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International Onshore Wind Study

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Editorial

Solving Europe's energy concerns with a gust of wind? It might take a little more than that. However, the expansion of onshore wind energy in Europe is essential to achieve the ambitious targets set for the decarbonisation of the energy sector – both on EU and national level. As this first-time international study regarding 29 European jurisdictions conducted by Luther Rechtsanwaltsgesellschaft mbH shows, despite the apparent awareness of the importance of onshore wind energy, the overall conditions for onshore wind energy in the European countries continue to vary greatly.

In total, wind energy accounted for 19% of electricity consumption in Europe in 2023. The EU has installed a record amount of 16.2 GW in 2023, 79% of which was onshore wind. The importance of onshore wind energy and the installed capacity of wind turbines has also increased considerably in neighbouring non-EU countries in recent years.

As a renewable energy source capable of generating large amounts of electricity, onshore wind energy is one of the central building blocks of the energy transition and the decarbonisation of the economies of many countries. Europe is leading in the expansion of onshore wind energy. The largest onshore wind energy markets in Europe in terms of installed capacity are Germany, Spain, France, Sweden, the UK, Türkiye and Italy. While countries such as Sweden, France and Finland are showing impressive progress, in 2023, Germany reported the largest growth rate with 3,567 MW in new generation capacities. In the coming years, a considerable increase in wind energy installations is expected in most EU countries and neighbouring non-EU countries.

The main drivers for the expansion are the desire to end the dependence on conventional energy sources and to achieve CO2-neutrality; as prescribed for the EU by Article 2 of the "European Climate Law". The further growth of onshore wind energy is therefore one of the key ways to combat the expansion and consequences of climate change.

Nevertheless, onshore wind energy is also facing challenges. Major obstacles are increasingly limited grid capacities throughout Europe and the length of planning and permitting procedures in many countries. Also, environmental regulations are often seen as a delaying factor. In contrast to solar energy, onshore wind energy projects are often hampered by a lack of acceptance among the local population.

Both the EU and neighbouring countries attempt to improve regulatory framework conditions. In the EU, this acceleration is driven by, among other things, Regulation (EU) 2022/2577, which introduced temporary measures to promote the expansion of onshore wind energy, and RED III. The latter inter alia raises the overall target for the expansion of renewable energies to 45% by 2030.

However, some legal areas important for the expansion of onshore wind energy are not harmonised and will remain subject to national

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law in the future. This applies, for example, to the securing of land governed by national property law. The legal framework conditions will therefore continue to differ considerably in European jurisdictions for the foreseeable future.

The following study provides a comprehensive overview of the status of onshore wind energy and the regulatory framework to expand onshore wind energy in 29 countries. These countries include all member states of the European Union that play a role in the wind energy sector, as well as neighbouring non-EU states such as Norway, Türkiye, Serbia and Ukraine. For each jurisdiction, the study contains a presentation and comparative analysis of key legal issues for wind energy projects, i.e. securing land, planning and permitting law, grid connection conditions and the marketing of electricity. The study also analyses the general political attitude towards onshore wind energy and the assessment of the legal certainty of investments.

The study was conducted from October 2023 to January 2025 in cooperation with leading law firms in the field of (renewable) energy law in the respective countries. A comprehensive questionnaire was drawn up for this purpose, which was answered by all participating law firms. The answers given in the questionnaire as detailed under “Jurisdictions” range from general descriptions of the wind energy sector, national government policies and the regulatory framework for onshore wind energy in the respective countries, aspects of energy law, property law, planning and permitting procedures and corporate structuring.

Editors – Luther Onshore Wind Team

← Benedikt Rechner
Lawyer, Counsel
Energy and antitrust law
Berlin
benedikt.rechner@
luther-lawfirm.com

Bernhard Burkert, LL.M. →
Lawyer, Counsel
Public law
Berlin
bernhard.burkert@
luther-lawfirm.com

← Dr Sven Stumm
Lawyer, Counsel
Corporate/M&A
Frankfurt
sven.stumm@luther-lawfirm.com

↑ Dr Holger Stappert
Lawyer, Partner
Energy and antitrust law
Dusseldorf
holger.stappert@
luther-lawfirm.com

↑ Cosima Flock
Lawyer, Counsel
Energy and antitrust law
Dusseldorf
cosima.flock@
luther-lawfirm.com

← Dr Frederic Tewes
Lawyer, Senior Associate
Property and architectural law
Dusseldorf
frederic.tewes@luther-lawfirm.com

← Tarik Bilici, LL.M.
Junior Consultant
Energy and antitrust law
Dusseldorf
tarik.bilici@luther-lawfirm.com

