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# Germany

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## **Overview of the current energy mix, and the place in the market of different energy sources**

As one of the leading industry and energy nations, Germany is aware of its special responsibility for climate change and is therefore setting itself quite ambitious goals for the energy turnaround (*Energiewende*). On October 9, 2019, the “Climate Protection Program 2019” was therefore adopted, the measures of which are now to be legally anchored and implemented step by step. The climate protection programme stipulates that the share of renewable energies in electricity consumption is to be 65% in 2030. Against the backdrop of the Federal Republic’s coal phase-out by 2038, which has been decided and regulated by law, the simultaneous expansion of renewable energies is becoming all the more important. In 2019, the share of renewable energies was 42.1%,<sup>1</sup> which means an increase of approx. 5% compared to the share of renewable energies in 2018.

This trend looks set to continue in 2020. In the first half of 2020, 136 billion kilowatt hours of electricity were generated from renewable energies and fed into the German electricity grid; according to the analysis of the Fraunhofer Institute for Solar Energy Systems (ISE), this was an increase of 9.7% compared to the average of the previous year. Overall, the share of electricity from renewable energies on the production side was 55.8%.<sup>2</sup> This represents a new record for renewable energies in Germany.

Like the year before, this development is primarily attributable to a very windy first half of the year: the volume of electricity from wind power was 75 billion kilowatt hours and thus with 30.6%, 11.7% higher than in the first half of 2019. The share of electricity derived from biomass amounted to 9.7%; that of electricity generated from solar energy being 11.4%. At the same time, there has been a steady decline in coal-fired power. The production of electricity from lignite decreased by 36.3% and that from hard coal by as much as 46% compared with the first half of the previous year. The strong decrease is caused by the risen costs of CO<sub>2</sub> certificates, which were on average with 21.91 euros per tonne of CO<sub>2</sub>, and the strongly sunken Day-Ahead stock exchange electricity price. Compared to the previous year, the importance of coal for the energy mix in Germany has therefore already fallen sharply.<sup>3</sup>

## **Changes in the energy situation in the last 12 months which are likely to have an impact on future direction or policy**

### Stagnating expansion of wind energy

As shown above, wind power is still the most important renewable energy source in Germany – wind turbines supply more and more electricity. Offshore wind farms also make an important contribution to this. In 2019, about 190 offshore wind turbines were connected

to the grid in Germany – this meant an additional capacity of about 1.1 Gigawatts (GW). At the end of 2019, a total of approx. 1,470 offshore wind turbines with a total capacity of approx. 7,500 Megawatts (MW) were connected to the grid in Germany.<sup>4</sup> Currently, however, it is already apparent that this expansion of offshore wind energy will stagnate for the time being: currently only one offshore wind farm is still under construction. It is therefore already foreseeable that there will be a “gap” in the expansion of offshore wind energy in Germany in the medium term.

In addition, the expansion of onshore wind energy in Germany continues to stagnate. In the first half of 2020, onshore wind turbines with a total capacity of 590 MW were added in Germany. In 2017, however, 5,300 MW were newly installed.<sup>5</sup> In order to achieve the expansion target of 2,900 MW in 2020, which is anchored in the EEG 2017, a lot more needs to be done this year. At present, however, the tenders of the Federal Network Agency are regularly significantly under-signed, i.e. the tendering capacities are far from being exhausted.<sup>6</sup> A major obstacle to the construction of new wind energy plants on land is still the lack of acceleration and improvement of approval procedures for such plants. In addition, already granted permits for wind energy plants are often complained about, especially by environmental associations. Lengthy lawsuits and approval procedures are thus generally responsible for the stagnating expansion of onshore wind energy. However, it is precisely the continuous expansion of onshore wind energy that is necessary if Germany is to achieve its climate target of 65% renewable energies by 2030. A calculation by BDEW came to the conclusion that approx. 3,700 MW of additional capacity from onshore wind energy plants will be required annually to achieve the targets – and thus even more than the expansion target set by the EEG 2017.<sup>7</sup> Against this background, it is absolutely necessary and to be expected that the Federal Government will now take measures to remove the existing obstacles to the expansion of wind energy in Germany and, in particular, to speed up the approval procedures and increase public acceptance. With the amendment of the EEG, the government now has the opportunity to implement this for the first time (see below).

