

German News Flash

- It's all about energy



GERMAN NEWS FLASH

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A. New regulations on energy efficiency

THE GERMAN ENERGY SAVING REGULATION 2009

In order to counter climate change, the German Federal Ministry for the Environment set up a "National Energy Efficiency Plan" in 2008. The most important tool of this plan is the amended Energy Saving Regulation (*Energieeinsparverordnung - EnEV*), which will enter into force on 1 October 2009. The EnEV 2009 provides for new crucial regulations to be observed by real estate developers and owners.

The EnEV 2009 applies to all heated or cooled buildings and parts of buildings provided that the building permit is applied for on or after 1 October 2009. Since 1 January 2009 on, purchasers and tenants of real property can ask for an "Energy Performance Certificate" (*Energieausweis*). This certificate provides information on the building's energy demand and suggests modernisations that would enhance its energy efficiency. The obligation to present the certificate to purchasers or tenants, if requested, is subject to public law and the failure to comply can be punished by means of an administrative fine.

In comparison to the previous EnEV 2007, the regulation provides for a reduction of the energy consumption based on heating and hot water use by an average of 30%. The permitted energy demand of residential buildings is assessed on the basis of a reference building. Substantial modernisations of existing buildings, such as the renewal of exterior walls, the windows or the roof, lead to similar obligations also for older buildings. ▶



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In general, it is the duty of the building's owner to observe the regulation. However, EnEV 2009 has additionally introduced a so-called "declaration by the entrepreneur" (*Unternehmerklärung*), i.e. a confirmation by the different craftsmen involved in the construction. The entrepreneur is obliged to observe the regulation's specifications and thresholds to the extent that he builds, rebuilds or changes the building or its installations, and he must affirm that he has done so to the building's owner in writing.

It is envisaged to require further reductions of consumption by another 30% already as of 2012.

FROM BERLIN TO BRUSSELS

On 23 April 2009, the European Parliament passed an amendment to Directive 2002/91/EC on the energy performance of buildings. The EU Member States have to ensure by 31 December 2018 that all new buildings are so called "zero energy buildings", i.e. that they produce – e.g. by using solar panels or heat pumps – as much energy as they consume. In addition, the Member States are supposed to develop already now national action plans to increase the number of zero energy buildings.

HEAT FROM RENEWABLE ENERGY SOURCES

The German Act on Heat from Renewable Energy Sources (*Erneuerbare-Energien-Wärmegesetz – EEWärmeG*), which came into force on 1 January 2009, constitutes that 15 to 50 % of the heat demand of new buildings must be covered by renewable energy sources. The act is based upon three pillars: the use of renewable energies for heat supply, financial aid for such usage to owners of buildings and the expansion of heat distribution networks.

SMART METERING

According to the German Energy Act (*Energiewirtschaftsgesetz – EnWG*), from 1 January 2010 on all buildings have to be equipped with intelligent energy meters to the extent that this is technically possible and economically reasonable. Smart meters inform consumers about the actual energy usage and precisely when the energy is used. This enables consumers to adapt their behaviour to low cost tariffs offered by the suppliers.

ACT ON ENERGY EFFICIENCY POSTPONED

All political efforts to pass a legislative initiative on energy efficiency (*Energieeffizienz-gesetz*) have been postponed to the next legislative period. After the financial crisis hit Germany last fall, the draft of the act on energy efficiency was taken off the agenda of the Federal Cabinet several times.

The draft is directed at energy supply companies. It aims at strengthening the producers' responsibility and liability regarding energy efficiency. The starting point of these legislative ambitions is Directive 2006/32/EC on energy end-use efficiency and energy services. The directive should have been implemented into German law by May 2008. By failing to do so, Germany has violated its obligations under the EC Treaty and risks a financial penalty. In January 2009, the European Commission officially asked Germany to comment on the delay, which may be a step by the Commission prior to initiating proceedings against Germany in this matter.



B. New laws on Renewable Energies and Combined Heat and Power

On 1 January 2009, amendments to two important laws in the energy sector entered into force.

RENEWABLE ENERGIES

The Renewable Energy Sources Act (*Gesetz für den Vorrang erneuerbarer Energien – EEG*) aims at increasing the contingent of renewable energies in electricity up to 30% by the year 2020 and to about 50% by the year 2034. The EEG has therefore been completely revised. The new EEG focuses on electricity as a correlate to the above-mentioned EEWärmeG, which deals with renewable energies in heat production.