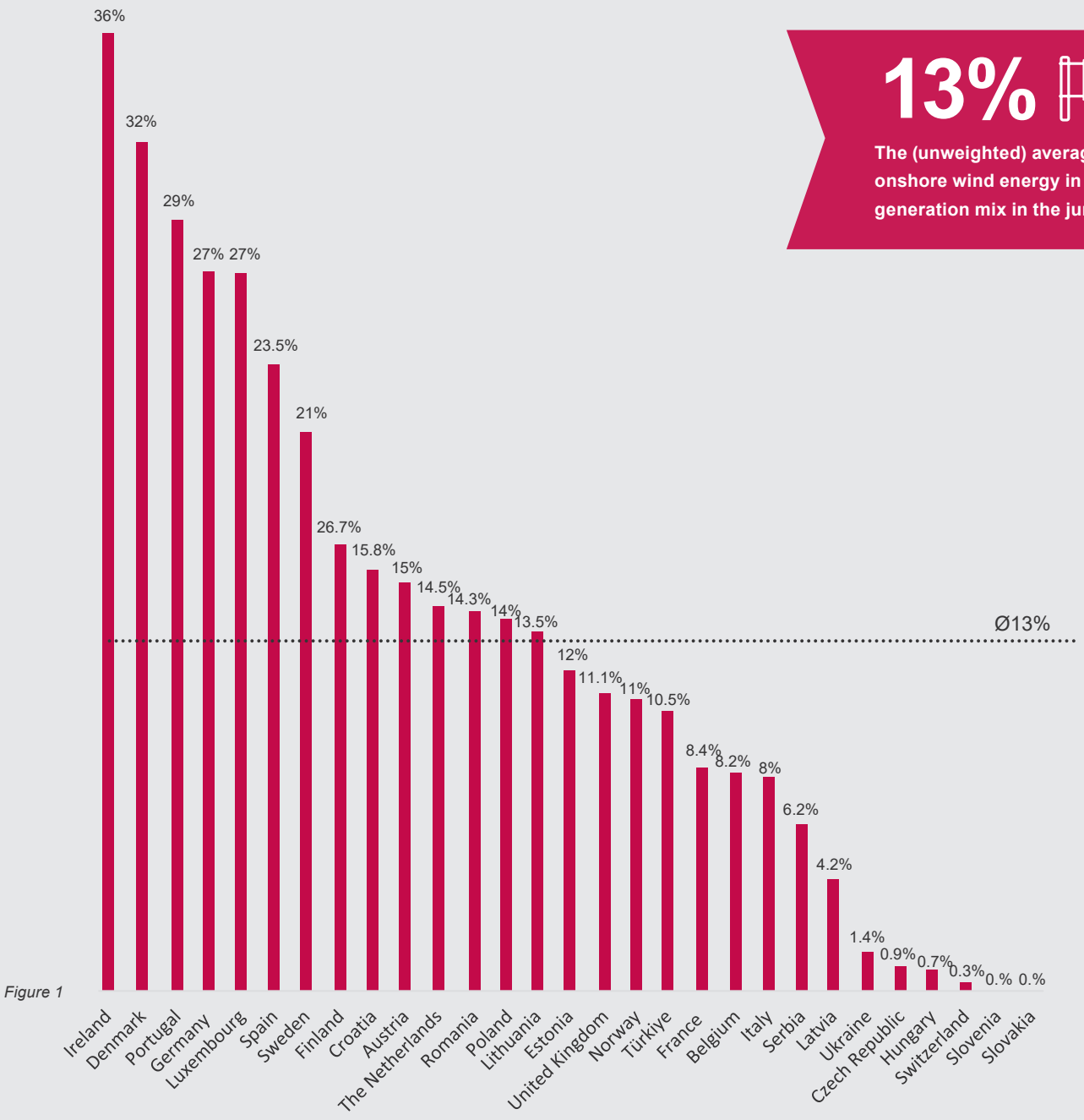


Figure 1

Please note that the data for Finland, France, and Lithuania refer to 2022 figures.

13%

The (unweighted) average of onshore wind energy in the generation mix in the jurisdictions

Analysis – Key Findings

In 2023, what share of total domestic energy production came from onshore wind?

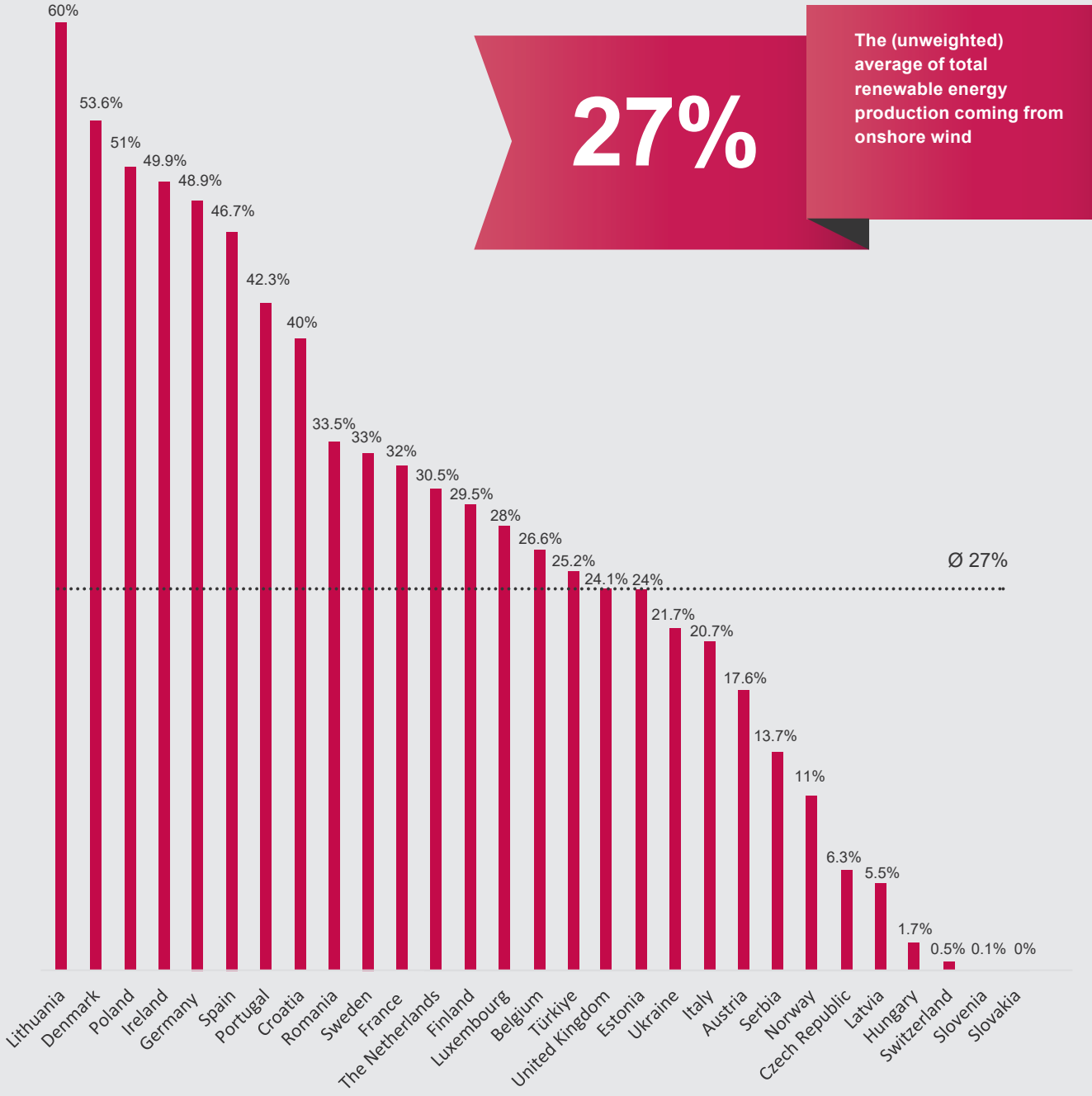
The natural wind potential in the 29 European jurisdictions varies greatly. This largely explains the varying shares of onshore wind power in the energy generation mix among the countries analysed. In 2023, the average proportion of onshore wind energy in domestic electricity production among the participating jurisdictions was 13%. With a share of around 27%, Germany is in the fourth place in this statistic. Ireland, Denmark and Portugal are in the medal places with shares of onshore wind power in the generation mix of 36% to 29%. At the other end of the scale are Ukraine, the Czech Republic, Hungary, Switzerland, Slovakia and Slovenia – six countries where the share is below 2%.

