

Legal Update

German Renewable Energy Sources Act 2014

Renewable Energy Sources Act 2014 - Overview of the most important changes

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Cologne, 8 August 2014

Introduction

The amended German Renewable Energy Sources Act (*Erneuerbare-Energien-Gesetz – EEG*) has come into effect on 1 August 2014. The aim is to integrate renewable energy into the market and grid and thereby to reduce the costs of the so-called energy turnaround (*Energiewende*) in Germany. To accomplish this, the federal government limits the annual extension of renewable energy plants and implements a fundamental change to the statutory tariff structure. The operators of new renewable energy plants will receive the statutory feed-in tariff only in exceptional cases. Instead, the direct marketing of energy generated by renewable energy plants is mandatory. Furthermore, the statutory feed-in tariffs have been reduced substantially. Bonuses have been abolished or modified.

This Legal Update shall provide an overview of the main regulations of the EEG 2014.

Extension Corridors

The proportion of renewable energy shall increase to 40 to 45 percent of gross electricity consumption by 2025, to 55 to 60 percent by 2035 and to 80 percent by 2050.

This staged increases shall be achieved by virtue of so-called extension corridors securing the controlled extension of specific energy plants:

- Offshore wind power: Extension limit of 6.5 GW until 2020 and 15 GW until 2030
- Onshore wind power: Annual extension of up to 2,500 MW net (consideration of shut-down plant capacity)

- Solar energy: Annual extension of up to 2,500 MW gross (no consideration of shut-down plant capacity)
- Biomass energy: Annual extension of up to 100 MW (gross)

A new plant register – in which renewable energy plants have to be registered – will be implemented by the Federal Network Agency (*Bundesnetzagentur*) in order to monitor the extension corridors. A respective ordinance has come into effect on 5 August 2014.

Mandatory Direct Marketing

In order to better integrate renewable energy into the market, operators of new renewable energy plants are obliged to market their generated electricity directly, either independently or through a direct marketer. The EEG 2014 contains two ways of direct marketing:

- (1) direct marketing with the purpose of receiving a market premium (subsidised direct marketing) or
- (2) direct marketing without receiving a subsidy (other direct marketing).

The ability to reduce the EEG surcharge (so-called green energy privilege, Sec. 39 EEG 2012) by way of direct marketing is no longer available. The possibility of a pro rata direct marketing of energy persists.

Market Premium

The payment of the market premium requires that the energy is direct marketed and that the grid operator is allowed to label the energy as “energy generated by renewable energy sources or mine mine gas”. The Market Premium consists of the fixed statutory tariff of the respective renewable energy plant minus its technology-

specific monthly market value (effective monthly average of the hourly contracts at the spot market of the electricity exchange EPEX Spot SE in Paris for the pricing zone Germany/Austria in cents per kWh). A separate management premium will no longer be granted for direct marketing of energy generated by wind and solar power plants and the respective Management Premium Ordinance have been abolished.

The management premium is instead included in the respective statutory tariff. Furthermore, the technical ability to remote control wind and solar plants for market needs no longer increase the market premium. Rather, this technical feature is now mandatory for all new EEG-plants and must be implemented at the latest as of the second month after the commencement of operation. Even plants the operation of which commenced before 1 August 2014 must – as of 1 April 2015 – have the ability to be operated by remote control in order to be able to receive the market premium.

Exemptions from Mandatory Direct Marketing

Only the following exemptions from mandatory direct marketing exist:

(1) direct marketing is temporarily and exceptionally not possible. In this case, the operator receives a tariff in the amount of 80 percent of the respective fixed statutory tariff from the grid operator. This fee shall ensure investment and planning security for new plants on the one hand by guaranteeing a minimum remuneration for the generated energy. On the other hand, it shall – by subtracting 20 percent of the fixed statutory tariff – motivate operators to return to direct marketing as quickly as possible.

(2) Small plants

- Plants with a nominal output not exceeding 500 kW the operation of which commenced before 1 January 2016, and
- Plants with a nominal output not exceeding 100 kW the operation of which commenced after 31 December 2015.

However, where the operators of small plants actually decide not to sell their electricity via direct marketing but instead demand the fixed statutory tariff from the grid operators, the respective fixed rate will be reduced by the saved direct marketing expenses, being 0.4 ct/kWh or 0.2 ct/kWh depending on the respective energy source.

Fixed Statutory Tariff

The technology-specific fixed statutory tariff – which is the basis for the calculation of the market premium – is largely changed:

- Offshore wind power:
Basic tariff 3.90 ct/kWh, increased initial tariff 15.40 ct/kWh, acceleration model 19.40 ct/kWh (the possibility to select the acceleration model has been extended until 31 December 2019).
- Onshore wind power:
Basic tariff 4.95 ct/kWh, increased initial tariff 8.90 ct/kWh. Deletion of the SDL-bonus and the Repowering bonus. A new reference yield model shall provide a better location control for onshore plants.
- Solar:
The statutory tariff has been significantly reduced. For example, for installations with a nominal output of up to 10 MW the basic tariff is 9.23 ct/kWh (before 13.50 ct/kWh).
- Biomass, Biogas:
The statutory tariffs have been reduced. The flexibility premium for biogas plants have been modified. Plants with a nominal output of at least 100 kW receive a premium of EUR 40/kW of the installed nominal power for the supply of flexible installed output. Further flexibility premiums shall apply for existing plants.
- Geothermal power, mine gas, landfill gas, sewage gas, water power:
The statutory tariffs have predominantly been reduced depending on the respective nominal power of each plant, and only partially increased.

