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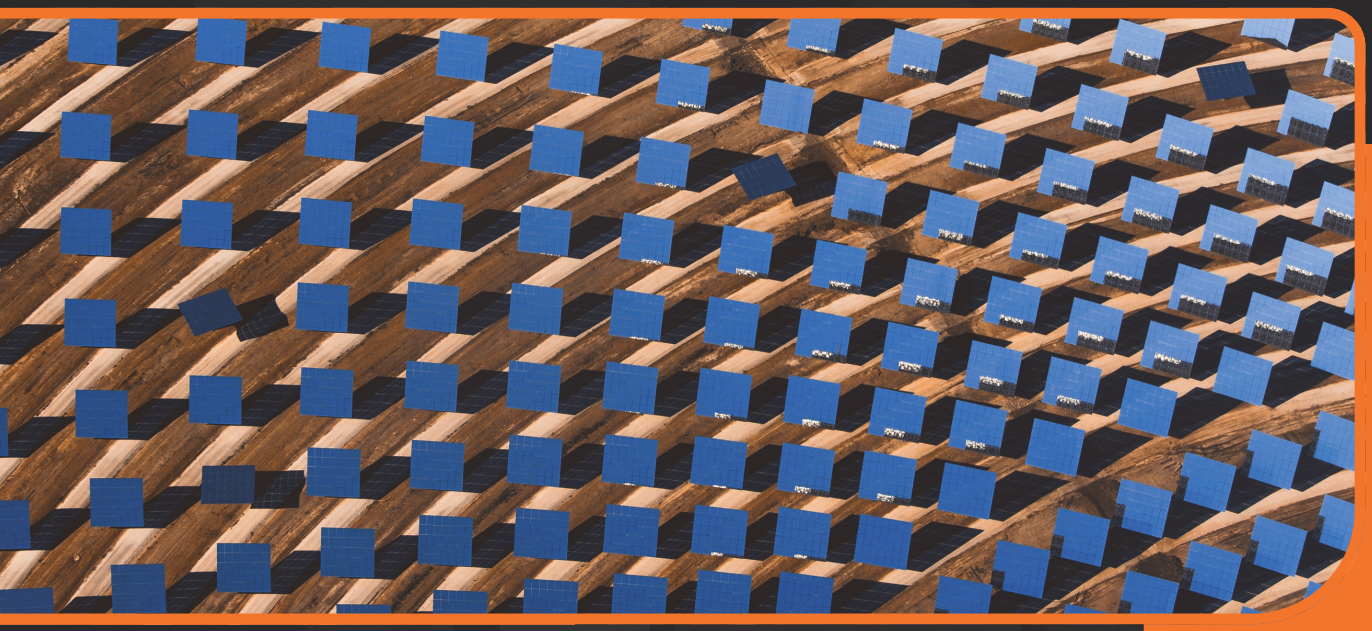

Practical cross-border insights into renewable energy law

# Renewable Energy 2022

## Second Edition

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# Expert Analysis Chapter



# Q&A Chapters

# Germany



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## 1 Overview of the Renewable Energy Sector

**1.1 What is the basis of renewable energy policy and regulation in your jurisdiction and is there a statutory definition of 'renewable energy', 'clean energy' or equivalent terminology?**

Renewable energy policy and regulation in Germany is primarily governed by federal law and defined by the Federal Government. The term "renewable energy" covers hydropower (including wave, tidal, salinity gradient and marine current energy), wind energy, solar energy, geothermal energy as well as energy from biomass (including biogas, biomethane, landfill and sewage treatment gas and gas from biologically degradable waste), pursuant to the German Renewable Energy Act (*Erneuerbare-Energien-Gesetz*, EEG).

**1.2 Describe the main participants in the renewable energy sector and the roles which they each perform.**

The main participants in the renewable energy sector are private entities, i.e. the operators of renewable energy facilities (*Anlagenbetreiber*) – both utility-scale and distribution-scale – electricity network operators (*Netzbetreiber*) and electricity suppliers (*Elektrizitätsversorgungsunternehmen*).