In 2023, what share of total renewable energy production came from onshore wind?

The order of the countries shifts considerably in some cases when looking at the share of onshore wind energy in the generation of electricity from renewable energies. In the (unweighted) average of all 29 jurisdictions, onshore wind energy accounts for 27% of the renewable energy generated. The gold, silver and bronze medals go to Lithuania, Denmark and Poland with shares of 60%, 53.6% and 51% respectively. Germany ranks fifth with a share of 48.9%.

This figure shows that countries have different priorities when it comes to renewable energies. Countries such as Norway, Austria and Switzerland, for example, offer good conditions for the use of hydropower, while solar energy plays a significant role in the renewable energy politics in the southern European countries. However, onshore wind energy accounts for a high proportion of electricity generation from renewable energies across many countries. This demonstrates that the deployment of onshore wind energy is one of the keys to the further decarbonisation of the European electricity generation.

The comparisons also make it clear that the natural conditions are not solely responsible for the success of onshore wind energy. The generation mix and the creation of the legal framework for electricity generation as a whole are the responsibility of the individual states, both within and outside the EU. Wind energy policy therefore differs considerably in the countries examined, even if they are EU member states. Political decision-making in the individual countries will continue to play a decisive role in the future.



Please note that the data for Finland, France, and Lithuania refer to 2022 figures.

In the member states of the European Union, the regulations are strongly influenced by EU-legislation, especially the RED III.

Government Policy / Regulatory Framework

Onshore wind energy is primarily governed by national policies. The regulatory framework varies from country to country. In the member states of the European Union, the regulations are strongly influenced by EU-legislation, especially the Renewable Energy Directives (RED). A special focus of energy policy in the European Union is on reducing dependence on natural gas and oil and making the energy supply in Europe climate-neutral in the medium term. Overall, a trend can be observed that EU member states and neighbouring countries are improving the regulatory framework in favour of a strong expansion of wind energy.

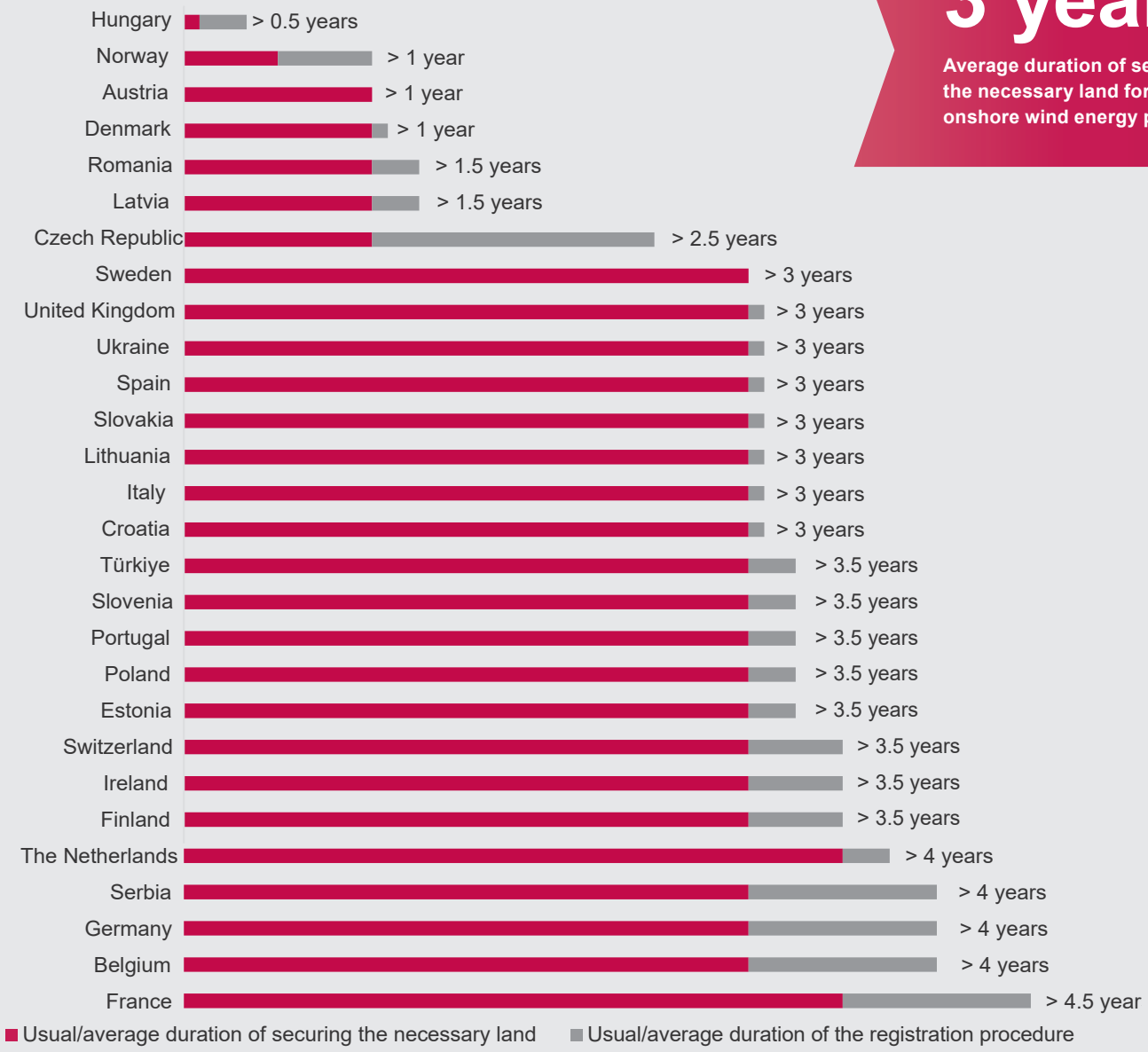
To reduce CO2-emissions and as a consequence of the limited availability of conventional fuels the EU and its member states have taken strong measures to promote the expansion of wind energy. These measures include, in particular, the Council Regulation (EU) 2022/2577 which introduced temporary measures to speed up the approval process for renewable energy projects. The regulation stipulates that the expansion of renewable energies is in the overriding public interest and therefore supersedes other concerns that could previously prevent the construction of wind turbines.

In October 2023 the revised Renewable Energy Directive (RED III) was adopted, which raised the overall target for the expansion of renewable energies to 45% by 2030. The revised directive also permanently establishes the overriding public interest and the requirements for accelerating permit procedures for the expansion of renewable energies. Furthermore, the directive contains stipulations for the designation of areas for renewable energies under planning law in which reduced requirements for environmental assessments apply. It also obliges member states to accelerate grid expansion to ensure sufficient grid capacity.

