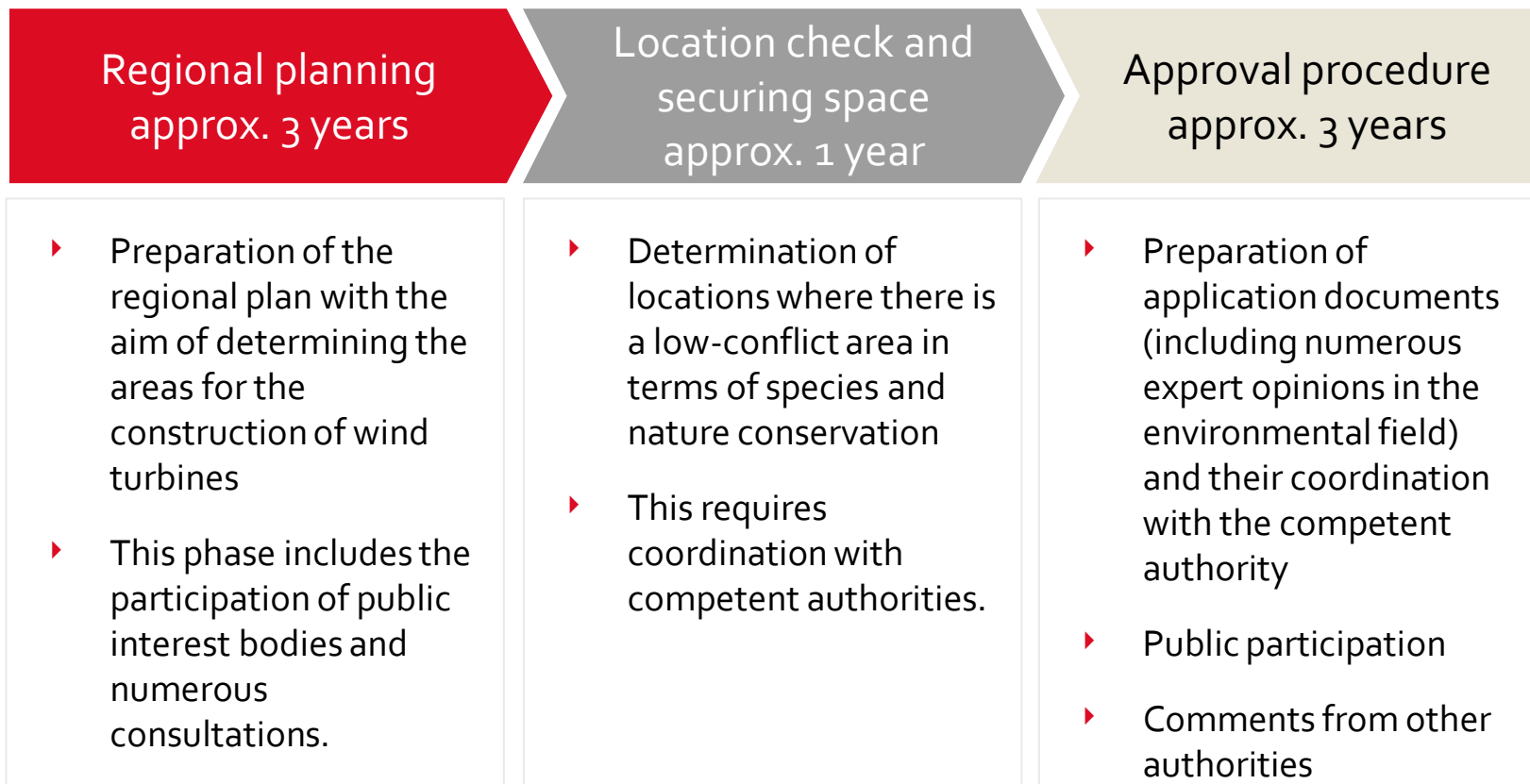


Agenda

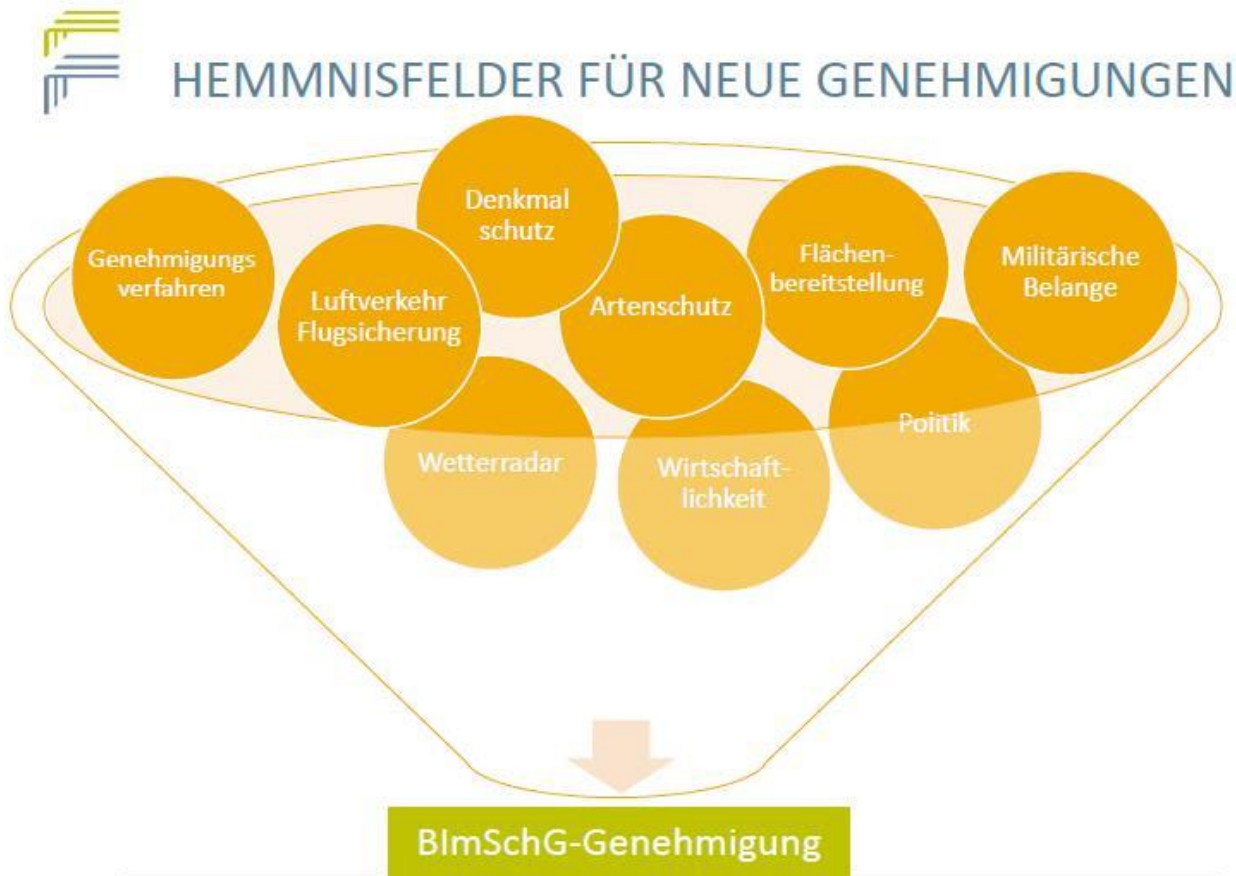
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Duration of authorisation procedures - example wind turbines

The planning and approval process of a wind power plants usually lasts up to **7 years**. That is too long to achieve our climate goals.