Regarding wind energy in particular, the focus is on making investments in “repowering” – i.e. the substitution of old wind energy converters by high-capacity and new technology converters, which will enhance the efficiency of wind energy usage – more attractive and improving the conditions for offshore wind power and the integration of plants producing electricity out of renewable energies into the grid. Furthermore, instead of fixed payments by the grid operator to the wind energy operator, the operator may now choose to directly market the electricity produced. If the operator only sells a certain percentage of the electricity directly to a third party via direct marketing, he can claim the fixed payments under EEG for the

remaining percentage as long as he notifies the grid operator of the respective allotment one month prior to the direct marketing.

COMBINED HEAT AND POWER

The purpose of the amendment to the Combined Heat and Power Act (*Kraft-Wärme-Kopplungsgesetz - KWKG*) is to increase electricity production by combined heat and power plants (CHP plants) up to 25% by supporting the modernisation of existing and the establishment of new CHP plants. To achieve this, a bonus payment between 1.5 and 5.11 EUR euro-cents per kilowatt hour electricity generated in a CHP-plant will be made. These bonuses are paid up to six operational years (maximum 30,000 operational hours). The total bonus payments are limited to EUR 750 million per year.

The other focus of the act is the construction and extension of heat distribution networks. Bonus payments are made for heat networks brought into service by 2020. The possible bonuses are limited to EUR 5 million per project and EUR 150 million in total per year.

C. Emissions trading after 2012

QUO VADIS “EUROPEAN EMISSION TRADING SCHEME”

The European Emission Trading Scheme (ETS) is a “cap and trade” system implemented by the European Union that limits the overall level of emissions allowed. However, within that limit, it permits participants of the system to buy and sell allowances according to their needs.

The current ETS directive only covers the period up until 2012. The new ETS directive, which was formally adopted by the Council of the European Union on 23 April 2009, provides guidelines regarding the third period of the ETS from 2013 on. The priority remains to reduce the emission of greenhouse gases by 2020 by 20% compared to the emissions in 1990.

One objective of the new directive is the implementation of a unitary “European emissions budget”. As a consequence, the Member States will no longer define their emission budgets independently on a national level. This will lead to greater control over the total number of emissions allowances issued and will facilitate the steady reduction of available allowances, thereby increasing their value and making emission trading economically more attractive. Furthermore, the possibilities to use within the framework of the ETS emission allowances based on the Kyoto Protocol (e.g. the Joint Implementation and the Clean Development Mechanism projects) are to be extended, thereby rewarding emission reductions

worldwide as an alternative to reductions within the EU.

While in the past emission allowances were allocated free of charge, from 2013 on power plant operators will have to buy the total amount of allowances they need. Only highly efficient combined heat and power plants are exempted from this regulation. Taking into consideration the special situation in Eastern European countries, where electricity is mostly generated by coal-fired power plants, 30% of the required allowances can under certain conditions be allocated for free up until 2020.

Regarding industries other than power plants, free allowances will be decreased at a slower rate, i.e. stepwise from 80% in 2013 to 30% in 2020. Only from 2027 onward will there be no more free allowances, meaning that 100% of allowances will be auctioned off. The reasons why free allowances are only reduced stepwise and not all at once is that excessive “carbon leakage” is supposed to be prevented. Carbon leakage refers to the relocation of industrial production abroad in view of increased costs due to emission trading within the EU. The system will not apply equally to all kinds of industrial production, but favor certain industries. A list regarding the treatment of different industry sectors is supposed to be published by 31 December 2009.



D. Carbon Capture and Storage – CCS

As a further component of a European climate package, together with the ETS directive the Council of the European Union adopted a directive as the legal framework for the safe and environmentally sound use of carbon capture and storage technologies. The CCS directive aims at granting planning and investment security up until 2015 for pilot and demonstration plants.

Capturing CO₂ is being discussed in connection with typical emission sources, such as large fossil fuel or biomass energy facilities, as well as industries with major CO₂ emissions and natural gas processing. In some cases, CO₂ is emitted in a relatively pure state and can be directly processed. In others, especially if CO₂ is captured from the air, it has to be separated from other gases before it can be stored. After capture, the CO₂ has to be transported to suitable storage sites; the cheapest way of transport is generally

through pipelines. There are several options for permanent storage of CO₂: gaseous storage in deep geological formations (including saline formations and exhausted gas fields), liquid storage in the ocean and solid storage by reaction of CO₂ with metal oxides to produce stable carbonates. The CCS directive favours underground gaseous storage.

In Germany, legislative work on the implementation of the CCS directive into a national CCS Act (*Gesetzesentwurf zur Regelung von Abscheidung, Transport und dauerhafter Speicherung von Kohlendioxid*) has commenced. However, this technology is controversially discussed, especially due to the lack of long term studies on the effects such storage may have on the environment. Accordingly, the implementation of the CCS Directive could face more resistance than expected in Brussels.

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