

- For the busy reader -

Legal opinion on the compatibility of Section 2 of the Renewable Energy Sources Act (EEG) with constitutional and EU law

Section 2 of the EEG declares the expansion of renewable energies to be of **overriding public interest**, even crucial for public safety and health. This is not a political declaration of intent, but a legally binding requirement for authorities and courts.

This opinion does not assess the so-called energy transition; it solely examines the constitutional admissibility of this provision.

The key point

In a constitutional state, the following principle applies: where conflicting interests arise, they must be **weighed up in each specific case**.

Section 2 of the EEG breaks with this principle, as the expansion of renewable energies is **given greater weight in advance by law** than all competing interests, even fundamental rights. The result of the weighing up is thus no longer determined, but is predetermined. Weighing up becomes a mere formality.

Why this is legally inadmissible

- **Weighing up the interests involved is mandatory:** weighing up the interests involved means genuine freedom of decision for the administration and the courts. A statutory priority decision is therefore completely incompatible with this.
- **Legislative overreach:** The legislature may set goals, but **it may not determine** how a specific conflict must be resolved. This decision is the responsibility of the administration and the courts.
- **Fundamental rights lose their protective effect:** Interference with property rights, freedom of occupation, general freedom of action and local self-government is no longer justified on a case-by-case basis, but is legitimised across the board. The proportionality test is devalued.

Article 20a of the Basic Law does not justify priority

Protecting the environment is a state objective under the Basic Law.

However, Article 20a of the Basic Law does not establish absolute priority, does not automatically suspend fundamental rights and does not replace weighing up the interests involved.

Section 2 of the Renewable Energy Sources Act (EEG) turns a state objective into a binding decision-making requirement. This exceeds the constitutional limits.

Local self-government and EU law

Section 2 EEG deprives municipalities of their real freedom to make planning decisions. Local concerns can be identified, but they are no longer regularly taken into account. This is a structural interference in local self-government.

The provision is also problematic under EU law, as it curtails judicial review and impairs the effective weighing of competing interests.

Conclusion of the expert opinion

Section 2 of the EEG is only legally tenable if it is understood not as a priority rule, but merely as one consideration among several.

Applied as a performance target, it is not tenable under constitutional and EU law.

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Note: Only the complete legal opinion is authoritative.

The rule of law is about weighing up interests.

Citizens have no chance – does the wind industry always win?

Where a law stipulates this, the courts are discredited.

In 2021/22, wind industry companies were officially asked about the factors that were slowing them down. The lobby promised to exert influence. The legal regulations on which the so-called energy transition is based are conspicuous in other areas as well. It is clear that an attempt has been made to shield the entire project from outside interests. In addition to blanket priority rules, there are acceleration clauses, fictitious approvals, and exclusionary effects that shorten the deliberation process and effectively bring forward decisions. Preclusion rules and procedural shortcuts structurally weaken effective legal protection and municipal planning authority. Cui bono? The resulting need for research and review is also currently being addressed.