In order to improve the framework conditions for manufacturers of wind turbines in the EU, the European Commission has also announced a wind energy action plan, which sets out a package of immediate measures to complement existing regulations and strategies for the expansion of wind energy. On 19 December 2023, representatives of the European Commission, 26 Member States and 300 companies from the wind industry signed a European Wind Charter. Among other things, the member states committed to quickly implementing the requirements of RED III to facilitate planning and approval procedures, improving wind energy auctions and the conditions for European manufacturers of wind turbines.

Onshore wind energy has become considerably more important in the government policies of neighbouring EU and non-EU countries in recent years and is firmly anchored in the national policies of these states. Particularly noteworthy here are the Baltic states, for example, which have recently made extensive legal adjustments and introduced ambitious expansion targets to promote the expansion of wind energy. Among neighbouring non-EU-states for instance the United Kingdom, Türkiye and Norway also provide significant amounts of electricity from onshore wind energy plants. Significant expansion rates can also be expected in these countries.

How long does it take to secure the necessary land for the construction of an onshore wind energy plant?



3 years

Average duration of securing the necessary land for an onshore wind energy project

Figure 3

Securing Land

The issue of securing land is of considerable importance for the construction of onshore wind turbines. In fact, it is the first step in any onshore wind energy project. Among other things, it is important to regulate the use of paths or access via third-party properties and to secure access authorisations for individual properties. Operators of wind turbines and owners of land on which wind turbines are to be constructed are usually different people. The operator must therefore first obtain the right of use for the construction and operation of the wind turbine “on third-party land” from the owner for a certain period of time. The same applies to possible access routes to these plots of land. To this end, the operator secures the land on which it intends to erect the wind turbine and via which the access routes and cable route are to be realised – for a period of time that is needed for the economic operation of the wind turbine.

The process of securing the land necessary for the construction of an onshore wind energy project, including the land required for the turbines, distance and compensation areas, and other necessary areas, typically takes an **average of three years** for a project of average location, size, and complexity. In addition to securing the land, many jurisdictions require the registration of the property title in a designated land register. While registration is not required in Sweden, for example it is usually done in Spain due to the protective effects it provides against third parties.

Hungary is the country with the fastest process, taking less than a year to secure the necessary

land and complete the registration process. In contrast, France can take up to four years and a half to complete the same process. Only seven countries have a shorter process than the average of three years, and it is evident that many other countries, particularly the largest countries in the EU, such as Germany, France, Italy, and Spain, require three years or more to secure land for such projects.

In practice, the expected duration of securing land varies from project to project. Estimating a “usual” duration in the respective jurisdictions is therefore difficult and should be treated with caution. Also, the clarification of planning and permitting processes are usually started during the land securing phase, so that these phases can overlap.

The process of securing land for the construction of onshore wind energy projects varies depending on the country and typically involves the use of land lease agreements, securities in rem, or a combination of both. In some rare cases, other instruments may also be used. The targeted durations for these instruments are illustrated in the map below.

What contractual terms are being sought for land contracts in each country?

Figure 4

When onshore wind energy projects are implemented, the land on which the projects are built needs to be secured. This is usually done through land use agreements. The length of these agreements is particularly important.

The economic viability of the respective projects is also determined by the length of these contracts. Financing banks and investors also require a certain term to ensure that the financial instruments used are profitable. In many cases, onshore wind energy projects are only written off after 30 years.

As a result, the study found that in the majority of European countries, land use contracts have a term of more than 30 years. Only a few countries, such as Portugal and Italy, have shorter terms of less than 30 years. Please note that these are average values and the duration of the land use agreements can vary depending on the type and size of the project.

Planning and Permits

The construction of wind turbines requires the designation of areas for wind turbines under zoning law at municipal, regional or state level and the subsequent permits under public law. The structure of the planning and approval procedures and the requirements for the granting of permits differ in the national legal systems.

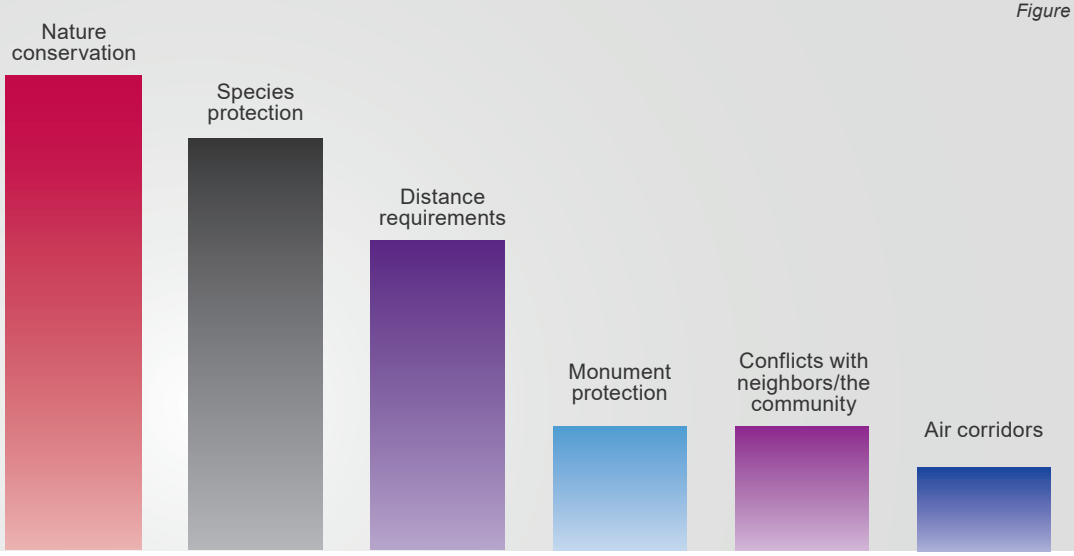
These processes are mostly seen as one of the biggest hurdles for the deployment of onshore wind energy in Europe. The reasons for the lengthy procedures are in many cases the large number and complexity of the legal requirements that need to be taken into account and the staff shortages at planning bodies and authorities. In particular, nature conservation and species protection regulations are seen as the main reason for the lengthy procedures in many countries, as extensive investigations are often required to determine and compensate for the relevant impacts. In addition, there are other typical legal obstacles in many countries, such as distance requirements from nearby residential areas, monument protection and the protection of civil and military radar systems and flight corridors.

How long does it usually take to complete planning and permit procedures for onshore wind energy projects?

Figure 5

Why do onshore wind energy projects fail?