#### Effects of the COVID-19 pandemic on the energy sector

The global COVID-19 pandemic has also left its mark on the German energy sector. As a result of the weak economic situation, electricity consumption in Germany also decreased significantly. In the first half of 2020, for example, around 26 billion kilowatt hours less electricity was consumed than in the same period of the previous calendar year. However, the share of renewable energies in this electricity consumption increased compared to the previous year; for the first time, more than half of the gross electricity consumption was covered by renewable energies.<sup>8</sup> With the recovery of the economy in the summer months of 2020, however, electricity consumption has already “recovered”; in August, electricity consumption was only 5.9% lower than in the previous year.<sup>9</sup> It nevertheless remains to be seen how this will develop over the winter months.

In the course of the fundamental decline in energy consumption, the stock market prices for electricity have also fallen significantly, at least temporarily. However, this initially positive-sounding development has the fundamental consequence that the EEG levy for 2021 will increase. The EEG levy is used to finance the financial support of renewable energies in Germany. The EEG levy is regularly owed by an energy supply company to the respective transmission system operator responsible for the rules. The energy supply companies in turn contractually pass on the EEG levy to the end consumers supplied via the electricity price. The EEG levy thus increases the price of electricity. The system of financial support for operators of renewable energy plants is designed in such a way that falling market prices

for electricity lead to higher support. Accordingly, the effects of the COVID-19 pandemic will lead to an increase in the EEG levy. As the German transmission system operators announced in October, the EEG levy would have increased to 9.651 cents per kilowatt hour in 2021 without any relief measures<sup>10</sup> – in 2020 the levy was 6.756 ct/kWh.<sup>11</sup> Against this background, the Federal Government decided to cap the EEG levy for the years 2020 and 2021. The EEG levy will thus amount to 6.5 ct/kWh in the next calendar year.<sup>12</sup> This means that the EEG levy will actually decrease compared to 2020.

This reduction of the EEG levy was only possible thanks to a 10.8 billion euros subsidy from the German government for the year 2020. This will be implemented through an amendment to the Renewable Energies Ordinance, which creates the possibility for state payments to transmission system operators. However, conflicts with European law are foreseeable: quite recently, it was controversial whether the funding mechanism was an illegal subsidy.<sup>13</sup> Although this was the legal opinion of the European Union, the European Court of Justice denied it. The direct influence of state funds on the distribution mechanism of the EEG levy could now again raise the question of whether the EEG is to be classified as state aid and must be approved by the European Commission. It remains to be seen how this issue will develop.

The COVID-19 pandemic also has direct consequences for the achievement of the German climate targets: according to a study by the economic consultancy McKinsey, the problems for the German energy turnaround, in particular the insufficient expansion of renewable energies, will be further aggravated by the COVID-19 pandemic. The study comes to the conclusion that about 15% of all renewable energy projects in Europe could be delayed or cancelled due to the pandemic.<sup>14</sup> In Germany this aggravates, in particular, the already slow expansion of wind energy. In order to mitigate these consequences, the German legislator has already passed minor amendments to the EEG 2017 in May 2020. In particular, this has extended the implementation deadlines for wind energy, solar and biomass projects: projects that were awarded in a tender before March 2020 will now have six months more time to build their plants.<sup>15</sup> However, the effects of the COVID-19 pandemic will certainly make it even more difficult to achieve the climate targets in Germany.

