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Planning and approval procedures in Germany

Alexandra Thiel, solicitor, Paris, 19 November 2025



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since 2023



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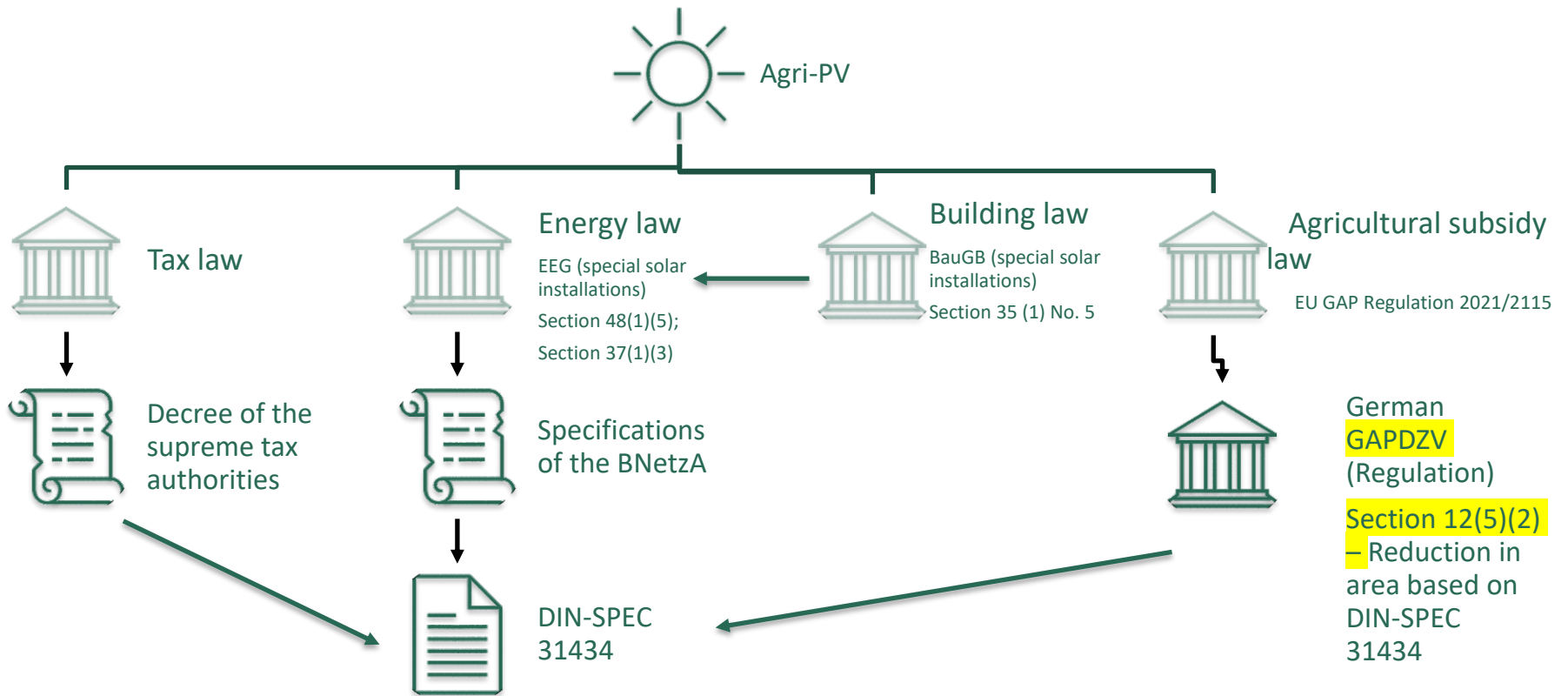
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Legal framework overview





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I. Energy law

- Right to grid connection
- Problem of plant aggregation
- Specifications of the Federal Network Agency; obligation to pro



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Right to grid connection against grid operators

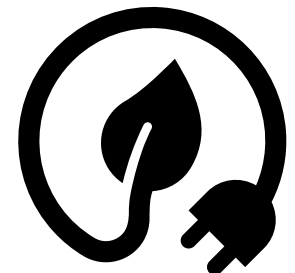
Practice: Grid operators often do not respond

Consequence:

- Delays in project planning;
- No cost calculation for grid connection;



Engagement of solicitors to enforce via interim legal protection, Section 83(1) EEG





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Problem Plant summary, Section 24(2) EEG 2023

Practice: Two small agri-PV plants (1 MW each) in the same municipality

- Spatial-temporal connection = 2 km radius within 24 months
- In summary, more than 1 MW is being installed

Legal consequence: the plant that was commissioned second is subject to the tendering obligation and bidding procedure

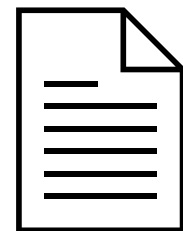




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BNetzA specifications – Documentation requirements for plant operators

- The Federal Network Agency (BNetzA) stipulates documentation requirements for plant operators (deviating from the principle of the EEG)
- Permanent grassland: expert confirmation every three years that agricultural cultivation is taking place
- Arable land/permanent crops: 66% reference yield is considered to have been achieved if agricultural production is taking place.