The regulatory framework for the renewable energy sector is mainly determined on the federal level, especially by the Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*) which defines the political agenda and drafts the relevant legislation in the field of renewables. The main regulatory actors in the sector of renewable energy are the federal authorities.

The Federal Network Agency (*Bundesnetzagentur*, BNetzA) is the primary authority responsible for the regulation of the electricity (and gas) networks in Germany. Its main tasks regarding renewable energy projects include the monitoring of the development of renewable energy in Germany, conducting tendering procedures for new renewable energy projects (please see question 2.6) as well as guaranteeing non-discriminatory connection and access to the electricity networks (please see questions 4.3 and 4.4).

Regarding the planning, permitting and operation of offshore wind facilities in the Exclusive Economic Zone, the responsible authority is the Federal Maritime and Hydrographic Agency (*Bundesamt für Seeschifffahrt und Hydrographie*, BSH). Regarding consents and permits for renewable energy facilities, please see questions 4.1 and 4.2.

**1.3 Describe the government's role in the ownership and development of renewable energy and any policy commitments towards renewable energy, including applicable renewable energy targets.**

The Federal Government plays an active role in the development of renewable energy projects in Germany and seeks to provide incentives for the generation of electricity from renewable energy sources (please see question 3.2). With the withdrawal from nuclear energy already well underway, Germany has also decided to phase out coal plant capacities and to end coal-fired power generation completely by 2038. It is, therefore, a fundamental political aim to increase the amount of renewable energy.

In 2021, the Federal Government further increased the Germany-wide renewable energy targets for the development of renewable energy. According to the EEG, the amount of electricity generated from renewable energy sources in the gross electricity consumption shall increase to 65% by 2030. By 2050, all energy generated and consumed in Germany shall be greenhouse gas neutral. Under the revised EEG, until 2030, Germany shall achieve a generation capacity of 71 GW onshore wind, 100 GW solar power and 8.4 GW biomass. The Offshore Wind Energy Act (*Windenergie-auf-See-Gesetz*, WindSeeG) was also amended in 2021 and provides for more ambitious targets for offshore wind generation capacity of 20 GW by 2020 and 40 GW by 2040.

Further energy targets are defined by the Federal Climate Action Plan 2050 (*Klimaschutzplan* 2050), which aims to reduce greenhouse gas emissions and seeks to fully decarbonise the energy supply in Germany by 2050. In early 2021, the Federal Climate Protection Act (*Bundes-Klimaschutzgesetz*) was amended to enshrine a greenhouse gas reduction of 65% by 2030 compared to 1990 and 88% by 2040, and to reach carbon neutrality by 2045 (see question 2.3).

Energy targets for Germany are also defined by the EU; the EU target for Germany 2020 of 18% of renewables in its annual gross energy consumption was achieved (19.6% by 2020). The current EU target for 2030 for Germany amounts to 30%. The Federal Government adopted the Integrated National Energy and Climate Plan 2021 (*Nationaler Energie- und Klima-Plan*) to comply with the 30% target.

## 2 Renewable Energy Market

**2.1 Describe the market for renewable energy in your jurisdiction. What are the main types of renewable energy deployed and what are the trends in terms of technology preference and size of facility?**

Renewable energy is at the core of the German energy transition (*Energiewende*). The share of renewables in the gross electric

power generation in 2020 was 44.4%: onshore wind accounted for 18.7%; solar power for 8.9%; biomass for 7.7%; offshore wind for 4.8%; and hydropower for 3.3%. In recent years, wind power has become the dominant source of growth in renewable energy production in Germany. In 2020, onshore and offshore wind power together contributed more than 50% of Germany's electricity production from renewables.

Trends in terms of technology can be identified regarding the development of offshore wind, which in 2020 saw an increase of the expansion target by 5 GW to 20 GW until 2030 (and to 40 GW by 2040). Moreover, further steps can be expected to facilitate the development of onshore wind facilities as well as the usage of decentralised solar power facilities.

