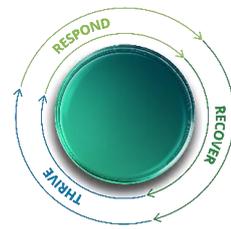


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Energy law issues in times of COVID-19

30th April 2020



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Energy law issues in times of COVID-19

The corona crisis can lead to the fact that certain deadlines and regulations for relief, e.g. within the framework of the Renewable Energy Sources Act, can objectively no longer be met or on-site inspections as part of an energy audit cannot be carried out. We have compiled the most important information for companies.

Introduction

The **Federal Network Agency** ("BNetzA"), the **Federal Office of Economics and Export Control** ("BAFA") and the **Federal Ministry of Economics and Energy** ("BMWi") have published "corona information" on their websites in the last few weeks. Furthermore, they have announced that they will be lenient towards companies, refrain from spot checks or **avoid undue hardship**. A precondition for granting leniency is that companies can demonstrate in individual cases that they were **unable to meet a deadline, make an application or make a payment due to the corona crisis**.

We have compiled the most important announcements below.

Performance of energy audits

At least four years after completion of the initial audit and every four years thereafter, an energy audit shall be carried out by qualified and accredited energy auditors. The date of completion of the first energy audit was 5 December 2015. According to Sections 8 - 8d EDL-G large companies are now obliged to undergo the second revolving audits. In particular, the **on-site inspection** is part of DIN EN 16247-1. An energy audit is regarded to be fully completed only if an on-site inspection has taken place. Due to the current situation, an on-site inspection at the companies by energy auditors is likely to be difficult, if not impossible.

On its website, the **BAFA points** out that companies should **document the reasons for a delayed on-site inspection** and the resulting delayed completion of the energy audit. According to the BAFA, any **adverse effects** of the current situation will be **taken into account accordingly**, as the **legal deadlines** for carrying out

the energy audit and submitting the online energy audit declaration will **not** be **extended**. The documentation should be as detailed as possible to facilitate a possible decision making for the BAFA.

Further information can be found on the BAFA's website under "Questions on EDL-G":

https://www.bafa.de/DE/Energie/Energieeffizienz/Energieaudit/energieaudit_node.html

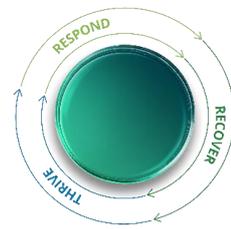
Tender dates EEG, KWKG and WindSeeG etc.

The **tendering procedures for new to-be-installed renewable production capacities are generally suspended by law** (e.g. Section 28 EEG 2017 for the tendering of RE plants). Uncertain chances of realization in view of the looming economic crisis pose a risk for potential bidders.

Due to the special circumstances, the BNetzA decided on the **following measures**:

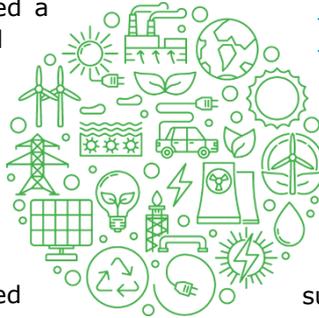
- **Tender dates:**
The legally stipulated tender dates will take **place** as usual **on the statutory dates**. This also applies to tendering dates that have not yet been published on the BNetzA's website. Participants must **submit** their **bids on time**.
- **Implementation of the tendering deadlines:**
The BNetzA will conduct the tender rounds, i.e. open, review and rank the bids. This process is likely to be delayed because opening and reviewing bids requires a large number of personnel and the presence of several people in a room.





After examination and ranking, it is determined which bids will be accepted.

However, the BNetzA has announced a **significant change**: The **award decision** will initially **not be announced on the internet**. As a result, the **deadlines** (concerning, among other things, penalties, implementation period and payment of the secondary security) will **not start to run**. Publication will only be made once the situation has calmed down.



Further information is available on the BAFA's website:

https://www.bafa.de/SharedDocs/Kurz-meldungen/DE/Energie/Besondere-Ausgleichsregelung/20200320_besar.html

Implementation period after acceptance of the EEG tender

According to Section 35 EEG 2017, planned and subsidised EEG projects must be realised within a certain period, otherwise the subsidy expires.

Further information is available at:

https://www.bundesnetzagentur.de/DE/Sachgebiete/El-ektrizitaetundGas/Unternehmen_Institutionen/Ausschreibungen/Ausschreibungen_node.html

Special compensation scheme under the EEG 2017

Within the framework of the **special equalization scheme** (Sections 63ff. EEG 2017) there are certain documents relevant to the deadline, such as a **certificate by an auditor** or a **valid DIN EN ISO 50001 certificate**. If these documents are not submitted to the BAFA within the **deadline (30 June 2020)**, the material preclusion period of Section 66 (1) EEG 2017 applies, with the consequence that the EEG levy cannot be reduced.

As certain proofs cannot be submitted in time by 30 June 2020 due to the corona pandemic, the **Federal Government is planning an amendment to the EEG 2017**, which **should enable the "auditor's certificate" and the "energy efficiency certificate" to be submitted by 30 November 2020**.

For this purpose, the BAFA has published the following **assistance measures**:

- If a complete application, in particular the submission of the documents relevant to the deadline "auditor's certificate" and "certification certificate", cannot be submitted properly by 30 June 2020 due to the effects of the corona pandemic, the BAFA will consider these circumstances as "**force majeure**" and **grant leniency**.
- The affected companies are obliged to **amend the complete application without delay** and to **inform** the BAFA at the time of application about the **circumstances** why the effects of the corona pandemic did not allow a timely application.

The BMWi has agreed with the BNetzA that **informal applications for extensions of time limits** can be submitted by the companies concerned by e-mail.

More detailed information is available on the websites of the BNetzA and the BMWi:

https://www.bundesnetzagentur.de/DE/Sachgebiete/El-ektrizitaetundGas/Unternehmen_Institutionen/Ausschreibungen/Ausschreibungen_node.html

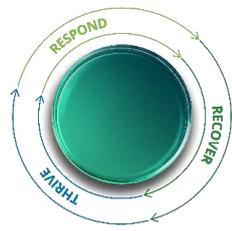
<https://www.bmwi.de/Redaktion/DE/Dossier/coronavirus.html>

So far no change in the regulations on measuring and estimating

At the end of the year (31 December 2020), the transition period for the obligatory, fully compliant delimitation of electricity quantities in accordance with metering and calibration law (Sections 62b, 104 (10) and (11) EEG 2017) ends.

So far, the BMWi or the BNetzA have **not yet communicated** this.

Due to increasing delivery difficulties and limited accessibility of company premises, this deadline will probably not be met and the corresponding measurement concepts will therefore not be completed on time. In this case, a change in the law or the extension of the transitional regulation is urgently required in order to create legal certainty for the companies concerned.



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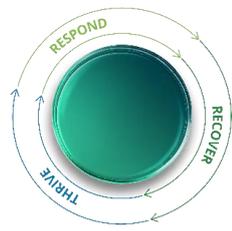
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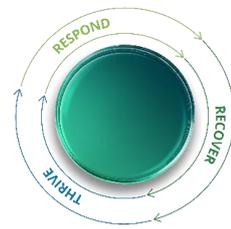
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