Causes of delays for granting permits for wind turbines (1)



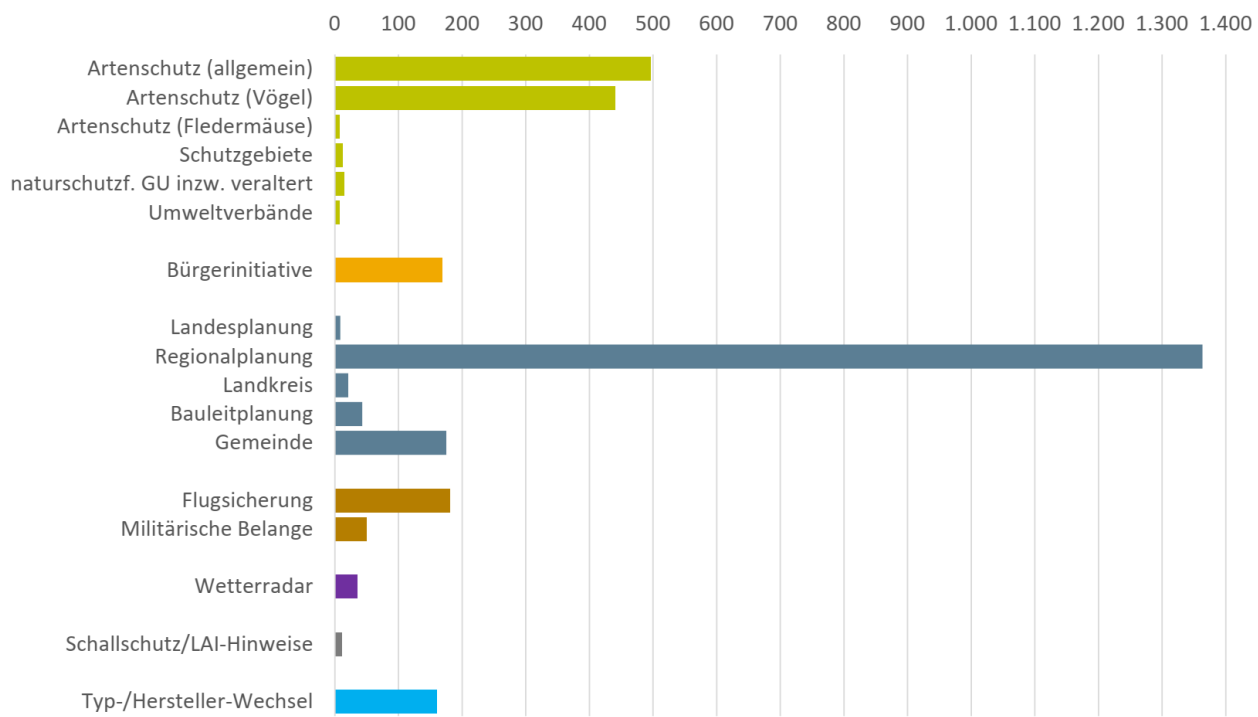
Obstacles for new permissions
(Source: Fachagentur Windenergie an Land)

Causes of delays for granting permits for wind turbines (2)



GEWICHTIGE HEMMNISFELDER

[ERGEBNISSE HERSTELLER-UMFRAGE; IN MW]



15 Daten: FA Wind

© Fachagentur Windenergie an Land

Weighty obstacles - Results of a producers survey

(Source: Fachagentur Windenergie an Land)

Conclusions

- ▶ **The problem are the permits and not so much the money.**
 - The construction of renewable energy plants requires planning and approval;
 - However, the required **procedures take far too long**, so readjustments are needed;
 - This conclusion applies not only to wind turbines but also to solar systems, grid expansion, etc.

- ▶ Has this problem already been tackled in Germany?

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Current status (1)

- ▶ In order to achieve the (quantitative) expansion targets, appropriate areas must be available.
 - The areas designated so far are far from sufficient for the intended expansion of onshore wind energy
 - **Currently, only 0.8% of Germany's land area is designated for onshore wind energy**
- ▶ Spatial planning in Germany takes place at different planning levels and in different planning areas, which interact with each other.