### 2.2 What role does the energy transition have in the level of commitment to, and investment in, renewables? What are the main drivers for change?

Germany has been an "early starter" in the adoption of renewable energy sources ever since the adoption of the EEG in 2000. Today, the main drivers for renewables are political climate targets, public opinion and the need to close the electricity supply gap, which stems from the nuclear phase-out by 2022 and the coal phase-out by 2038.

### 2.3 What role, if any, has civil society played in the promotion of renewable energy?

Civil society and public environmental awareness have played a major role in shaping German energy policy, from the protests against the use of nuclear energy in the 1980s to the recent Friday for Future rallies, thus maintaining high pressure on the government.

A relatively new phenomenon in the German jurisdiction is strategic climate change litigation by individuals and non-governmental organisations (NGOs) before German courts. In 2021, in a widely recognised landmark judgment, the Federal Constitutional Court (*Bundesverfassungsgericht*) held that the governing national emission reduction targets (a reduction of at least 55% by 2030 compared to 1990 levels) provided for in the Federal Climate Protection Act were not sufficient and required the federal legislator to set ambitious reduction targets beyond 2030. To comply with the judgment, the federal legislator has so far amended the emission reduction targets under the Federal Climate Protection Act, which may also accelerate the shift towards renewable energy.

### 2.4 What is the legal and regulatory framework for the generation, transmission and distribution of renewable energy?

The EEG defines specific national policy targets for the share of electricity from renewable energy sources in annual gross electricity consumption (please see question 1.3). It also provides specific regulation regarding the remuneration of electricity from renewable energy sources, as well as the connection of renewable energy facilities to the electricity network. Further, it stipulates the integration of renewable energy into the electricity supply system, the direct selling (*Direktvermarktung*) of electricity from renewable energy sources by the producers and the tendering procedures (*Ausschreibungen*) by which funding for electricity from renewable energy sources is determined.

The general regulatory framework for the energy sector, including electricity from renewable sources, is set out in the Energy Industry Act (*Energiewirtschaftsgesetz*). This covers access and connection to the electricity networks, network charges and rules for the operation, planning and expansion of the electricity network. For offshore wind facilities in the Exclusive Economic Zone of Germany, the planning, construction, operation and remuneration of, and tendering procedure for, offshore projects is set out in the WindSeeG. Further regulation covers specific aspects of the renewable energy sector, e.g. generation, transmission and remuneration of electricity from renewable energy sources.

### 2.5 What are the main challenges that limit investment in, and development of, renewable energy projects?

A major challenge for the development of renewable energy projects is the fact that the expansion of the transmission network capacity required to accommodate the feed-in of increasing amounts of renewable energy does not currently keep up with the realisation of renewable energy facilities. This applies most notably regarding the transportation of electricity generated in the north to the industrial consumption centres in the south of Germany. Accordingly, this increases the need for costly network management measures by the network operators, e.g. to avoid congestion.

The realisation of renewable energy facilities and the required network can also be hampered by lawsuits from affected residents, municipalities or environmental associations, which can hinder or prolong the permit and construction process.

### 2.6 How are large utility-scale renewable power projects typically tendered?

Tendering procedures apply regarding the remuneration of electricity generated from renewable energy sources. Annually, a pre-determined amount of new generation capacity is put out to tender pursuant to the EEG, in order to determine the size of the subsidies which are granted in ct/KWh for the feed-in of electricity into the network. The tender is awarded to the party who submits a bid for the lowest amount of subsidy.

Additional requirements apply to the right to construct and operate offshore wind projects in the Exclusive Economic Zone. The WindSeeG provides for a mandatory tendering system for the right to develop and realise an offshore wind project which simultaneously regulates the eligibility for remuneration for electricity generated in this facility. The award in the tender procedure entails the exclusive right to construct and operate an offshore wind facility in the tendered area of the Exclusive Economic Zone. Only operators who have been awarded the contract in the tender procedure may implement their project. In the past, this has led to fierce competition with regard to the areas and generation capacities put out to tender, resulting in zero-cent bids in which operators waived any kind of additional state subsidies in order to obtain the right to realise their project.

