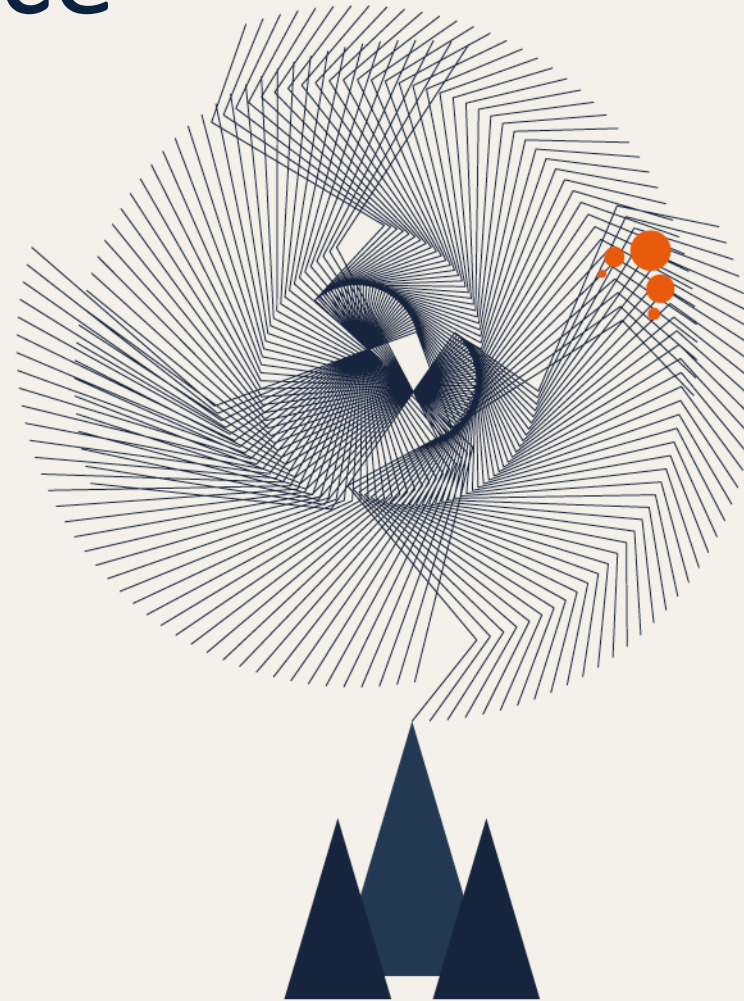


/ Legal requirements for repowering projects in Germany and France

DFBEW Repowering Conference

Paris, 15.03.2018

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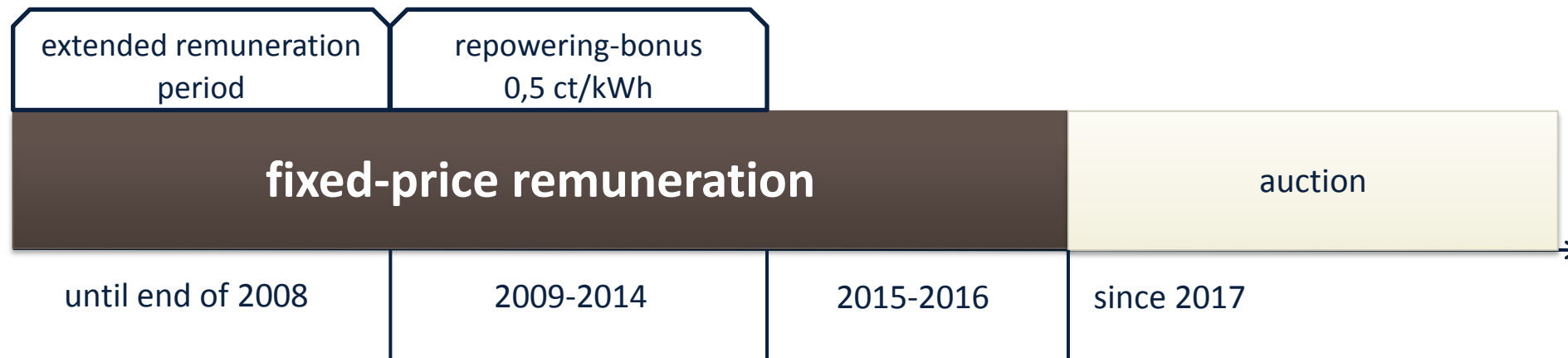
/ Agenda

- Promotion of the use of energy from renewable sources in Germany and France
 - ▷ Changes in remuneration systems
 - ▷ Current situation for repowering projects
- Public law in Germany and France
- Real estate issues
- Purchase and corporate law