Figure 6



On average, it takes four years to complete the necessary planning and permitting procedures in the jurisdictions surveyed. However, there are considerable differences in the typical duration in the respective countries. The time required for planning and approval can also vary greatly. In Spain, for example, the legal planning aspects can usually be dealt with in a relatively short time, whereas the permitting procedures can take a long time.

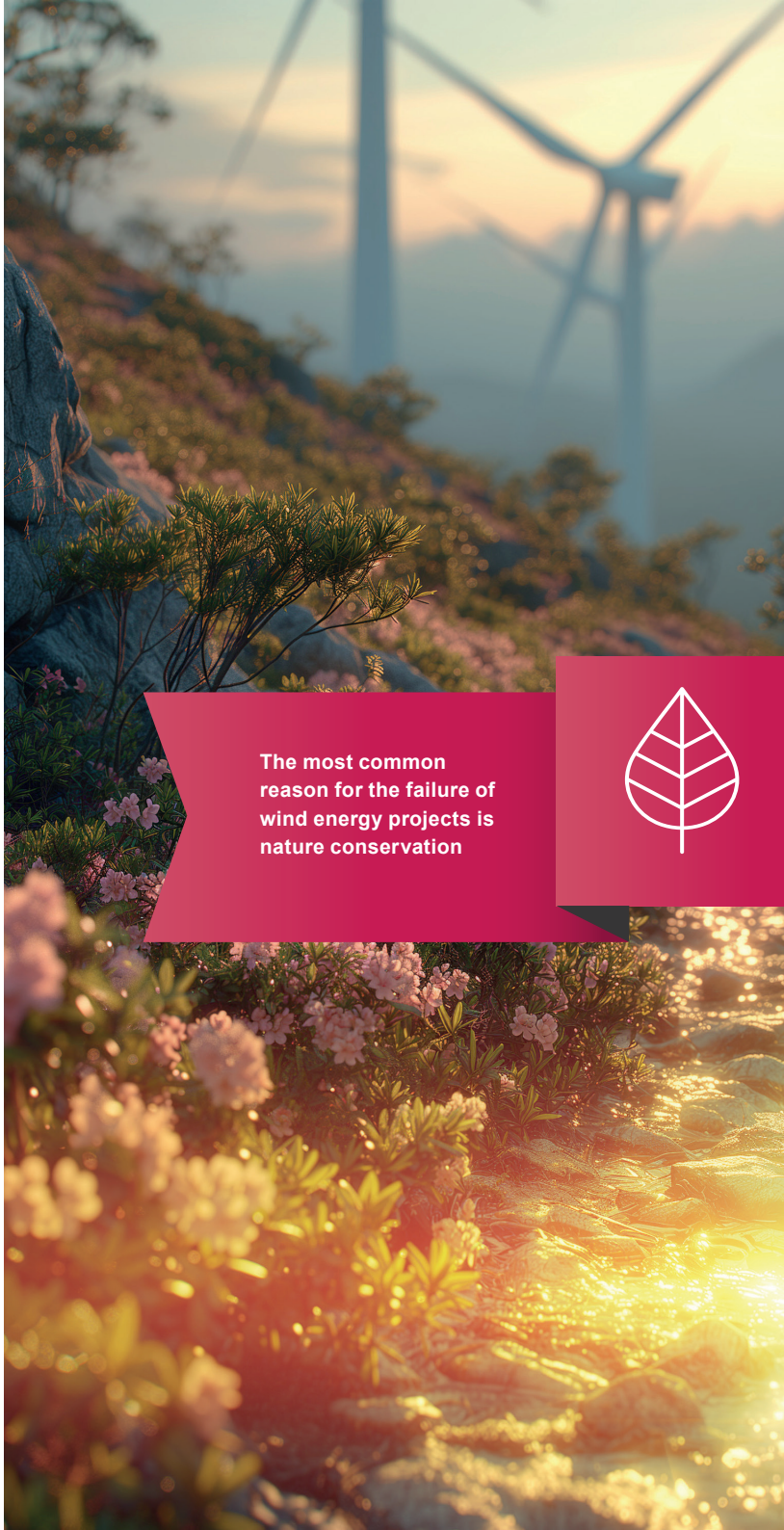
However, a long process duration in itself is obviously not a compelling reason for the stagnant expansion of onshore wind energy. In Sweden, for example, planning and permitting procedures take a very long period of eight years. Nevertheless, this did not stand in the way of the good expansion figures in the past. Conversely, there is still considerable potential for onshore wind energy in Hungary, although not only the time required to secure land but also the planning and permitting procedures are generally short there.

The study found that nature conservation is the most prevalent reason for the failure of onshore wind energy projects. Specifically, 23 out of 29 countries cited nature conservation issues as a significant factor contributing to project failure.

The second most common reason for project failure, as reported by 20 out of 29 participating countries, is species protection. Distance requirements were also identified as a significant factor in project failure, with 15 out of 29 countries citing this as a reason for their wind energy projects not coming to fruition.

In addition, the study found that monument protection, conflicts with neighbours or the community, and air corridors were frequently mentioned as reasons for project failure. These findings suggest that there are a range of factors that can impact the success of onshore wind energy projects.

Overall, the study highlights the importance of considering a variety of factors when developing onshore wind energy projects. By carefully assessing and mitigating potential risks such as nature conservation, species protection, and distance requirements early on, developers can increase the likelihood of project success.



The most common reason for the failure of wind energy projects is nature conservation

Grid Connection

Grid connection is a crucial step in the development of onshore wind energy projects, as it enables the energy produced in the plants to be transported to consumers. However, connecting a wind farm to the grid can be a complex and challenging process, with a range of considerations that need to be taken into account.

In addition to the financial burden of grid connection, which falls on the wind farm developer in all analysed countries, investors also have a keen interest in the regulatory frameworks of the countries involved.

One of the currently biggest challenges and maybe the number one bottleneck to deploying onshore wind energy projects at scale is getting access to the electricity grids. The answers from the participating law firms show that in many countries (≈83%), the existing grid infrastructure is insufficient to accommodate the increasing number of onshore wind energy projects being developed. This can lead to delays in grid connection, as developers may need to upgrade the existing grid infrastructure or build new transmission lines to connect to the grid.

The answers from the participating countries revealed that the financial responsibilities for grid connection efforts typically fall upon the operator or developer of the onshore wind power installation in all of the countries analysed. The study also has shown a clear need for early application for grid connections by project developers (see left graph below). In 52% of the countries, project developers usually apply for a grid connection to the (private or public) grid operators “as early as possible, i.e. right after identification of a suitable project site”. In a number of countries, the application will take place only after the plots of land needed for the wind farm have been secured (24%). The share of countries in which the application is made only after the necessary permit(s) was/were granted makes up 24%. This leads to the conclusion that speed is essential in order to secure the much sought-after resource “grid capacity” for a wind project.

