



Energy Regulatory

Our capabilities in Germany

**Hogan
Lovells**

Energy and regulatory law in Germany

German and European energy laws and in particular energy regulatory laws are subject to ongoing changes. The transformation of the energy market from a monopolistic market to a liberalized and competitive market environment, which began about twenty years ago, is already well underway, but far from complete.

The energy regulatory and legal framework is continuously changing, especially due to European legislation and its intended integration of national energy markets.

At the same time, infrastructure operators and market participants face complex challenges based on developments triggered e.g. by the increasing importance of electromobility and climate protection.

Regulation of network infrastructures

The operation of network infrastructure facilities in the energy sector - which includes in particular energy transmission and distribution networks, but also storage facilities and other infrastructure facilities such as LNG terminals - are subject to a strict regulatory regime.

This applies not only to the regulation of third party access as such, but also with respect to the regulation of relevant usage fees, aspects of network connection, or the construction and development of new infrastructures. Further regulatory implications arise from the obligations of joint network development planning in Germany and Europe. Undertakings which operate network infrastructure and their affiliates further need to comply with applicable unbundling requirements.

Renewable energies

The support scheme for renewable energies in Germany has been subject to constant change. Energy supply companies and project developers who are active in this economic area must therefore ensure that their own business model complies with the applicable legal requirements at any time. New investments,

economic activities, as well as business and sales models must always take into account the applicable regulatory environment.

In the competition with other energy companies, trading and distribution contracts not only need to comply with the applicable regulatory regime, but also have to be designed innovatively. In addition, companies already have to prepare for the so-called post-EEG (German Renewable Energy Act) age. Relevant PPAs need to be drafted and developed.

Alternative sources of supply

Political and economic changes may encourage the development of alternative sources of energy supply. One example is the dependency on imports in the gas sector in large parts of Europe, and in particular Germany. For decades the existing demand was met almost exclusively by the pipeline transport of gas, but can now additionally be covered by import of LNG.

However, the construction and connection of LNG terminals to the existing network triggers complex regulatory challenges for the network operators as well as the operators and users of such terminals, since the legal environment in Germany and Europe has not yet been fully developed.

“Stefan Schröder is able to bring professional competence straight to the point.”

Legal 500 Germany, 2020

New technologies and use of alternative energies

Energy market structure is not only influenced by new and alternative sources of supply. The use of new technologies and even completely new energy sources is becoming increasingly important, based on political changes affecting the objectives of energy policy at national and European levels. Climate change considerations have greater impact.

Whereas the German energy market is still characterized by the nuclear phase-out implemented after Fukushima, Germany is now also planning to phase out the production of electricity from lignite and to introduce new requirements for achieving lower carbon emissions.

As a result, in the electricity sector, smart solutions must be developed to ensure that electricity generation and consumption are better synchronized in terms of location and time, and required storage facilities need to be constructed. New technologies such as power-to-gas are becoming increasingly important.

The gas sector will be subject to fundamental changes, since the use of alternative - more climate-friendly - energy sources will become increasingly important. In particular, the partial or exclusive use of alternative energy sources such as hydrogen instead of natural gas will have an impact on the energy industry for decades. To a large extent, however, the legal and regulatory environment applicable to these changes is not yet entirely developed.





Energy trading and contract documentation

Whether involving conventional or new energy sources, energy trading contracts, energy supply contracts, and energy storage contracts must be documented properly. Additionally, such contracts must take into account future market developments and challenges. This is even more important, when long-term contracts are concluded.

In addition to compliance with the relevant regulatory framework, the inclusion of loyalty clauses or price revision clauses and their design must be considered, when contracts are drafted and concluded. Opportunities and risks associated with such clauses must be analysed in detail. Such clauses in contracts need to be reviewed regularly to determine to what extent one party can request an adjustment of prices under such legal instruments.

Supervisory law

Companies operating in the energy sector must also ensure compliance with the Regulation on Wholesale Energy Market Integrity and Transparency (so-called REMIT regulation). Failure to do so can result in severe fines.

Aside from physical trading, banking regulatory law implications can be of relevance for energy trading companies.

Our approach

Companies facing the market challenges of the energy sector require legal advice from professionals who have deep industry knowledge and significant experience in energy and regulatory law.

We advise infrastructure and especially gas and electricity network operators on all regulatory issues in the energy sector.