/ Promotion of the use of energy from renewable sources

► Germany:

- ▷ EEG (Renewable Energy Sources Act) guarantees a fixed-price remuneration for power from renewable energy sources for 20 years after commissioning
- ▷ EEG 2004 granted an extended remuneration period for repowered wind turbines
- ▷ EEG 2009 and 2012 also granted a special repowering-bonus in the amount of 0,5 ct/kWh on top, which has been abolished in 2014 without replacement
- ▷ Since 2017 the remuneration (for plants <750 kW) is granted only after successful bid



/ Promotion of the use of energy from renewable sources

➤ Germany:

- ▷ The amount of possible successful bids is limited in regions with overloaded transmission networks (*Netzausbaubereich*) to 58% of the average extension in this region between 2013 and 2015
- ▷ The fixed upper limit amount to 902 MW per annum
- ▷ Current region: northern Niedersachsen, Bremen, Hamburg, Schleswig-Holstein, Mecklenburg-Vorpommern.
- ▷ *Bundesnetzagentur* will evaluate the region and the upper limit by 31.07.2019 and after this day every 2 years



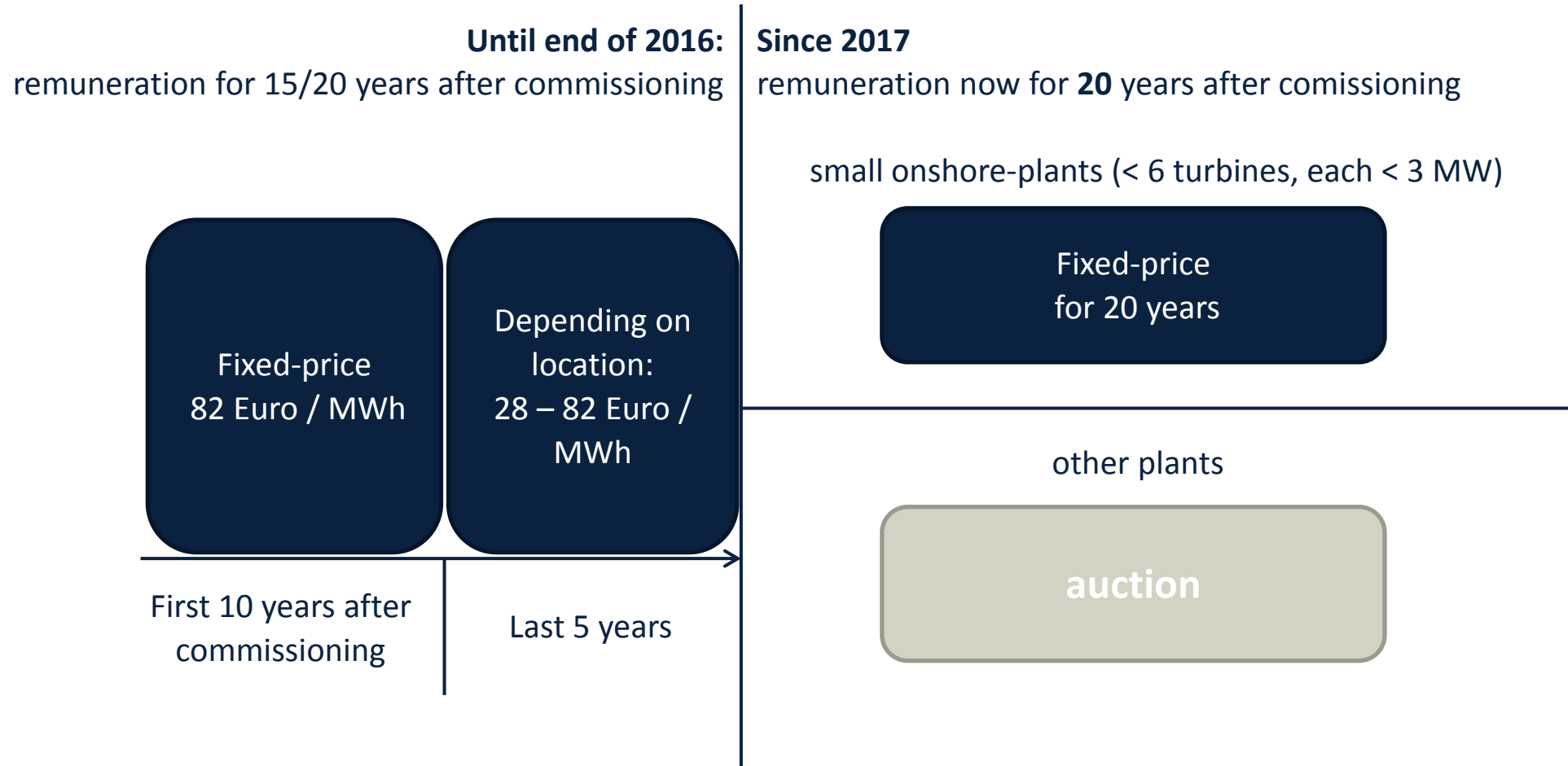
/ Promotion of the use of energy from renewable sources