Current status (2)



Planning levels
 (Source: Wulf Hülsmann & Peggy König / Umweltbundesamt)

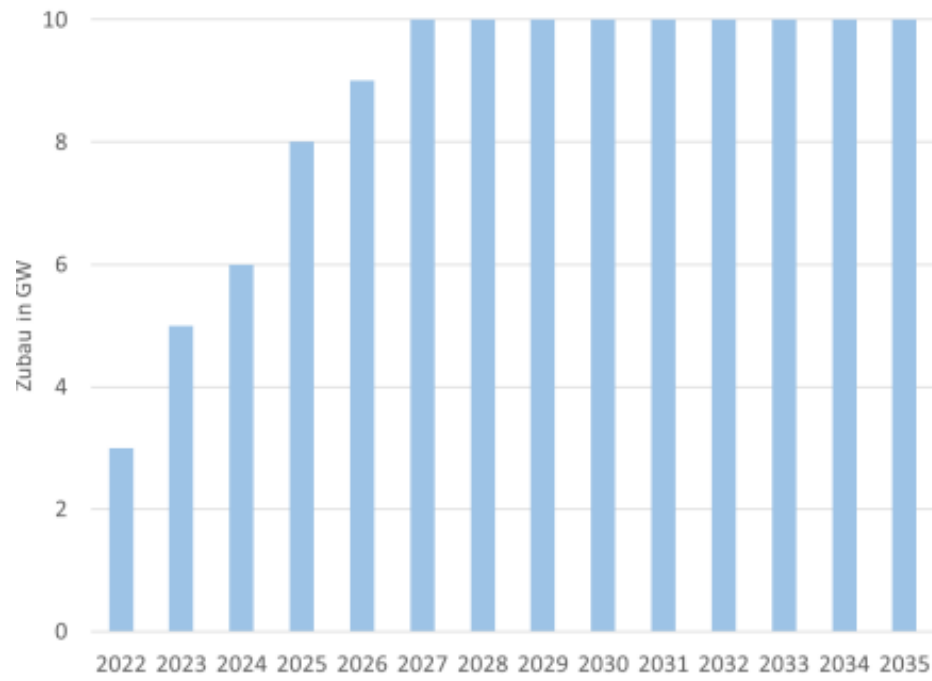
Current status (3)

- ▶ **Planning law** serves the designation of wind energy areas and therefore has a control function.
- ▶ Legal situation so far:
 - Wind turbines are privileged in the “outside areas” (*Außenbereich*) but only if this does not conflict with public interests;
 - In addition, conflict with public interests is assumed if (on a higher planning level) other priority areas have been provided for wind turbines.
- ▶ Wrong approach:
 - very prone to errors and disputes;
 - with the positive designation of priority areas, exclusion effect for other conceivable areas.

Wind-on-Land-Act – Starting point (1)

- ▶ The EEG 2023 defines **ambitious targets** for the expansion of renewable energies, especially wind energy.
- ▶ So far, the law only provides for targets with regard to the **amount of electricity to be generated**.

Ausbauziele
Wind an Land bis 2035
(Quelle: BMWK)



Wind-on-Land-Act – Starting point (2)

