



ENERGY COMMUNITIES REPOSITORY

Germany



OVERVIEW OF THE POLICY FRAMEWORK

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DISCLAIMER

The content of this document aims to establish an overview of the national legal developments in the context of the Clean Energy Package for the Member State mentioned above. The document includes only final legislation which was published before the end of March 2023. It does not include provisions that are not yet applicable under law (i.e., currently drafted or discussed).

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Overview

According to the Energy Communities Repository's research, Germany introduced changes to the existing citizen energy company definition with the Renewables Energy Act 2023 (EEG), with which the Government reformed its framework for renewables support schemes.¹ The definition of citizen energy companies applies specifically to the ability to access support schemes under the EEG, therefore it is not clarified whether it is generally applicable. In particular, the government reintroduced exemptions for citizen energy companies from the requirement to participate in tenders to be able to receive support. Under the new amendments, this definition is strengthened significantly to prevent abuse or corporate capture.

1. Definition

The citizen energy company definition, as amended with the revision of the EEG, was also expanded to apply to both onshore wind and photovoltaic projects. As such, the definition applies to the ability to receive market premiums, be exempted from participating in auctions and tenders, and receive investment support under a new grant-to-loan programme.

With regards to reporting, it is highlighted in the EEG that the Federal Network Agency shall report to the Federal Government from 31 December 2024 and then annually on experiences with the provisions of the EEG to secure citizen energy and citizen participation.²

1.1. Citizen Energy Company definition

The EEG introduced amendments to the definition of citizen energy companies. In more detail, citizen energy company is a legal entity:

- in which at least 75 per cent of the voting rights are held by natural persons who are registered with a dwelling in accordance with the Federal Registration Act in a postcode area that is wholly or partly within a radius of 50 kilometres around the planned installation, whereby the distance is measured from the outer edge of the respective installation in the case of solar installations and from the centre of the tower of the respective installation in the case of wind turbines;³
- in which voting rights not held by natural persons are limited exclusively to micro, small or medium-sized enterprises in accordance with the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises or to municipal local

¹ Federal Law on immediate measures for an accelerated expansion of renewable energies and other measures in the electricity sector, Official Gazette Part I No. 28/28 July 2022, entered into force on 1 January 2023, available at: https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5B@attr_id=%27%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl122s1237.pdf%27%5D_1692957768883

² § 99b of the EEG

³ Section 3 point 15(b) of the EEG



authorities and their associations with legal capacity;⁴

- whereby, as a rule, the voting rights referred to above must also be associated with a corresponding actual possibility of influencing the company and participating in decisions of the shareholders' meeting.⁵

In addition, the law places some limitations to mergers of citizen energy companies. More specifically, it is allowed to merge several legal entities or partnerships into a citizen energy company as long as each of the members of the company fulfils the requirements set above for citizen energy companies. Similarly, it is allowed for a citizen energy company to hold 100 per cent of the voting rights of another citizen energy company, if the latter fulfils the conditions laid above.⁶

1.2. Alternative energy communities definitions

There are no other definitions introduced in national legislation, however there are several hundred energy cooperatives already established in Germany following the legislation on commercial and economic cooperatives pre-dating the Clean Energy Package.⁷

2. Assessment of obstacles and potential and removal of unjustified barriers

No formal assessment of potential and barriers has been carried out.

3. Access to financing and support

To start with, according to the EEG provisions, the projects of citizen energy companies are exempted from the tendering process. This includes wind turbines on land owned by citizen energy companies with an installed capacity of up to and including 18 megawatts. Such exception is only permissible if:

1. the Federal Network Agency has been informed that the onshore wind turbines are installations of a citizen energy company,
2. this notification has been received by the Federal Network Agency no later than three weeks after the approval has been granted in accordance with the Federal Emission Control Act and the

⁴ Section 3 point 15(c) of the EEG

⁵ Section 3 point 15(d) of the EEG

⁶ Ibid

⁷ Law on the commercial and economic cooperatives issued on 5 January 1889, as updated, available at: <https://www.gesetze-im-internet.de/geng/>



registration number is stated in the notification, and

3. the citizen energy company and its voting members or shareholders who are legal entities governed by private law and the companies affiliated with them⁸ have not put any further onshore wind turbines into operation in the previous three years.⁹

Moreover, all solar systems with an installed capacity of up to and including 1 megawatt are exempted, and solar systems owned by citizen energy companies with an installed capacity of up to and including 6 megawatts are exempted from tenders. Such exception is only permissible if:

1. the solar installations have been notified to the Federal Network Agency no later than three weeks after commissioning stating the registration number, and
2. the citizen energy company and its voting members or shareholders who are legal entities governed by private law and the companies affiliated with them¹⁰ have not commissioned any other solar plants of the same segment in the previous three years.^{11,12}