## **Developments in government policy/strategy/approach**

### Climate Protection Program 2030

At the political level, various measures have been taken in the recent past to create favourable framework conditions for the further expansion of renewable energies. The first of these is the Climate Protection Program 2030 (“*Klimaschutzprogramm 2030*”), which was adopted in October 2019. It sets out the goal of reducing greenhouse gas emissions by 55% by 2030. It also identifies concrete implementation measures. These include the coal phase-out by 2038, the establishment of a National Emissions Trading System, further support for renewable energies and tax incentives for energy efficiency improvements. Some of these measures have already been incorporated into current law, such as the National Emissions Trading System. The legal basis for the introduction of the emissions trading system is the Fuel Emissions Trading Act (“*Brennstoffemissionshandelsgesetz*”), which came into force on December 20, 2019. On this basis, a corresponding quantity of emission certificates is to be surrendered for the marketing of fossil fuels and combustibles from the year 2021.<sup>16</sup> The trading system is to start with a starting price of 25 euros per tonne of carbon dioxide in 2021, which will gradually increase in subsequent years.<sup>17</sup>

## 20 gigawatts of offshore wind energy by 2030

On May 12, 2020, the German federal government, the coastal states (Bremen, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony and Schleswig-Holstein) and the transmission system operators reached an agreement that should help to realise the expansion of offshore wind energy. The goal is an increase of 20 GW of offshore wind energy by 2030, which corresponds to the target set in the Climate Protection Program 2030. The agreement specifies the measures to be taken by the parties to achieve the objectives. Among other things, it is planned that the Federal Maritime and Hydrographic Agency (“*Bundesamt für Seeschifffahrt und Hydrographie*”) will create the legal planning basis for the expansion, in particular the designation of new areas for wind power utilisation. In addition, concrete time schedules were agreed for the realisation of already planned offshore connection lines.<sup>18</sup>

On June 10, 2020, the German government released its new national hydrogen strategy. According to this strategy, hydrogen will be a central element for the successful energy turnover in Germany. Material measures, such as the implementation of a new regulatory framework for the production, storage, transport and deployment of hydrogen, will be carried out at short hand in order to increase the usage of hydrogen technology in many areas, such as in the transport sector, steel production, storage of electricity, etc. The main challenge will be to implement a system where only or mainly the so-called green hydrogen will be produced, that is, hydrogen which is produced by renewable energy sources and not by coal, gas or other fossil power. Moreover, the aim of this strategy is to legally and economically strengthen German companies producing hydrogen in order to be able to compete within the international market.

The federal government recognised that electrically powered technologies are not able to completely substitute the former energy sources to transform the energy sector. It therefore believes that hydrogen as an energy carrier can be used as a supplement in sectors that cannot be driven by batteries. According to this concept, hydrogen is thus a supplementation for the electrification of the economy and households. Hydrogen is particularly attractive for “sector coupling” (“*Power-to-X*”). In other words, it connects incompatible renewable energy technologies. In those areas in which electricity generated from renewable sources cannot be used directly, it serves as a composite carrier.

As an example: as soon as wind turbines can no longer feed electricity into the grid to the limited grid capacity, especially during strong winds, the electricity can be used to produce hydrogen. Thus, the electrolysis is driven by green energy and the green electricity is stored in this way. It should not be forgotten that this chemical element is not only an energy source, but also an important raw material in the chemical industry. Since electrolysis is a highly energy-intensive chemical process, an operation with green electricity is crucial in order to save greenhouse gases. Furthermore, energy-intensive industrial processes that were previously operated carbon-based could in the future also be operated with hydrogen. This seems promising because after all these, industries are very significant emitters at the expense of global climate goals. However, the hydrogen technology can only prevail in the domestic and international market if it is an alternative for companies that can be implemented on a cost-effective basis. For a breakthrough, the German government claims that the costs of the technologies must be reduced.