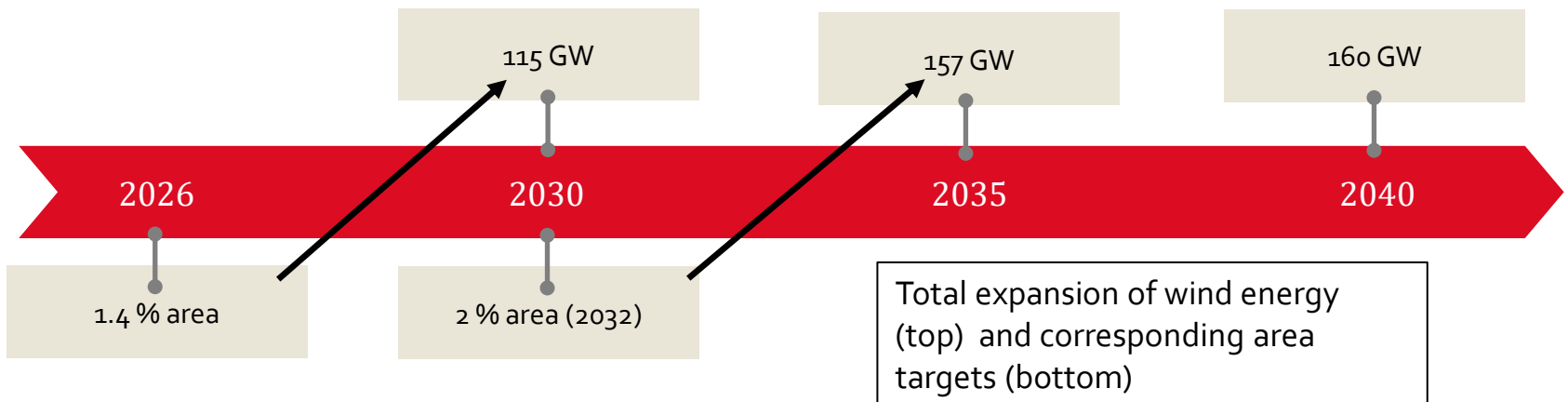
- ▶ In order for the (quantitative) expansion targets to be achieved, corresponding plots of land must be available.
- ▶ **From 2025 onwards, the annual expansion rates are to be increased to 10 GW**, which means a total of around 115 GW from wind energy in 2030, 157 GW in 2035 and 160 GW in 2040 and beyond.
- ▶ Planning and realisation periods for approval and construction need a **preliminary time period**.

Wind-on-Land-Act – Starting point (3)

- ▶ The areas designated so far are far from sufficient for the intended expansion of onshore wind energy.
 - Currently, **0.8 %** of the state's area is **designated for onshore wind energy**.
 - Only **0.5 %** of the country's land area is **actually available**.
- ▶ Lawmakers can only exert indirect influence on the realisation of projects, but they can **exert direct influence on the available land**.
- ▶ Influence via the **Wind Area Requirements Act**
Windflächenbedarfsgesetz (WindBG)
- ▶ Amendments of **Federal Planning Code (BauGB) and Renewable Energy Act (EEG)**

Wind-on-Land-Act – Targets

- ▶ In the long term, 2 % of Germany's territory shall be available for onshore wind energy, **4 times the current amount**
 - Until 2026 it shall be **1.4 % of the country's area**
 - Until 2032 it shall be **2 % of the country's area**
- ▶ The area targets are related to the content of the (quantitative) expansion targets.



Wind Energy Requirement Act (WindBG) – Implementation options

- ▶ The Federal States have **two options** to implement the new requirements.

Independent definition of land use targets in state-wide or regional spatial development plans (*Raumordnungspläne*)

or

Delegation of the definition of land use objectives to the subsequent planning levels (by law or definition as spatial planning objectives).

- ▶ The consequences of a breach of the requirements depend on the choice of implementation (see below).

WindBG – Implementation in further detail

- ▶ The Federal States must provide corresponding evidence ("traffic lights for the area" / "*Flächenampel*").
- ▶ The Federal States must report to a **Cooperation Committee** (*Kooperationsausschuss*) on the status of implementation of the area targets in their territory.
- ▶ This is to prevent Federal States from "blindly" missing their area targets until the **sanction rules** take effect.



WindBG – Area contribution values (*Flächenbeitragswerte*)



Federal State	Area contribution until 2026	Area contribution until 2032	Land	Area contribution until 2026	Area contribution until 2032
BW	1.1 %	1.8 %	NI	1.7 %	2.2 %
BY	1.1 %	1.8 %	NW	1.1 %	1.8 %
BE	0.25 %	0.5 %	RP	1.4 %	2.2 %
BB	1.8 %	2.2 %	SL	1.1 %	1.8 %
HB	0.25 %	0.5 %	SN	1.3 %	2.0 %
HH	0.25 %	0.5 %	ST	1.8 %	2.2 %
HE	1.8 %	2.2 %	SH	1.3 %	2.0 %
MV	1.4 %	2.1 %	TH	1.8 %	2.2 %

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Starting point and proposed solution

- example wind turbines

- ▶ We want climate change; if this kills birds, so what! Is that so?
- Very strongly predetermined by European law (**Bird Protection Directive; Natura 2000 etc.**). Species extinction is being taken seriously; another ecological crisis.
- National leeway small.
- Further problem: Implementation of the requirements on the Federal States level is largely unclear.