We have extensive experience in representing companies in proceedings before of the German Federal Network Agency (including in particular the representation of companies in abusive practices proceedings). Moreover, we have successfully represented a number of companies in complaint proceedings against decisions and regulations of the Federal Network Agency in front of the Dusseldorf Higher Regional Court. Our energy team also has experience in representing companies in subsequent legal complaint proceedings before the German Federal Court of Justice.

We assist our clients regularly in the drafting, negotiation, and conclusion of energy trading and energy supply contracts. Clients trust us when their business needs to be adapted to the constantly changing requirements of energy law and legislation regarding renewable energies. We are proud that numerous energy companies see us not only as their partner in the development of new project ideas, but also as their "trusted advisor". We have established numerous innovative sales concepts together with our clients.

Unfortunately, disputes in business are sometimes unavoidable. In such cases, we regularly represent energy companies in extrajudicial disputes, in legal disputes before court of general jurisdiction and also in arbitration.

We advise a large number of market participants not only with respect to the current challenges of their activities in the energy sector, but especially regarding the preparation and implementation of projects in order to benefit from future opportunities in energy markets.

Selected areas of experience:

Energy regulatory law

- Advice on third-party access to energy infrastructure facilities and the regulation of usage fees
- Advising energy companies on compliance with all regulatory requirements for the energy sector
- Representing regulated entities in proceedings before and in complaint proceedings against decisions and regulations of the German Federal Network Agency (as competent national regulatory authority)
- Advising infrastructure operators in relation to the usage and integration of alternative energy sources
- Regulatory advice in connection with national and international energy infrastructure projects
- Advice to energy companies on REMIT and banking regulatory implications

Energy trading

- Legal review, negotiation and drafting of energy trading contracts and energy storage contracts
- Advice on sales models in the energy sector
- Representing energy companies in civil disputes in connection with energy trading and supply contracts (e.g. in connection with price revision disputes)

Renewable energies

- Advice on the German legal framework for renewable energies support
- Advice on the implementation and development of renewable energy projects
- Advice on the negotiation of direct marketing contracts and the development of new contracts, such as PPAs



Our Dusseldorf based energy and regulatory law team



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Frequently recommended lawyer for energy regulatory law

JUVE Handbook 2019/2020

"Up and Coming" in 'Energy: Regulatory' in Germany

Chambers Europe, 2019

"Next generation name" in 'Energy'

Legal 500 Germany, 2020

Dr. Stefan Schröder focuses on national and international legal issues in the energy sector.

He specialises in German and European regulatory law and represents clients in administrative proceedings (including abusive practices proceedings) in front of the German Federal Network Agency as well as in complaint proceedings against decisions of the regulatory authority.

Stefan also has extensive experience in energy contract law and energy trading law, e.g. as regards the legal review, negotiation and drafting of energy trading contracts and energy storage contracts.

He also advises energy companies and project developers on renewable energy aspects.

Moreover, Stefan regularly represents energy companies in civil law proceedings before courts of general jurisdiction and also in arbitration.

Stefan has also been involved in M&A-transactions and international projects in the energy sector.

Clients appreciate that Stefan is "*very hands-on, gives good, in-depth legal analyses and can work out legal questions that have not been dealt with before*" (Chambers Europe, 2018)



Katharina Schwind

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Katharina Schwind advises companies on all aspects of energy law.

Her work focuses on energy regulation. She has advised several regulated entities in complaint proceedings against decisions of the national regulatory authority.

Her work further focuses on energy trading issues (including trading of emission certificates) and the drafting of civil law contracts for the energy industry.

Katharina's clients include network operators, energy supply companies, energy trading companies and investment banks.



Dr. Katherina Jung

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Dr. Katherina Jung advises companies on all aspects of public law and aspects of energy law.

Katherina studied law at the University of Bielefeld. During her studies, she worked as a student assistant at a chair for public law. She also holds a PhD on a doctoral thesis in public law.

As a legal trainee in the district of the Hamm Higher Regional Court she gained practical experience at the German Federal Cartel Office, a boutique law firm specialising in public law and in the legal department of a leading German energy company in Essen.



Isabell Steckel

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Isabell Steckel advises companies and the public sector on all aspects of public law. Besides, Isabell has a particular focus on energy law and energy regulatory law.

Isabell studied law at the University of Bonn. She completed her legal traineeship in the district of the Cologne Higher Regional Court.

During her traineeship, she worked *inter alia* for a major Australian law firm in Sydney.

Before joining Hogan Lovells, she worked as a lawyer for a boutique law firm specialising in public law.

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