### 2.7 To what extent is your jurisdiction's energy demand met through domestic renewable power generation?

In 2020, 19.3% of gross energy consumption in Germany was fuelled by renewable sources. The main energy sources in 2020 were mineral oil (33.9%) and natural gas (26.6%). Further sources included lignite (8.1%), hard coal (7.6%) and nuclear power (6.0%). 72.0% of Germany's gross energy demand in 2019 was met through imports, mostly of mineral oil, natural gas and hard coal.

## 3 Sale of Renewable Energy and Financial Incentives

### 3.1 What is the legal and regulatory framework for the sale of utility-scale renewable power?

The sale of utility-scale renewable power is subject to the regulatory framework under the Energy Industry Act, which governs the rules for the use of the electricity network as well as network access. The sale of electricity is subject to agreements under private law. Generally, electricity from renewable energy sources is sold directly to a consumer or an electricity supplier, or at the electricity exchange.

The sale and purchase of electricity is subject to certain levies, such as the electricity tax based on the Electricity Tax Act (*Stromsteuergesetz*). If electricity is transported through the energy network, additional statutory charges and levies apply which are generally payable by the end-consumer.

### 3.2 Are there financial or regulatory incentives available to promote investment in/sale of utility-scale renewable power?

The EEG is the main instrument to promote the investment in and sale of electricity from renewable sources. In particular, it provides for a remuneration system for electricity generated from renewable energy. Further regulatory incentives apply regarding network connection and access (please see questions 4.3 and 4.4).

Renewable energy systems can be remunerated by a so-called market premium (*Marktprämie*) for electricity fed into the grid. The operators of the plants must continue to sell the electricity directly on the electricity market; however, the market premium will compensate the operator for the difference between the market price of electricity and the nominal value of the market premium. Both the nominal value of the market premium and the renewable energy eligible for remuneration are determined by tendering procedures (please see question 2.6). The market premium will be paid for a period of 20 years, starting at the date of the commissioning of the individual facility. Only in exceptional circumstances, i.e. for small or older facilities, can statutory fixed feed-in tariffs (*Einspeisevergütung*) apply. Operators may decide to forego subsidies and sell electricity exclusively by means of direct selling.

The remuneration of renewable energy facilities is financed by the so-called Renewable Energy Surcharge (*EEG-Umlage*), which is levied on every KW/h of electricity taken out of the electricity network and which is usually paid by the end-consumer. In 2021, the Federal Government took measures to reduce electricity costs for consumers by lowering the EEG levy using public funds.

### 3.3 What are the main sources of financing for the development of utility-scale renewable power projects?

The main sources of financing for renewable energy projects are private funds, as well as remuneration for electricity generation (please see question 3.2).

### 3.4 What is the legal and regulatory framework applicable to distributed/C&I renewable energy?

In principle, distributed/Commercial & Industrial (C&I) renewable energy projects are subject to the same legal and regulatory framework as utility-scale renewable power (please see question 3.1). However, exceptions apply for decentralised generation facilities and self supply facilities which can benefit from a reduction of statutory charges.

### 3.5 Are there financial or regulatory incentives available to promote investment in distributed/C&I renewable energy facilities?

Generally, the incentives for renewable energy facilities apply to distributed/C&I renewable energy facilities and utility facilities indiscriminately (please see question 3.2).

### 3.6 What are the main sources of financing for the development of distributed/C&I renewable energy facilities?

The sources of financing for distributed/C&I renewable energy facilities are generally the same as for utility facilities (please see question 3.3).

### 3.7 What is the legal and regulatory framework that applies for clean energy certificates/environmental attributes from renewable energy projects?

Energy suppliers are required to disclose (to the end-consumer) the composition of the electricity mix, in particular the use of "green energy" (*Stromkennzeichnung*).