Hydrogen must develop into a more competitive energy source. A further step towards a widespread use of hydrogen technology and its application areas is the expansion and creation of a suitable infrastructure. For this purpose, it is not sufficient to have modern electrolytic units and suitable energy couplings available in sufficient quantities. Rather, hydrogen-using

infrastructure must also be expanded. This applies especially to the traffic and transport sector. The technology is currently not yet being used to a possible and significant extent in this area. Rail transport, for example, is a promising area of application. In this connection, non-electrified routes can be served by hydrogen-powered trains instead of diesel trains. Such routes, which make up a not inconsiderable part of the route network in Germany and have so far been operated with diesel locomotives, could be converted into an environmentally friendly way, whereby when complete, costly electrification with overhead contact lines can be avoided. However, it cannot be denied that the technology is still in its infancy. But, the federal government is ambiguous to promote this technology and to help that it will achieve a breakthrough by virtue of regulatory measures and special funding of projects and concepts. Of course, the goal is to accompany the transformation of the German economy and to ensure that German companies become frontrunners in this key technology.<sup>19</sup>

## **Developments in legislation or regulation**

### Coal phase-out

On August 14, 2020, the law on reducing and ending coal-fired power generation and amending other laws (so-called “coal exit law”, “*Kohleausstiegsgesetz*”) has become effective. The aim of the law is to end the generation of electricity from coal in an economically justifiable manner. In other words, the law regulates the conversion of the energy sector to renewable energies. The law requires coal-fired power generation in Germany to be terminated by 2038. The law sets out an orderly, step-by-step exit path for this. In addition, it is to be reviewed at various review dates to determine whether coal-fired power generation can already be completely phased out by 2035.

At the same time, the social consequences associated with the conversion are mitigated. Federal funds are provided for this purpose.<sup>20</sup> Both the aid payment to the affected communities and the compensation for the power plant operators were controversial in Germany. The government sees the law as a decisive step towards the post-fossil age. The opposition and conservationists would have liked more ambitious goals. In particular, the subsidies of 40 billion euros for the regions affected by the “coal exit” have brought remarkable criticism of the government.<sup>21</sup>

### Building Energy Act

On November 1, 2020, the Building Energy Act (“*Gesetz zur Einsparung von Energie und zur Nutzung erneuerbarer Energien zur Wärme- und Kälteerzeugung in Gebäuden -Gebäudeenergiegesetz*”) will come into force. The law forms the new legal framework for energy efficiency and the use of renewable energies in the building sector. The unification of the existing regulations serves the implementation of several political obligations, for example, from the coalition agreement and the climate protection programme 2030 as well as the resolutions of the Housing Summit 2018. In particular, the EU Building Directive, which obliges all new buildings to be constructed as low-energy buildings from 2021 onwards, will be implemented. The energy requirements of such buildings must be as low as possible, in which energy losses should be avoided and the heating and cooling requirements should be covered to a large extent by renewable energies. As a result, however, the law will not tighten the already high level of requirements in Germany, neither for new buildings nor for the energy-efficient renovation of existing buildings.

### Wind turbine distance regulation

The regulation of distances to be maintained between wind turbines and residential areas is very controversial in Germany. The conflict of interests between the desired expansion of

wind energy in Germany and the protection of local residents has led to lengthy discussions. After months of discussion, the federal government of Germany decided in June 2020 to set a minimum distance between wind turbines and residential buildings of 1,000 metres. However, this legislation is not binding for the whole federal territory: the federal states are empowered by the law to decide for themselves whether they set a minimum distance up to 1,000 metres. A nationwide regulation of the distance requirement, as originally agreed, is no longer provided. As a result, different regulations in the federal states must be expected. Renewable Energy Associations complain this law reduces potential areas for wind-powered energy generation. Nevertheless, to their mind, the 1,000 metres distance rule is a viable compromise between the protection of residents and the expansion of the wind energy sector.<sup>22</sup>