Starting point and proposed solution

- example wind turbines

- ▶ Legislative proposal:
 - Among other things, a **uniform federal standard for the species protection assessment**: clearly defined zones are now regulated around the wind turbine.
 - Objective:
 - to avoid discussions between the federal states (e.g., wind turbine on the NRW/Lower Saxony border and different assessment of the effects of this wind turbine)
 - hope that standardisation will have an accelerating effect while high ecological protection standards are observed

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Amendments of building law

- ▶ German government proposal to change **Federal Building Code**: wind turbines shall be privileged outside of populated areas.
- ▶ Permit-granting procedures for wind turbines shall be expedited on **former brown coal (lignite)** mine sites.
- ▶ Planned entry into force: 01 February 2023

Draft amendment of Spatial Planning Act (*Raumordnungsgesetz* – ROG)

- ▶ **Draft amendment** of ROG by federal government
- ▶ For the designation of **wind energy areas** - no overall spatial planning concept necessary anymore
- ▶ If wind turbines to be erected in a „wind energy area“ acc. to WindBG, **no environmental impact assessment** and **no species protection assessment for birds**
- ▶ Exception: wind turbines planned in national parks or “Natura 2000“-areas
- ▶ **Entry into force** only after passing legally binding EU acts – e.g., exception of Directive EEC 92/43/EEC (on the conservation of natural habitats and of wild fauna and flora), Directive 2009/147/EC on wild living birds.

Which proposal is still on the table at the present?

- ▶ **Simplification** of administrative processes (through e.g., bundling or removal of certain procedural steps)
- ▶ **Digitalisation** (e.g., digital public announcements, the display of documents in digital form and the possibility of online discussion meetings)
- ▶ **More qualified personnel** (developing strategically oriented human resources planning, creating flexible personnel pools, simplifying the commissioning of external service providers etc.)
- ▶ **Acceleration of court proceedings** in case of lawsuits against the approval of wind turbines

Draft proposal - Act on the acceleration of administrative court proceedings in the infrastructure sector (30.11.2022)



- ▶ **Amendments of the Administrative Court Code (VwGO)**
- ▶ **Simplification of administrative court proceedings,**
- ▶ **Competence of Higher Administration Courts** (for onshore wind turbines with height > 50 m and offshore territorial wind turbines in the territorial sea)
- ▶ **New procedure for urgent legal protection** for infrastructure procedures
- ▶ **Acceleration of court proceedings** in case of lawsuits against the approval of wind turbines (expert judges; guidelines on how proceedings are to be structured etc.)

Are more reform proposals needed?

(1)

- ▶ **The targets are fixed:** greenhouse gas neutrality by 2035; in 2030, 80% of electricity consumption in Germany is to be covered by renewable energies.
- ▶ **To achieve this,** in particular the expansion of wind energy and photovoltaic plants needs to be tripled over the next five years.
- ▶ **Some proposals have been made (and implemented)** on how to speed up planning and approval procedures; however, this will probably not be enough. The duration of these procedures must be shortened even more significantly.
- ▶ Discussion is being held in Germany, in other EU countries and at EU level, and there are **various other ideas** (see e.g., recommendations of the COM on speeding up approval procedures).

Are more reform proposals needed? (2) – Conflict with monument protection

- ▶ Conflict occurs on Federal State level
- ▶ According to BWE: at least 1 GW of wind capacity cannot currently be implemented due to historic preservation
- ▶ Overriding public interest of renewable energies in sec. 2 EEG not enough
- ▶ Overriding public interest also needs to be implemented in Federal state level legislation, *inter alia*, monument protection acts of Federal states



Source: Wikicommons

Thank you very much
for your attention.

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