Facility operators which sell electricity directly and without relying on remuneration under the Renewable Energy Act are also entitled to Guarantees of Origin certificates (*Herkunftsnachweise*) for the electricity which they feed into the grid. These certificates can be sold freely, e.g. for the purpose of an energy supplier to re-label the electricity purchased on the electricity exchange as "green energy".

### 3.8 Are there financial or regulatory incentives or mechanisms in place to promote the purchase of renewable energy by the private sector?

Generally, the Federal Government undertook steps to promote the usage of renewable energy in the sectors energy generation, industry, mobility, buildings and agriculture. In particular, incentives apply in the transport sector, which sets a binding minimum quota regarding the consumption of fuel from renewable energy sources. Furthermore, the usage of renewable energy for the production of so-called "green" hydrogen allows for an exemption of the hydrogen facility from state-induced charges and levies under the Renewable Energy Act as amended in 2021. Additional incentives are contained in the Renewable Heat Act (*Erneuerbare-Energien-Wärmegesetz*), which provides subsidies for heating systems using renewable energy, e.g. heat pumps for buildings.

## 4 Consents and Permits

### 4.1 What are the primary consents and permits required to construct, commission and operate utility-scale renewable energy facilities?

The requirements for the construction, commission and operation of utility-scale renewable energy facilities vary based on the generation technology and the renewable energy source.

The construction and operation of onshore wind facilities primarily require a permit pursuant to the Federal Immission Control Act (*Bundesimmissionsschutzgesetz*, *BImSchG*). An extensive

environmental impact assessment (*Umweltverträglichkeitsprüfung*), as well as a public participation procedure, are generally required for projects of 20 or more wind turbines.

Offshore wind facilities are subject to a plan approval (*Planfeststellungsbeschluss*) pursuant to the Offshore Wind Energy Act. Only projects granted a tender in the tendering procedures for offshore wind projects (please see question 2.6) are eligible for the plan approval procedure (*Planfeststellungsverfahren*), which requires documentation regarding construction planning, safety measures and environmental studies.

Solar power facilities require a construction permit (*Baugenehmigung*) pursuant to the Federal Building Code (*Baugesetzbuch*, *BauGB*) and the Building Codes of the Federal States (*Bauordnungen*). In particular, they must comply with regional planning and land-use planning (*Bebauungsplan*).

The construction and operation of hydropower facilities require a construction permit and are subject to a permit pursuant to the Federal Water Act (*Wasserhaushaltsgesetz*), which relates to the impounding of the respective waterbody as well as the discharge and then re-introduction of water used for energy generation. The permit usually requires an environmental impact assessment as well as a public participation procedure.

Geothermal facilities require a construction permit and a water law permit, as well as a permit under the Federal Mining Act (*Bundesberggesetz*); the permit procedure can necessitate a formal plan approval procedure including public participation and an environmental impact assessment.

Utility-scale biomass facilities require a permit pursuant to the Federal Immission Control Act, and can also necessitate an environmental impact assessment.

### 4.2 What are the primary consents and permits required to construct, commission and operate distributed/C&I renewable energy facilities?

Generally, the same permitting requirements that apply to utility facilities also apply to distributed/C&I renewable energy facilities (please see question 4.1).

### 4.3 What are the requirements for renewable energy facilities to be connected to and access the transmission network(s)?

Electricity network operators are obliged to connect renewable energy facilities to their network with priority; the facility operator bears the cost for the grid connection. Should network capacity be insufficient, the network operator must expand capacity to allow for feed-in by the renewable energy facility. A network operator must further grant priority access to the network regarding the take-in, transmission and distribution of electricity from a renewable energy facility.

Specific regulation applies regarding offshore wind facilities; such facilities are connected to the network according to the binding schedule set out in the Network Development Plan (*Offshore-Netzentwicklungsplan*) of the electricity network operators, which specifies the timeline for the network connection of the respective offshore wind projects. If the network operator fails to provide the grid connection as specified, the facility operator is entitled to compensation.

The further requirements of network connection and access are governed by the general provisions of the Energy Industry Act and are subject to compulsory agreements between the facility operator and the network operator.

