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Renewable Energy
Germany

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Government publishes first draft of Renewable Energy Sources Act 2016 reform bill and new offshore wind legislation (Part I)

On April 15, 2016, the German Federal Ministry for Economic Affairs and Energy published a draft bill for the 2016 reform of the German Renewable Energy Sources Act ("EEG") as well as a separate draft bill regarding the development and promotion of offshore wind.¹ With the current drafts, the government's plans to introduce competitive tender mechanisms for most renewable energy technologies starting 2017 continue to take shape.

The following Client Alert describes the principles of the tender design and the proposed amendments for onshore wind and solar PV. In Part II of our Client Alert, we will discuss the main changes for offshore wind.

I. Background

Under the EEG 2014, the present system of financial support to installations generating electricity from renewable energy sources ("RES installations") by way of statutory feed-in tariffs and market premiums must be replaced by competitive tenders starting 2017.

Following the evaluation of two pilot tenders for freestanding PV installations and the consultation of several key issue papers in 2015, the Federal Ministry for Economic Affairs and Energy has now published a draft bill for the upcoming EEG reform. The Ministry's draft, which has not yet been aligned within the Federal Government, also includes a separate bill regarding the development and promotion of offshore wind (*Gesetz zur Entwicklung und Förderung der Windenergie auf See*; the "Offshore Wind Development Act"), which aims to comprehensively regulate the centralized selection, preliminary investigation and auctioning of suitable offshore wind sites. Both bills will fundamentally change the market conditions for the development of renewable energy projects in Germany.

II. Proposed EEG 2016 Amendments

Guiding principles

With the EEG 2016 reform, the Government aims to ensure that the expansion of renewables continues at a steady pace, in a cost-efficient manner, and with strong public support. These aims result in three main principles underlying the reform:

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¹ The draft bills are available (in German) [here](#) and [here](#).

- **To keep the development of renewable energy capacities within the statutory ‘development corridors’.** The capacities available in the tender rounds will be limited so as to avoid an expansion above the development targets. At the same time, the bidding processes will be supplemented by rules ensuring a maximum realization rate for successful bids.
- **To keep to a minimum the overall cost arising from the Renewable Energy Sources Act.** Tenders with sufficient competition ensure that government funding does not exceed the amount needed to maintain commercial viability of the RES installations.
- **To create a level playing field for all players involved.** The Government has placed a particular focus on designing the tender mechanisms so as to create a level playing field, both with respect to regional differences between projects as well as various types of market players (e.g. small and medium-sized enterprises, energy cooperatives set up by individuals, local project developers, etc.).

Which technologies are affected?

Competitive tender procedures will be introduced for onshore and offshore wind turbines and large PV systems, excluding only installations with an installed capacity of no more than 1 megawatt (MW).

Under the proposed transitional provisions, onshore wind turbines will remain eligible for funding under the existing system if an operating permit is issued prior to January 1, 2017 and the installation is commissioned by December 31, 2018 at the latest. For offshore wind turbines, the existing funding system applies if the operator receives an unconditional allocation of grid connection capacity before January 1, 2017 and the turbine is commissioned by December 31, 2020.

The Government also plans to introduce tender mechanisms for new and existing biomass installations. The draft contains first key points and the power to issue statutory ordinances in this respect.

How will the tenders be integrated into the EEG funding system?

Under the current EEG funding system, all operators of RES installations with an installed capacity of at least 100 kilowatts (kW) must directly market the electricity generated by the installation. However, they are entitled to supplementary market premiums. The market premiums cover the difference between the average monthly reference market value for the respective RES technology and the respective statutory reference amount guaranteed by the EEG.

The draft law leaves the existing EEG rules largely in place. However, for all technologies and installations covered by the tender requirements, only RES installations that have been successful in a tender will be eligible for funding. For these installations, the statutory reference amount will be replaced by the reference amounts determined in the respective tender.

Basic tender design

The tender design for all three technologies (onshore/offshore wind, PV) will share the following common basic principles:

- (1) **Bid dates.** The Federal Network Agency (BNetzA) will hold several tenders per year for pre-defined capacity volumes of each technology.
- (2) **Bidding principles.** Bidders will submit one sealed bid and will be required to provide a security payment. In general, the bids will be project-related, meaning that the award cannot be transferred to another project. Limited exceptions are planned for PV, subject, however, to financial penalties.
- (3) **Pay-as-bid and uniform pricing.** Valid bids will be awarded from lowest to highest bid until the tender volume is reached. Funding is granted based on the respective bid (pay-as-bid).
- (4) **Maximum bid value.** In all tenders, a maximum bid value will apply, which bidders may not exceed. The value will be based on current funding levels.
- (5) **Deadlines for project realization.** The projects must be implemented within certain deadlines. The award will be forfeited after expiry of the deadline.

Special rules for onshore wind

The tender process is open only to installations which have already been issued an operating permit pursuant to the Federal Pollution Control Act. There will be three tenders in 2017, four in 2018 and three from 2019 onwards. The tender volumes will be determined and later adjusted yearly so as to ensure that the overall development corridors for renewables are met, taking into account the tender volumes of the other technologies and other installed capacities that are not covered by the tender mechanisms. The Government estimates that the initial tender volume for 2017 will be 2,900 MW. In any case, a minimum volume of 2,000 MW capacity will be tendered per year.

The maximum bid value will initially be fixed at 7.0 Euro cent/kWh and reduced yearly by 1 percent. However, the Federal Network Agency may adjust this maximum bid value by up to 5 percent as needed. The required security payments will be set at 30 Euro per kW. The award is forfeited if the project is not realized within 30 months after the award, unless the deadline is extended. An extension is only available if the project has been contested by lawsuit.

In principle, the bid value corresponds to the reference amount which is used to determine the supplementary market premiums. However, in order to create fair competition for all regions in Germany, the bid value will be adjusted depending on whether the specific yield of the respective installation exceeds or falls below the statutory reference yield. This adjustment will take place at the beginning of funding and in three subsequent reviews over the course of the funding period, so as to ensure that the adjustment reflects the installation's actual yield.

Special rules for PV

The tender design will largely follow the principles developed in the pilot tenders. There will be three tenders per year, with a total volume of 500 MW per year. The security payments will be 50 Euro per kW.

Outlook

The Federal States and industry associations were invited to submit comments to the drafts until April 22, 2016. After evaluating the results of the consultation, the drafts will be finalized and aligned within the Federal Government. The bill will then be introduced in Parliament. The Government currently plans to enact the legislative bill by summer 2016 and to start the first tenders in late 2016.

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