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II. Agricultural law

- Reference yield in the utilisation concept
- Permanent grassland New planting



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Usage concept and handling of reference yield 66% Requirements for farmers

Wording of Section 12(5)(2) GAPDZV: *the agriculturally usable area is reduced by a maximum of 15 per cent based on DIN SPEC 91434:2021-05¹ .*

Note: This regulation is dependent on the current EU CAP (Common Agricultural Policy 2023-2027), which may be amended on 1 January 2028 by a new EU legal framework

- Different requirements of the federal states in the CAP application – interpretation also varies (proof of land use efficiency)





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Usage concept and handling of reference yield Land use efficiency 66%

- BNetzA: "A yield loss of more than one third on average over three years would unilaterally promote electricity generation." (Distinguishing criterion from FF-PVA)
- However, plant operators currently "only" have to prove agricultural management (BNetzA specifications – appropriate).
- Farmers must maintain an agricultural utilisation concept throughout the entire operation of the PV system – the DIN-SPEC cultivation obligation is transferred to the farmer, as is the risk of achieving land use efficiency.



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Restriction of farming methods using the example of New permanent grassland

- Typical question during planning: Can I convert my currently "poor arable land" (low soil points) to permanent grassland as part of the Agri-PV approval process?

Answer: No. Technical and subsidy law allow this, and the creation of new permanent grassland is also required by policy (EU Renaturation Regulation), but DIN SPEC prevents it in Germany.





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III. Building law

- Federalism and guidelines for authorities
- Area classification BauNVO
- Compensation measures



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Federalism and guidelines for authorities

- Federal states have varying levels of knowledge – no standard for approval procedures exists to date
- There is a great need for clarification regarding agri-PV in the building permit process – uniform guidelines for authorities must be put in place as quickly as possible
- Stakeholders/municipalities have different ideas about what agri-PV means





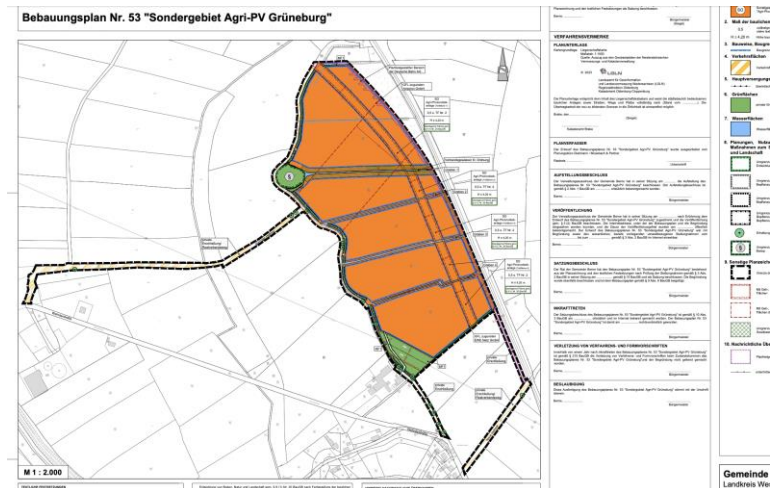
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Area classification according to BauNVO

- Agri-PVA are designated in special areas, although there are considerable differences in how they are presented
- Development plans drawn up at the discretion of the town planner do little to contribute to the reduction of complexity and positive public perception, which should always be the aim



Representation as agricultural land



Representation as an industrial estate



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Compensation measures

- Agri-PV = 90% agriculture – 10% PV OR 85% agriculture – 15% PV

However, agri-PV constitutes an intervention under the Federal Nature Conservation Act (BNatSchG).

Practice: Often, **100% of the total area** is used to calculate compensation, even though in fact only a maximum of 15% of the area is used for electricity generation.



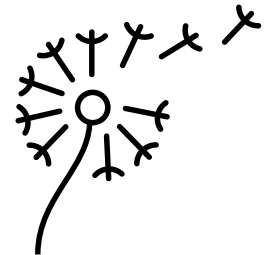
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Compensation measures

Consequence: Each federal state has its own guidelines for compensating for the intervention

- Example Schleswig-Holstein: high elevation can have far-reaching environmental impacts; compensation to be determined on a case-by-case basis

- Additional costs (lease) for compensation areas,
- additional land withdrawal on the part of agriculture
- Production area becomes compensation area





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VI. Tax law

Decree of the supreme financial authorities



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Decree issued by the highest financial authorities
Allocation and valuation of agri-PV systems

Supreme tax authorities of the federal states dated 15 July 2022 – S 3250 BStBl
2022 I p. 1226

Reference(s): BStBl 2022 I p. 1226; DStR 2022 p. 2007 No. 39; NWB BAAAJ-21070
<https://datenbank.nwb.de/Dokument/998557/>

Tax privilege remains in place for the time being

Land on which photovoltaic systems are located that are classified as Category I or II agri-photovoltaic systems in accordance with DIN SPEC 91434 is to be classified as agricultural and forestry assets.



Thank you for your attention!

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