### 4.4 What are the requirements for renewable energy facilities to be connected to and access the distribution network(s)?

The general requirements for the connection and access of renewable energy facilities to the distribution network conform with the requirements regarding transmission networks (please see question 4.3).

### 4.5 Are microgrids able to operate? If so, what is the legislative basis and are there any financial or regulatory incentives available to promote investment in microgrids?

Generally, all energy networks are subject to the requirements of the Energy Industry Act. Federal legislation does not provide for particular incentives for microgrids; only specific types of microgrids are available, such as self-supplying facilities, closed distribution systems or customer facilities which must comply with additional specific regulation.

### 4.6 Are there health, safety and environment laws/regulations which should be considered in relation to specific types of renewable energy or which may limit the deployment of specific types of renewable energy?

In general, all renewable energy facilities are subject to a permitting procedure based on the potential impact of the installation on the health and safety of persons as well as on potential impacts on the environment (please see question 4.1).

## 5 Storage

### 5.1 What is the legal and regulatory framework which applies to energy storage and specifically the storage of renewable energy?

The operation of an energy storage facility is governed by energy regulation, most notably the Energy Industry Act. The regulatory framework varies depending on the storage technology used, e.g. battery storage, power-to-gas storage, compressed air storage and pumped storage.

Generally, the construction of a battery storage facility requires a construction permit, while a power-to-gas storage facility or hydrogen plant requires a permit under the Federal Immission Control Act. Compressed air storage facilities can require a permit pursuant to the Federal Mining Act, and pumped storage facilities usually require a plan approval procedure under the Water Act, including an environmental impact assessment.

Another way to store electricity from renewable energies is to convert it into gas (power-to-gas), in particular hydrogen, which is flexible in its use in terms of time and location. Following the German National Hydrogen Strategy (*Nationale Wasserstoff Strategie*) from 2020, a specific regulatory framework for the generation, transportation and storage of hydrogen from renewable energy, so-called "green hydrogen" was created in 2021. The Renewable Energy Act provides for a reduction of charges and levies for the production of green hydrogen to provide for a level playing-field compared to regular "grey hydrogen". The amended Energy Industry Act for the first time governs the creation of hydrogen infrastructure, including pipelines and storage facilities as well as the non-discriminatory access to such facilities.

### 5.2 Are there any financial or regulatory incentives available to promote the storage of renewable energy?

Operators of storage facilities, including power-to-gas storage facilities that produce hydrogen or biogas, can be exempted from grid access fees if they feed stored electricity into the grid. Power-to-gas facilities are also exempt from fees for feeding power into the gas grid. In addition, operators of energy storage facilities are eligible for a reduction of the Renewable Energy Surcharge.

Following the National Hydrogen Strategy, regulatory changes to the Renewable Energy Act were introduced to promote the utility-scale roll-out of hydrogen facilities by 2030 (please see question 5.1).

## 6 Foreign Investment and International Obligations

### 6.1 Are there any special requirements or limitations on foreign investors investing in renewable energy projects?

No particular requirements or limitations on foreign investments in renewable energy projects apply. However, the acquisition by non-EU entities of companies or assets that are considered "critical infrastructure", such as facilities for the generation, transmission or storage of electricity, can generally be subject to a federal audit procedure under the Foreign Trade Regulation (*Außenwirtschaftsverordnung*). If certain thresholds are reached, the Federal Ministry for Economic Affairs and Energy may consider that national security interests are concerned and prohibit the transaction.

### 6.2 Are there any currency exchange restrictions or restrictions on the transfer of funds derived from investment in renewable energy projects?

Apart from tax provisions that apply indiscriminately, there is no specific regulation concerning funds derived from renewable energy projects.

### 6.3 Are there any employment limitations or requirements which may impact on foreign investment in renewable energy projects?

No specific employment limitations or requirements apply regarding foreign investment in renewable energy projects. Germany and the EU common market generally provide for a sufficient and skilled work force; however, shortages cannot fully be ruled out due to an increase of demand for workers in the renewable sector. Non-EU citizens require a work permit/visa to work in Germany. No specific quota requirements apply regarding workers from Germany.