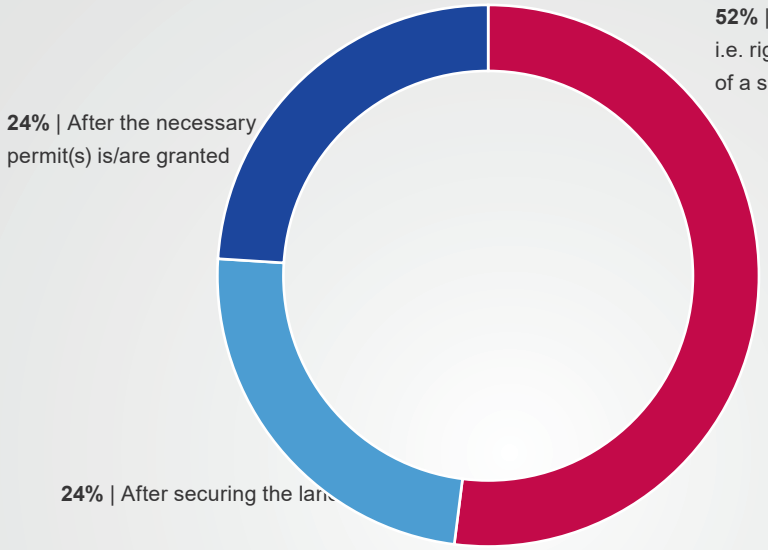
Another key issue which the study has highlighted is the lack of adequate capacities in the grids of the countries. In total 24 out of 29 countries (≈83%) have stated that onshore wind energy project developers face hurdles when it comes to the availability of grid capacities. The often rapidly increasing expansion in the countries, which is not or cannot be accompanied by grid expansion at the same pace, can result in a “bottleneck” for further expansion of onshore wind energy.

In 83%

of countries, onshore wind developers have indicated that there are hurdles regarding the availability of grid capacity.

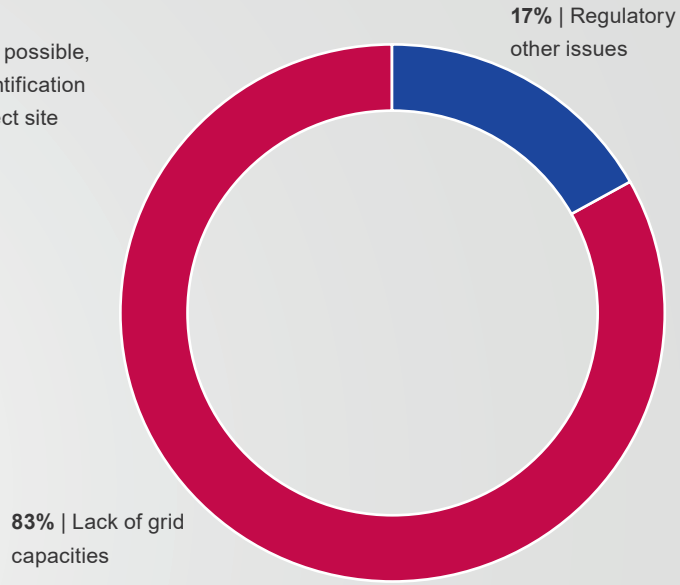
At which stage of a project do project developers have to apply for a grid connection?

Figure 7



Which hurdles in grid connection exist?

Figure 8



Comparing the issues identified in the different countries, it becomes clear many of them face similar challenges related to grid capacity. This leads to a wide-spread necessity for grid expansion to accommodate the growing sector of renewable energy generation. Countries like Austria, Croatia, Germany and the Netherlands are regularly experiencing grid congestion, while others like Finland and Serbia are introducing stricter conditions for connection to the grid. In some countries like Luxembourg and Switzerland, potentially time-consuming planning approval procedures are required, and in others, applicants are obligated to participate in the grid expansion costs (e.g. Türkiye) or have to pay special reservation fees (e.g. Latvia) or provide performance securities (e.g. Lithuania).

Overall, the challenges related to grid connection for wind power are complex and require careful planning and coordination between various stakeholders to ensure a successful project realisation. Also, the relevance of timing in the application process for grid connections in times of decreasing connection capacities cannot be understated as an important factor for the success of onshore wind projects.