➤ France:

- ▷ Fixed-price remuneration for power from renewable energy sources was guaranteed for a period between 15 and 20 years after commissioning depending on the used technology
- ▷ Current legal status:
 - Operators of small onshore plants (<6 turbines, each <3 MW) still can obtain a fixed-price remuneration
 - Remuneration for bigger plants will be granted only after successful bid

/ Promotion of the use of energy from renewable sources

➤ France:



/ Public law in Germany

- Construction and assembly of wind turbines are subject to immission control law approval which comprises all (other) necessary permits like building permit, environmental law permission etc.
- Repowering projects are also subject to same procedure as new projects, but only if the repowered station can no longer be considered a continuation of the existing one, whereby it is not defined, what „continuation of an existing plant“ stand for
- In principle, existing plant which no longer complies to current regional planning cannot be repowered
- Each repowering project must be precisely examined with regard to public law requirements

/ Public law in France

- Construction and assembly of wind turbines in France also require public law permit, maintenance procedures are already included
- Significant changes (*changements notables*) are subject to a complementary permit (*arrêté complémentaire*); substantial changes (*modifications substantielles*) require a new permit
- The difference between *changements notables* and *modifications substantielles* is unclear, although there is a draft of administrative order dated by October 2017 (*Instruction du Gouvernement du relative à l'appréciation des projets de renouvellement des parcs éoliens terrestres*)
- Until 2014 various permits were necessary
- March 2014 – implementation of concentrated permit (*Autorisation Unique*) in 7 regions
- Since November 2015 extension to whole territory of France for all wind turbines projects
- March 2017 – every project is now subject to *Autorisation Unique*

/ Real estate in Germany

➤ Germany:

- ▷ Common collateral instruments: lease agreement with property owners and limited personal easements
- ▷ Contractual problems: after a 30 years period lessor can terminate the contract extraordinarily with the statutory deadline, sec. 544 BGB
- ▷ Real collaterals – usually: limited personal easements:
 - operation easement
 - transit easement



/ Purchase and corporate law in Germany

- Purchase and corporate law barriers, in case the new operator shall replace the current operator of the plant:
 - ▷ Choice between asset or share deal
 - ▷ A cooperation agreement with the current operator is advisable
- Corporate law barriers for repowering for the case, that the new plant shall be operated by the current operator
 - ▷ In case of a limited partnership (*Kommanditgesellschaft*) the limited partner (*Kommanditist*) can have the right to participate in fundamental decisions which repowering can be - therefore each individual case must be examined

/ Your contact person



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Dr Cornelia Kermel is a partner at Noerr in the Energy and Regulatory Group with longstanding experience in the energy sector. She is highly regarded for her over twenty years of experience in advising on energy law e. g. in the field of renewable energies such as the realization of various on- and offshore projects. She regularly advises national and international energy companies and municipalities on all regulatory issues, energy trading and on the realization of all kinds of energy projects. Her profound experience in the field of concession law as well as her wide-ranging know-how in the field of litigation, such as arbitration, are some of her valuable assets.

Competences

- Energy law and renewable energies
- Energy antitrust law
- Litigation
- Concession agreements and concession fees

Distinctions

- Listed among the world's leading energy lawyers, Who's Who Legal 2018
- Since 2015 recommended as a leading Energy lawyer, Legal 500 Germany
- Since 2016 recommended as leading individual for Energy Law, Best Lawyers
- Since 2017 recommended as very best legal practitioner for Energy, Who's Who Legal
- Recommended for the sectors "Regulatory Industries: Energy" and "Regulatory Industries: Transactions/Financing", JUVE Handbook 2017/2018
- Recommended as a leading lawyer for Energy; "In the Berlin office, Cornelia Kermel, a 'competent and committed energy lawyer', has particular expertise in the field of concessions...", Legal 500 Germany 2017
- Recommended as leading lawyer for "Energy: Regulatory (Germany)", Chambers Europe 2017
- Listed under "Germany's best lawyers 2016" for Energy law, Best Lawyers 2016

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