### **Judicial decisions, court judgments, results of public enquiries**

#### Federal Constitutional Court: Wind Energy At Sea Act is partially unconstitutional

According to a judgment by the Federal Constitutional Court (“*Bundesverfassungsgericht*”), the “Wind Energy At Sea Act” (“*Windenergie-auf-See-Gesetz*”) is partly unconstitutional. The law has regulated the development of offshore wind energy since 2017. The ruling was based on constitutional complaints from several wind farm project developers who had applied for approval of offshore wind farms in the North Sea Exclusive Economic Zone. According to the legal situation applicable at the time, the developers had carried out the planning and investigations necessary for their projects at their own expense. However, the WindSeeG then regulated the approval of wind turbines in the exclusive economic zone in a new and more detailed manner. According to this law, the development of areas for offshore wind energy is now the responsibility of the state and tenders must be carried out centrally in advance. Subsequently, the still ongoing planning approval procedures were terminated and one developer lost a previously granted approval. On June 30, 2020, the court found that the conversion of the system without compensation was not fully compatible with the principle of protection of legitimate expectations. There should therefore have been a compensation scheme for the costs already incurred by the affected parties.<sup>23</sup>

#### Federal Constitutional Court: Rejection of an application for a temporary injunction against the Coal Exit Act

The Federal Constitutional Court already had to deal with a case in which an operator of a hard coal power plant considered the compensation for the future shutdown of the power plant according to the coal exit law to be unconstitutional. The plant operator had taken out a temporary injunction specifically against provisions of the tendering procedures for the decommissioning of coal-fired power plants. The first call for tenders under the law was already issued on September 1. In this tender, operators of hard coal-fired power plants can bid on a price per megawatt of net nominal capacity of their power plants to be decommissioned. In addition, the power plant operator has already announced that it also intends to lodge a constitutional complaint. The court has rejected this claim for an interim order on August 19, 2020. The plaintiff is a consortium consisting of municipal electricity producers. Thus, they can be assigned to the public sector. Therefore, the court ruled that the plaintiff cannot be violated in his fundamental rights, which is a prerequisite for this type of legal protection. The court rejected the claim for that reason. Private power plant operators may, however, file constitutional complaints against the law in the future for what can be assumed.<sup>24</sup>



## Federal Court of Justice: Compensation for renewable energy plants in grid expansion measures

On February 11, 2020, the Federal Court of Justice (BGH) ruled that operators of renewable energy plants are also entitled to compensation if the plant is shut down due to grid expansion measures. A distribution network operator had carried out repair, maintenance and expansion measures on its network over a long period of time. At times, these led to significantly lower intake capacities, so that connected plants had to be reduced. The affected plant operator had sued for compensation for its lost income for the affected periods. The Naumburg Higher Regional Court had rejected this in 2018, as a hardship claim under Section 15 EEG 2017 only applies if the grid is overloaded due to excessive feed-in and therefore throttling is necessary. The BGH now clarified that the compensation standard applies to all cases of grid overload, regardless of the cause. Accordingly, reduction during the implementation of repair, maintenance and expansion measures are to be qualified as measures of feed-in management and compensation is to be paid in accordance with § 15 EEG 2017. For plant operators who are or were affected by such shutdowns, this risk is of enormous economic importance.<sup>25</sup>

### **Major events or developments**

#### Allegations of market manipulation

In June 2019, the German electricity grid was significantly undersupplied for three days. The shortfall was so significant that the four transmission grid operators in Germany had to call up reserves of balancing energy throughout Europe because twice as much balancing energy as had been booked in advance was unexpectedly required. Following these bottlenecks, electricity prices on the energy exchange increased significantly for a short time.

The Federal Network Agency (“*Bundesnetzagentur*”) has initiated fine proceedings against three electricity market participants on suspicion of market manipulation. The Federal Network Agency is an authority of the Federal Ministry for Economic Affairs and Energy. The task of the regulatory authority also includes the supervision of the energy markets. The suspicion was substantiated due to significant imbalances in the German electricity grid occurring in June 2019. The fine proceedings focus on the trading behaviour of the market participants and thus whether the extreme situation in June was exploited by traders. The supervisory procedures dealt with the obligation of the accounting grid managers to properly handle their accounting grid.<sup>26</sup>