Remuneration

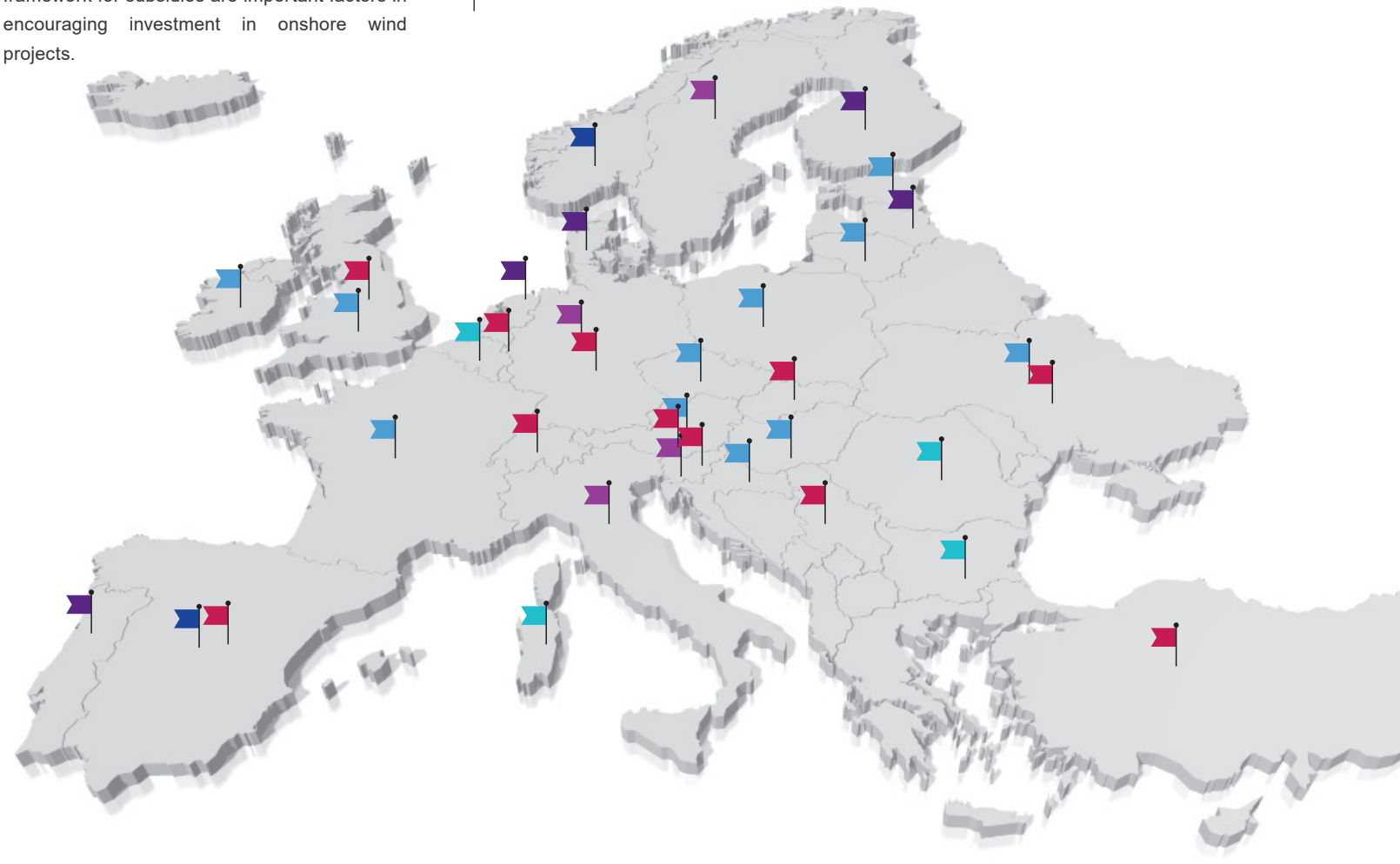
The financial viability of onshore wind projects is strongly influenced by the remuneration/subsidy scheme in place. Our study found that a variety of support schemes are available in the 29 countries surveyed, including feed-in tariffs, contracts for difference and other mechanisms such as lower VAT for wind energy. To strike a balance between reducing the financial burden on the government and ensuring profitability for investors, many countries use a tendering process in combination with these mechanisms to minimise the burden on taxpayers. However, there are also countries where there are no official support schemes and the focus is on direct marketing of wind energy.

The stability and predictability of the remuneration/subsidy scheme is crucial to attract investors and ensure the long-term success of onshore wind projects. The existence of official support schemes and a clear legal framework for subsidies are important factors in encouraging investment in onshore wind projects.

What are the channels for selling electricity from onshore wind energy?

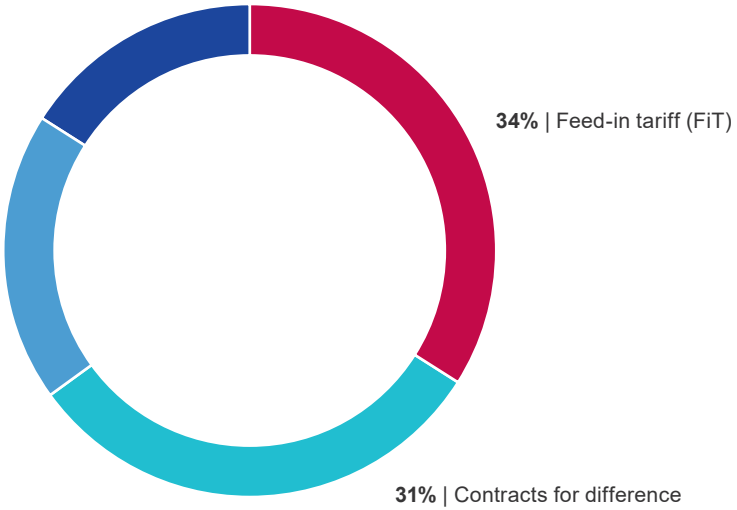
Figure 9

The financial viability of onshore wind projects is strongly influenced by the remuneration/subsidy scheme in place.



What is the distribution of support mechanisms for onshore wind energy across different countries?

Figure 10



There is a surprisingly wide range of support and marketing mechanisms for onshore wind energy in the participating countries. It is worth noting that some countries combine promotion schemes (as indicated by the cross-hatched areas in the map above), whereby the eligibility of a project for a particular scheme usually depends on the installed capacity and/or the commissioning date.

As shown in Figure 10, only 16% of the participating countries currently do not foresee an official promotion scheme, mostly leading to the necessity for operators of onshore wind parks to look for marketing opportunities via PPAs or the spot market (e.g. in Portugal). The still widespread use of promotion mechanisms, however, shows that the participating countries still recognise a need for the promotion of wind energy throughout the EU. At the same time, the increasing implementation of at least market-oriented remuneration models (e.g. market premium in Germany or CfDs in various countries) shows that there is a clear intention to develop onshore wind energy in line with the objectives determined by European law towards complete marketability without state support. The diversity of promotion mechanisms also shows that there is no one-size-fits-all solution and that national characteristics in particular lead to individual approaches.

How are wind power project companies generally structured?

This section of the study focuses on the legal structures used for wind power projects in the participating jurisdictions. With the growing demand for renewable energy and the increasing importance of wind power in the energy mix, it is essential to also understand the choice of legal entity used to operate and manage the project. In particular, whether there is any mandatory prescribed legal form. Different countries have different legal frameworks for wind power projects, and the choice of legal entity can have significant implications for project financing, ownership structures, and liability issues.

With certain exceptions (e.g. Türkiye or Hungary), we generally see that there are no special requirements for the choice of legal form of wind farm operators in the individual jurisdictions. In Türkiye, for example, the choice of legal form is generally prescribed due to the licensing requirements. Under Turkish law, legal entities to be issued a generation license in the market must be established as a joint stock company or limited liability company in accordance with the provisions of the Turkish Commercial Code No. 6762. The same applies to Hungary where the Hungarian Enforcement Decree specifies the form of company in which a licensable activity can be carried out (typically as a domestically established limited liability company or a company limited by shares). Other indicated restrictions are also licence related: In Serbia, for example, any such legal entity for which an energy license is applied for, must be incorporated in Serbia but there is no mandatory prescribed type of legal entity.

Apart from these particularities, the legal form for the operation of the wind power plants can basically be freely chosen. Typically, a special purpose vehicle (SPV) is set up to operate the

wind power project. The separation of individual projects or structures into SPVs is likely to be driven by the need to separate financing and liability levels from each other in most countries and to meet certain unbundling requirements where applicable. Further, establishing an SPV also facilitates a later sale (especially if ownership of the assets, the contractual framework and licenses are concentrated in the SPV).