### 6.4 Are there any limitations or requirements related to equipment and materials which may impact on foreign investment in renewable energy projects?

Equipment and materials used in renewable energy projects must comply indiscriminately with general safety requirements as well as additional project-related requirements under German and EU law. Non-compliance with such standards can hinder the use of specific products or equipment.

## 7 Competition and Antitrust

### 7.1 Which governmental authority or regulator is responsible for the regulation of competition and antitrust in the renewable energy sector?

The primary authority regarding competition, antitrust and merger control is the Federal Cartel Office (*Bundeskartellamt*). This applies equally for the renewable energy sector. Regarding merger control with EU-wide implications, the European Commission is directly responsible. Under the Energy Industry Act, specific regulation applies regarding the unbundling of the activities of energy transmission on the one hand, and energy generation or supply on the other hand. Further, network operators are regulated to prevent an abuse of their monopolies. The responsible authority is the Federal Network Agency.

### 7.2 What power or authority does the relevant governmental authority or regulator have to prohibit or take action in relation to anti-competitive practices?

In the field of merger control, the Federal Cartel Office may prohibit a transaction if the concerned companies exceed certain revenue thresholds and if the transaction is expected to create or perpetuate a market-dominating position. The European Commission may impose conditions or prohibit transactions that might restrain competition in the EU.

Concerning an abuse of market power, the Federal Cartel Office Act may prohibit any abusive behaviour and take corrective measures to ensure compliance.

BNetzA possesses specific competences to ensure network access, e.g. by imposing revenue caps for network tariffs or by specifying cost components.

### 7.3 What are the key criteria applied by the relevant governmental authority or regulator to determine whether a practice is anti-competitive?

If a company holds a dominant market position (e.g. no competitor, paramount market position of 40% of market shares), its practices are considered abusive if they deny access to facilities essential for competition, seek to squeeze a competitor out of the market, or demand unreasonable prices or conditions.

Under the Energy Industry Act, there is deemed to be an abuse of market power if network connection and access are denied or in the case of discrimination against certain companies compared to their competitors.

## 8 Dispute Resolution

### 8.1 Provide a short summary of the dispute resolution framework (statutory or contractual) that typically applies in the renewable energy sector, including procedures applying in the context of disputes between any applicable government authority/regulator and the private sector.

Disputes between participants in the energy market are regarded as civil law matters. This includes disputes regarding remuneration under the Renewable Energy Act. Disputes regarding decisions by regulatory agencies in energy-related matters under the Energy Industry Act are heard by the cartel senates of the higher regional courts.

**8.2 Are alternative dispute resolution or tiered dispute resolution clauses common in the renewable energy sector?**

The Renewable Energy Act provides for an alternative dispute resolution mechanism (*Clearingstelle*), which is responsible, for example, for disputes between network operators and facility operators. The *Clearingstelle* also provides general advice on the application of the Renewable Energy Act.

**8.3 What interim or emergency relief can the courts grant?**

German Civil or Administrative Courts can provide interim relief or grant pre-judgment seizures and interim injunctions. Similar provisions also exist with regard to decisions by regulatory agencies under the Energy Industry Act.

Under the Renewable Energy Act, courts can issue mandatory injunctive relief, e.g. requiring the grid operator to connect a facility to the network or to provide remuneration.

**8.4 Is your jurisdiction a party to and has it ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and/or any significant regional treaty for the recognition and enforcement of judgments and/or arbitral awards?**

Germany has signed and ratified both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

Moreover, Germany also applies the European Union's system on the mutual recognition and enforcement of foreign judgments. Under this regime, a judgment handed down in any Member State shall, subject to certain conditions, be recognised and enforceable in all other Member States without any special procedure of recognition or declaration of enforceability being required.