#### Controversial commissioning of Datteln IV

After long discussions and heavy criticism, the German government agreed in January 2020 to the commissioning of the coal-fired power plant Datteln IV of Uniper Kraftwerke GmbH. The German “Coal commission”, an expert group advising the Federal government of Germany regarding the shutdown of coal-based energy generation, had recommended that Datteln VI should not be commissioned before 2019 in view of the planned coal phase-out. Datteln IV is the last stone coal-fired power plant to be put in operation in Germany. The startup was originally scheduled for 2011, with the main argument of the German government for the startup being that the power plant has already had an operating permit since 2017. In addition, no agreement could be reached with the owners of the power plant with regard to a waiver of commissioning. Nevertheless, this decision received much criticism. Once commissioned, the power plant is expected to run until 2038.<sup>27</sup>

#### Nuclear waste repository in Germany

In the course of the German nuclear power phase-out, a permanent storage facility for the

atomically contaminated material must be found. Experts searched for geologically suitable regions in Germany where nuclear waste could be safely stored. Ninety regions are eligible for this purpose. According to the experts, the storage facility should be built underground in salt, clay or granite layers of earth. A closer selection should be made from these suitable regions in the upcoming years. It remains to be seen whether the federal states will also agree to the respective location; many fear that the facility will be located in their territory.<sup>28</sup>

## **Proposals for changes in laws or regulations**

### Renewable Energy Sources Act 2021

The Renewable Energy Sources Act 2021 (“*Erneuerbare-Energien-Gesetz 2021*”) is scheduled to come into effect on January 1 2021 reforming the EEG 2017. The law is the central regulatory framework for the expansion of renewable technologies in Germany for more than 20 years. The draft law was developed under the lead responsibility of the Ministry of Economy and Energy. According to the current draft, it will provide new targets for the realisation of renewable energy sources projects due to the climate protection programme and the goal of greenhouse gas neutrality by 2050. The proportion of renewable energies shall increase to 65% of the total electricity composition by 2030. This includes a legally prescribed increase especially for wind energy on land (onshore) and at sea (offshore) as well as for photovoltaic technology. By virtue of this reform, Germany intends to accelerate the pace of energy turnover in order to achieve its climate targets. The opposition and environmental groups have criticised for a long time that the federal government is not pursuing the climate targets ambiguously. In particular, the environment and economics ministries have agreed on this draft in order to meet the goal of the rapid expansion of this energy sector. It is noteworthy that all electricity consumed in Germany shall follow this goal of neutrality, which means that even imported electricity must come from regenerative sources. Moreover, the legislation aims at the acceptance of the communities and their citizens affected by the planned expansion. Municipalities shall financially participate in the profits of new power plants. Moreover, discounted tariffs for electricity supply shall be offered as an incentive for citizens. This is related to the realisation that the success of the energy transition also depends to a large extent on whether the population agrees with the associated infrastructure measures. In particular, the expansion of wind energy is facing increasing criticism from parts of the population. People are afraid that wind turbines will be built in their neighbourhood. They worry about the noise, shadows and other impacts of those turbines or claim that the wind turbines spoil the landscape. The construction of wind turbines shall therefore become more attractive for local residents in order to increase the acceptance of these power plants. This participation mechanism is intended to convey the benefits of expanding wind energy to the citizens affected by the infrastructure projects. Moreover, a tendering system is being established for roof-mounted photovoltaic systems. This is due to the fact that roof systems have so far had higher prime costs compared to free-standing systems. The roof-bound systems were therefore not competitive in the previous tendering process. Another innovation of the draft law is to exempt green hydrogen from the statutory allocation. This is intended to promote the use and production of green hydrogen while reducing costs. In order to provide network stability and service security in southern Germany, certain power production quotas shall apply for this area. The law also aims to encourage ocean ships to use shore power instead of running diesel generators which emit CO<sub>2</sub> gases. For this purpose, the electricity received shall be discounted. Besides the environmental goals pursued by the law, it shall not cause any unnecessary additional burdens

for electricity-intensive industry. A special compensation mechanism has been adapted for this sector, with the aim of relieving it of allocations. There are likely to be some changes to this law, as it is still at a very early stage in the legislative process.<sup>29</sup>

\* \* \*

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