In almost all jurisdictions, wind power plants are operated in an SPV in the form a LLC, LLP or public company. Limited liability companies or other comparable structures (like stock corporations) typically provide for a limitation of the liability of the shareholders to the contributed share capital. In recent years/decades, the minimum capital requirements for limited liability companies across European jurisdictions have become much more flexible (ultimately also to counter the trend of increased demand for English limited companies). In addition to such LLCs, wind power projects are often set up in a limited partnership, which in most jurisdictions also provides for limited liability (limited to the contributions) for the limited partners. The choice of legal form depends on various factors, including the size and scope of the project, financial resources, tax considerations and also liability assumption of the parties involved. Choosing a limited liability company is on the one hand due to the easy setup. On the other hand, this naturally reduces the risk of the respective financing providers. In Germany for example, there is no prescribed mandatory form to operate wind power plants and typically, these are operated by limited liability companies (GmbH). There are also other legal forms in which wind power plants are operated in Germany, such as partnerships, cooperatives and investor groups.

The ownership structure of wind power projects varies significantly from country to country. In some countries, the electricity market is strongly characterised by publicly owned utilities (Austria), while for some other countries it is stated that both the state and private providers are active in the market. However, from the answers given, it appears that the majority of wind power plants are owned by private investors, without giving an exact figure. However, we can also see that in some countries the ratio is changing due to increased public investment (e.g. Slovenia). Furthermore, there is no real pattern regarding the ownership structure or internal structures in terms of production and supply. The spectrum with regard to the owners ranges from large energy companies (which may be privately or sometime publicly owned) to smaller municipal entities and small private operators, and in some cases even private investors/individuals (e.g., in Belgium, citizen participation is sometimes required as a condition of approval). In certain jurisdictions, SPVs are typically set up as joint ventures (e.g. Finland). However, we cannot identify a consistent structure across the relevant jurisdictions in terms of investment and structure within each entity. In some countries (e.g. driven by local subsidy law like in Ireland) the operational business and generation are separated (in different SPVs), in (most) other countries this seems to play less of a role (e.g. Italy, Luxembourg or Portugal).

In addition, various unbundling requirements apply, particularly with respect to the operation of the grid. In addition to mandatory unbundling requirements, certain jurisdictions indicate that the separation of generation and distribution is a common corporate design. However, this should not be regarded as a standard pattern.

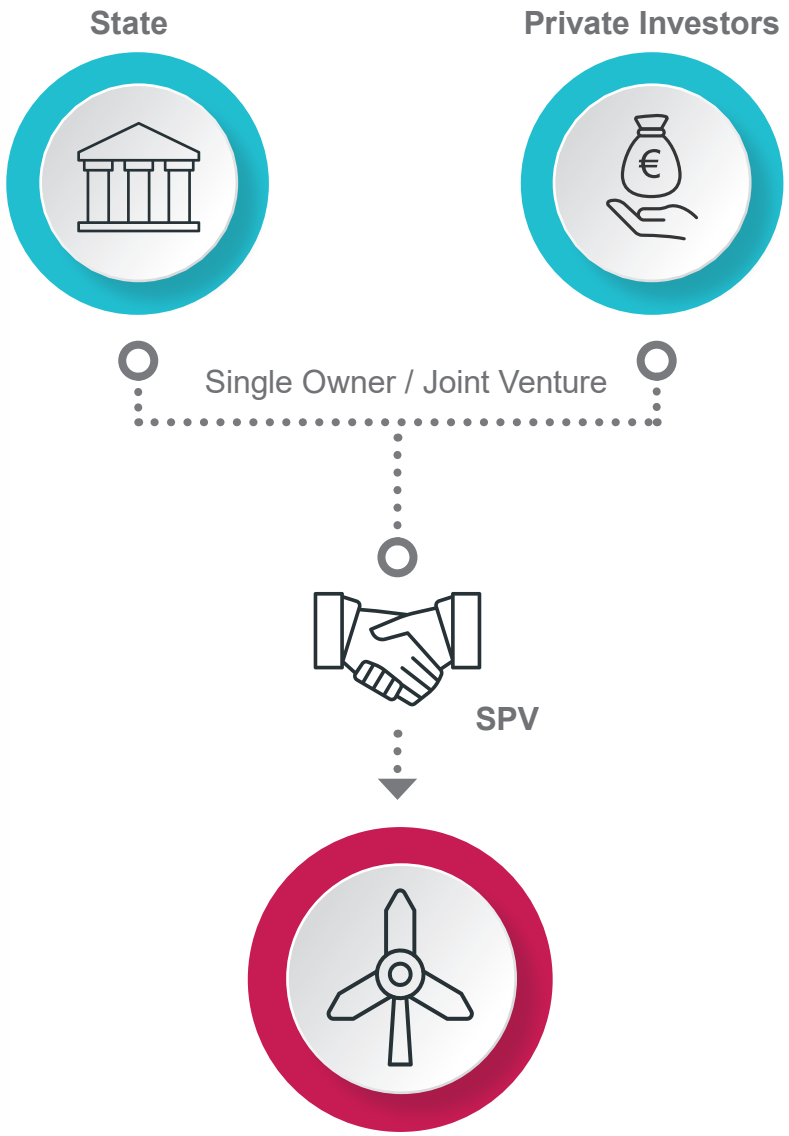


Figure 11

How do countries rate the legal certainty of onshore wind projects in relation to the four issues below?

Country	Securing land	Planning law	Permit situation	Granting of subsidies
Austria	9	8	7	8
Belgium	9	5	2	6
Croatia	8	7	8	8
Czech Republic	9	7	8	9
Denmark	8	8	8	8
Estonia	9	6	7	7
Finland	9	9	8	9
France	10	5	5	8
Germany	8	7	8	8
Hungary	8	8	8	8
Ireland	8	8	8	9
Italy	10	7	6	7
Latvia	9	6	7	10
Lithuania	9	8	6	1
Luxembourg	5	5	5	5
The Netherlands	10	5	5	10
Norway	8	8	6	10
Poland	7	4	5	9
Portugal	6	5	6	6
Romania	9	8	8	7
Serbia	6	7	7	9
Slovakia	9	6	7	8
Slovenia	10	8	8	8
Spain	7	7	7	9
Sweden	5	5	5	5
Switzerland	9	3	3	8
Türkiye	8	7	9	10
Ukraine	7	4	6	4
United Kingdom	8	5	8	6

- 10: Highly transparent and consistently produces predictable outcomes
- 6: Moderately clear but with room for improvement in terms of clarity and predictability
- 1: Lacks transparency and provides no reliable or predictable outcomes

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