In addition, the tariffs decrease in accordance with a fixed degression rate. The amount of degression for onshore wind, solar and biomass plants depends on the effective annual overall extension of the respective power plants corridor (so called “breathing cap”).

Furthermore, the statutory tariff will be reduced in case of negative market prices: if the value of hourly contracts at the EPEX Spot in Paris is constantly negative for at least six hours, the respective statutory tariff is reduced to zero for the entire period with negative hourly contracts.

Auction Procedures

From 2017 onward, the tariffs for renewable energy will no longer be fixed by statute, but instead will be determined on the basis of competitive auction procedures. In order to gain experience in this respect, auctions are to be carried out for open landscape solar plants (solar plants that are not installed in, on or close to a building or other facility). For this purpose, a nominal output of up to 400 MW annually will be tendered.

Special Balancing Scheme

Electricity-costs-intensive undertakings are able to limit the payment of the EEG-surcharge under the following conditions:

- Electricity-costs-intensity¹ has to be:
 - for undertakings from list 1 of annex 4 of the EEG 2014: at least 16 percent for the limit in 2015 and 17 percent from 2016 onwards
 - for undertakings from the list 2: at least 20 percent
- the consumed amount of electricity at a delivery point where an undertaking can be allocated to a business listed in annex 4 of the EEG must be more than 1 GWh in the last fiscal year, and
- the undertaking runs
 - a certified energy and environmental management system or
 - an alternative system for the improvement of energy efficiency if the undertaking has consumed less than 5 GWh in the last fiscal year.

If these conditions are fulfilled, the EEG-surcharge for electricity is limited at a delivery point as follows:

- no limit for the electricity portion till 1 GWh (deductible)
- for the electricity portion over 1 GWh: 15 percent, but maximum
 - 4 percent of the gross value of the undertaking, unless the average electricity-costs-intensity of the last three years has been under 20 percent
 - 0.5 percent of the gross value, unless the average electricity-costs-intensity of

¹ The relation of a relevant electricity-costs (including the domestic consumption for which EEG-surcharge becomes due) to the arithmetic average of the gross value in the last three closed fiscal years of the undertaking.

the undertaking has been over 20 percent.

- The minimum EEG-surcharge of 0.1 ct/kWh (0.05 ct/kWh for undertakings of an industry of numbers 130-132 of annex 4) must not be undercut.

The EEG 2014 provides for a mechanism for the step-wise implementation of the new requirements until 2019; it provides for numerous transitional regulations and hardship clauses for the years 2015-2018. For example, the EEG-surcharge for undertakings of the manufacturing industry (§ 3 Nr. 14 EEG) which do not fulfill the above requirements of the EEG 2014, is limited – without time limitation – to 20 percent (for electricity portion over 1 GWh) if the undertaking can prove that its electricity-cost-intensity has been over 14 percent in the last or within the last two years.

It must also be noted that the Federal Office of Economics and Export Control (BAFA) is obliged to withdraw with retroactive effect its decisions to the limitation of the EEG-surcharge if it becomes known that the legal requirements have not been fulfilled at the time of the granting of the limitation.

Domestic Consumption

New domestic consumption plants are be obliged to pay the EEG-surcharge as follows:

- in the amount of 30 percent for electricity which will be consumed before 1 January 2016
- in the amount of 35 percent for electricity which will be consumed after 31 December 2015 but before 1 January 2017
- in the amount of 40 percent for electricity which will be consumed after 31 December 2016.

These values increase to 100 percent if the domestic consumption plant is neither an EEG-plant nor a KWK-plant and the monthly or annual degree of utilisation is 70 percent or higher.

The EEG-surcharge does not have to be paid for:

- internal consumption of plants
- isolated installations (the domestic consumption plant is not - directly or indirectly - connected to the grid)
- complete self-supply with renewable energies and no claim for statutory tariff under EEG for the surplus electricity

- small plants (max. 10 kW installed power und less then 10 MW own consumption per year)

Moreover, the EEG-surcharge does not apply for existing installations if:

- the endconsumer operates the plant himself,
- as far as the endconsumer consumes the electricity for himself and
- the electricity is not transported through the grid, unless the electricity is consumed in spatial connection to the plant

The foregoing requirements do not apply for plants the operation of which connected before 1 September 2011.

To which plants does the EEG 2014 apply?

The EEG 2014 applies to renewable power plants the operation of which commenced after 31 July 2014. It also applies to renewable power plants the operation of which commenced before 1 August 2014. However, for the purpose of protecting legitimate expectations, substantial provisions of the current EEG 2012, especially the provisions on the fixed statutory tariffs granted, apply to those existing plants the operation of which commenced before 1 August 2014. The same applies for plants the operation of which commenced after 31 July 2014 and before 1 January 2015 where the permit or approval for the respective plant was issued before 23 January 2014.

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author himself: Thoralf Herbold on +49 221 – 33660-788 or by email to therbold@goerg.de. For further information about the author/the authors visit our website www.goerg.de

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