Germany is also a party to the Energy Charter Treaty, which provides for the protection of foreign investments in the energy sector, based on the extension of national treatment, or most-favoured-nation treatment and protection against key non-commercial risks such as expropriation, unreasonable and discriminatory measures or measures that infringe the principle of fair and equitable treatment. The Energy Charter Treaty also provides for Investor-State Dispute Settlement under the arbitral rules of ICSID, United Nations Commission on International Trade Law (UNCITRAL) or the Stockholm Chamber of Commerce.

**8.5 Are there any specific difficulties (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against government authorities or the state?**

In principle, actions against decisions by governmental agencies or regulators may only be brought by persons who can claim to be "injured", i.e. where they can demonstrate that they have suffered a legal detriment from the allegedly unlawful act. Third parties must demonstrate that the legal provisions which are alleged to have been breached by the act (also) serve the purpose of protecting their legal interests. Exceptions exist, for instance, with respect to certain authorisations alleged to violate provisions relating to the environment; in this regard, environmental organisations can bring cases without having to demonstrate their own legal interest in the decision. This is based on legislation implementing the Aarhus Convention, which applies throughout the European Union.

**8.6 Are there examples where foreign investors in the renewable energy sector have successfully obtained domestic judgments or arbitral awards seated in your jurisdiction against government authorities or the state?**

Based on the Energy Charter Treaty, the Swedish state-owned power company Vattenfall AB filed two cases against Germany under the ICSID rules. The first case (ICSID Case No. ARB/09/6) concerned the imposition of environmental restrictions on the construction of a coal-fired power plant. Vattenfall initiated an investor-state dispute settlement, pleading violations of the principle of fair and equitable treatment and the prohibition of indirect expropriation. The case was resolved through a settlement in which the government of Hamburg agreed to waive certain restrictions.

The second case was filed by Vattenfall against Germany in May 2012 before an ICSID arbitral tribunal (ICSID Case No. ARB/12/12) on the basis of the Energy Charter Treaty concerning the re-accelerated phase-out of commercial nuclear power which was implemented by the German Federal Government following the Fukushima disaster in 2011. This case is still pending.

In 2019, Strabag (ICSID Case No. ARB/19/29) filed a case against Germany under the ICSID rules, regarding investments in offshore wind energy projects in the German North Sea and legislative changes by Germany to its renewable energy regime, which caused the claimants to abandon their offshore wind projects.

## 9 Updates and Recent Developments

**9.1 Please provide a summary of any recent cases, new legislation and regulations, policy announcements, trends and developments in renewables in your jurisdiction.**

In the recent past, the Federal Government has undertaken ambitious steps to promote the development of renewables in Germany. The 2019 climate package with the Climate Action Programme 2030 and the Federal Climate Protection Act enshrines the target to decarbonise the economy. In June 2020, the National Hydrogen Strategy was published, which establishes hydrogen produced from renewable sources as a significant factor in Germany's decarbonisation strategy and aims at industrial scale generation capacities for green hydrogen with 5 GW to be installed by 2030 and 10 GW by 2035. In July 2020, the Coal Phase-out Act was passed, which will end energy generation from coal by 2038. In 2021, the German Federal Constitutional Court issued a landmark judgment on the federal legislator's constitutional obligations to address climate change (please see question 2.3), which led to an amendment of the Federal Climate Protection Act and stricter emission targets (please see question 1.3). Further impulses in Germany can be expected from the EU "Fit for 55" package for 2021, which aims to achieve an EU-wide emission reduction of 55% compared to 1990 levels (compared to a mere 40% planned today).

These drivers, in particular decarbonisation of sectors including industry, mobility and transportation as well as the building and agriculture sector, will require an ever increasing share of renewable energy. To that end, the Renewable Energy Act was amended in 2021 to provide for additional generation capacities, notably for offshore wind.

However, it is clear that more electricity from renewable energy will be needed when millions of new electric vehicles and heat pumps enter the market and if more and more green hydrogen is produced. This will not only increase the demand for renewable energy facilities but also for energy transmission systems and energy storage facilities in Germany for the foreseeable future. To transpose these political aims into action, further amendments to the regulatory framework will be required by the new Federal Government following the general elections in September 2021.

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