The EEG also states that the Federal Network Agency shall publish the registration numbers of the wind and solar installations for which a notification has been submitted as mentioned above.¹³

In addition, the EEG mentions that citizen energy companies, as well as their voting members or shareholders who are legal entities governed by private law, and their respective affiliated undertakings,¹⁴ for three years from the date of notification referred to above, have no funding claim under the EEG or a statutory ordinance issued on the basis of it for further installations of the same technology and the same segment. Participation in the respective tenders¹⁵ is not permitted during this period.¹⁶

It is also clarified that the federal states (Länder) may issue further provisions on citizen participation and on increasing acceptance for the construction of new plants.¹⁷

With regards to the form of support for community production projects, feed-in tariffs are available for installations under 100 kW and guaranteed market premium are available for installations under 1 MW.¹⁸ Above 1 MW, citizen energy companies receive a price according to the winning bids from the tenders under the normal competitive bidding process (i.e. tender).¹⁹

⁸ In accordance with Article 3 of Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 (OJ L 2014, p. OJ L 187 of 26.6.2014, p. 1)

⁹ § 22b(1) of the EEG

¹⁰ Ibid

¹¹ § 22b(2) of the EEG

¹² These thresholds make the most of what is allowed under the new State aid guidelines on climate, energy and environmental protection (CEEAG).

¹³ § 22b(3) of the EEG

¹⁴ In accordance with Article 3 of Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014. (OJ L 187, 26.6.2014, p. 1)

¹⁵ Pursuant to § 28, § 28a or § 28b of the EEG

¹⁶ § 22b(5) of the EEG

¹⁷ § 22b(6) of the EEG

¹⁸ § 23b of the EEG

¹⁹ § 48 of the EEG



Besides the measures introduced in the context of the EEG, there was an investment fund launched for citizen energy companies, which provides support in the planning and approval of projects up to a total size of 25 MW per applicant for generating electricity from wind energy on land. If the project is successful, the money has to be paid back (i.e. loan to grant model).²⁰

With regards to eligibility to this fund, all eligible costs listed below that are incurred by the Federal Network Agency up to the time a bid is submitted in the competitive tendering process in accordance with the applicable EEG provisions or up to the registration of the project in the market master data register²¹ are eligible, provided that there is evidence of this and verifiable documents have been submitted.

In particular, the following are eligible for funding:

- All preliminary planning costs, for instance for feasibility studies, location analyses, costs for expert opinions for changing the land use plan, costs for data collection for the respective project and profitability calculations;
- Costs for necessary expert opinions as part of a development plan required for the implementation of the project;
- Costs for legal and tax advisory services in connection with the project, insofar as these relate to fundamental issues and are not associated with the establishment of a citizen energy company.²²

Applications can be submitted to the Federal Office of Economics and Export Control from 1 January 2023 when the funding guidelines come into force. Applications must specify the measures eligible for funding, both in terms of costs and content. The details of the application procedure can be found in the Federal Office of Economics and Export Control leaflet on the application procedure.²³

Only measures that have not yet started before the application for funding is submitted are eligible for funding. Also, applications for funding must be submitted before the start of the project. The start of the project is deemed to be the conclusion of a delivery or service contract to be assigned to the execution. Non-binding offers or draft contracts do not count as premature start of measures.²⁴

References

- Federal Law on immediate measures for an accelerated expansion of renewable energies and other measures in the electricity sector, Official Gazette Part I No. 28/28 July 2022, entered into force on 1 January 2023, available at:

²⁰ All information with regard to this programme is specified in the funding guidelines, available at: https://www.bafa.de/DE/Wirtschaft/Beratung_Finanzierung/Buergerenergiegesellschaften/buergerenergiegesellschaften_node.html

²¹ In accordance with Section 22b EEG

²² Ibid 20

²³ Ibid

²⁴ The legal basis for the funding programme is available at: <https://www.bundesanzeiger.de/pub/de/amtliche-veroeffentlichung?1>



https://www.bgbl.de/xaver/bgbl/start.xav?start=//*%5B@attr_id=%27%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl122s1237.pdf%27%5D_1692957768883

- Law on the commercial and economic cooperatives issued on 5 January 1889, as updated, available at: <https://www.gesetze-im-internet.de/geng/>
- Funding programme for projects of citizen energy companies in onshore wind, Federal Office of Economics and Export Control, available at: https://www.bafa.de/DE/Wirtschaft/Beratung_Finanzierung/Buergerenergiegesellschaften/buergerenergiegesellschaften_node.html
- Announcement of the guidelines for the Citizen Energy Companies funding programme for onshore wind energy, Federal Ministry of Economics and Climate Protection, available at: <https://www.bundesanzeiger.de/pub/de/amtliche-veroeffentlichung?1>