

- Legal framework for citizen-owned energy projects in the context of power auctions in Germany and France –
Conference of the German-French Office for Renewable Energies

Development of the legal framework for citizen-owned wind energy projects in Germany

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1. Development of citizen-owned wind farms

- Wind energy in Germany originally began with citizen-owned wind farms
- Northern Frisia is the cradle of the German citizen-owned wind farm
- The first German citizen-owned wind farm:
Friedrich-Wilhelm-Lübke-Koog (1991)
- Approx. 90% of wind farms in Northern Frisia are citizen-owned wind farms
- More than 20 years of experience with citizen-owned wind farms
- Citizen-owned wind farms = crucial for local acceptance



2. Legal framework of citizen-owned energy projects in Germany in the context of power auctions

- Goal of EEG 2017 inter alia to maintain a high level of diversity of actors by means of relaxed requirements for participation in auctions for citizen-owned energy projects (*Bürgerenergiegesellschaften* – BEG), as defined by the EEG 2017.
- BEG = small local actors, low creditworthiness  high development cost
- EEG 2017 therefore provides for special conditions

2.1 Special conditions for BEG, § 36g EEG 2017:

- BEG may submit bids prior to having been granted a permit under the Federal Immission Control Act (BImSchG)
- Bid bonds are split in half, § 31 EEG 2017: BEG may deposit 15 €/kWh upon submitting the bid and another 15 €/kWh two months after grant of permit.
- The applicable deadline for construction of the turbines is extended by two years
- Uniform pricing: if their bid is accepted, BEG will receive the same price as the highest bid still accepted in the respective auction round

2.2 Requirements for BEG, § 36 EEG 2017: Special conditions for BEG, § 36g EEG 2017:

- Positive elements:
 - BEG as defined by § 3 No. 15 EEG 2017
 - Max. 6 wind turbines/18 MW
 - Evidence of secured availability of land plots required for the turbine
Certified wind report
 - Evidence of proposal for a 10% „financial participation“ of the local community or a company fully owned by such local community

- Negative elements: :
- No „related projects“: participation of BEG or one of its shareholders in other projects (= barring clause)
 - ✓ whose bid has been accepted during a period of 12 months prior to submitting the BEG's bid or
 - ✓ which have submitted bids in the same auction round and which together with the BEG's bid would exceed the 18 MW limit.
 - No „circumvention contracts“:
 - ✓ Contracts for the transfer of shares or voting rights and other agreements leading to the result that the BEG-criteria of the definition in § 3 No. 15 EEG 2017 are not fulfilled or circumvented post-bid.
 - ✓ Contracts for the transfer of shares or voting rights or for profit-sharing concluded prior to commissioning require the BEG's prior consent
 - ✓ BEG may not issue consent if such contracts lead to the result that the BEG-criteria of the definition in § 3 No. 15 EEG 2017 are not fulfilled or circumvented post-bid.

- Evidence of fulfillment of BEG-criteria by written declaration at the time of submittal of the bid, to be repeated at the time of application for allocation,
- Application for allocation: within 2 months after grant of permit
- Lock-up period, § 36g para (5) sentence 4 EEG 2017: BEG-criteria need to be upheld uninterrupted until two years after commissioning,
- In case of breach:
 - Revocation of bid acceptance by the Federal Network Agency (BNetzA)
 - Exclusion from further auction rounds
 - Uniform pricing does not apply anymore, pay-as-bid only

2.3 Requirements for BEG, § 3 no. 15 EEG 2017:

- Shareholder structure of BEG:
 - Minimum 10 natural persons as shareholders with voting power
 - No shareholder may hold more than 10% of the voting rights
 - Minimum 50% of voting rights to be held by natural persons with registered principal residence in the administrative district of the planned turbines since at least one year
 - Companies which in turn also meet the BEG-criteria

2.4 Impact on auctions 2017

Auction date	Bid acceptances for BEG	Bid acceptances for non-BEG
May 1, 2017	65 (93%)	5 (7%)
August 1, 2017	60 (89%)	7 (11%)
November 1, 2017	60 (98%)	1 (2%)

(data provided by BNetzA)

What we can see is:

- Disproportionately high success of BEGs
- However structure of successful BEGs often does not conform to legislator's intentions
- Considerable price erosion: average unit-value-related value of bid acceptances has decreased from 5.71 ct/kWh (05/17) to 4.28 ct/kWh (08/17) to 3.82 ct/kWh (11/17) (data provided by BNetzA)

2.5 Consequences of auction results 2017

- Risk of delays and/or missing of targets for additional construction of wind energy turbines due to
 - missing permits, impact on expected additional constructions beginning 2019/2020
 - extremely competitive bid pricing based on expectations of reduced production cost in the future („gamble on the future“)
- „industry-political disruption“: job cuts – Enercon: 1,200 jobs, Senvion: 700 jobs, Nordex: 500 jobs (data provided by NDR, Hamburg Journal, 25.09.2018, 19:30), IG Metall: 5000 jobs in total.
- „2 markets in the auction“: projects with and without permit
- Threat to diversity of actors: market distortion in favor of BEG with participation of professional developers

2.6 Reaction of the legislator: § 104 para (8) EEG 2017

- Permits required for BEGs too in the auction rounds February 2018 to June 2020
- § 36 para (1) EEG 2017: permit must be granted at least 3 weeks before the auction date.
- The deadline for construction of the turbines is reduced from 54 months to 30 months
- The limitation to 6 turbines/18 MW is dropped

2.7 Impact on auctions

Auction Date	Bid acceptances for BEGs	Bid acceptances for Non-BEGs
February 1, 2018	19 (23 %)	64 (77 %)
May 1, 2018	15 (13,5%)	96 (86,5%)
August 1, 2018	4 (5 %)	82 (95 %)

(data provided by BNetzA)

What we can see is:

- Shifting of relation between bid acceptance for BEGs and Non-BEGs
- Price erosion has been halted: average unit-value-related value of bid acceptances has developed from 4.73 ct/kWh (02/18) to 5.73 ct/kWh (05/18) to 6.16 ct/kWh (08/18) (data provided by BNetzA)

3. Outlook:

- Conceivable modifications:
 - BEGs continue to require price- and bid acceptance security; reason: high development cost, low creditworthiness
 - Amount of shareholders may be higher than 10 if barring clause (= no participations in other projects for 12 months before the relevant auction date, § 36g para (1) no. 3 lit. b EEG 2017) is dropped
 - Lock-up period to be extended beyond 2 years with limited exceptions (e.g. relocation)
 - Uniform pricing possibly unnecessary

Thank you for your attention!

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