

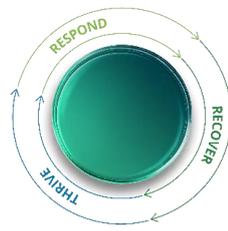
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Promotion of Electromobility by way of the German
Condominium Modernisation Act (WEMoG)

June 3, 2020



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German Condominium Modernisation Act (WEMoG) and Electromobility

By means of the German Condominium Modernisation Act (WEMoG) condominium owners and tenants shall in particular be given the right to demand approval for the installation of a charging facility for an electric vehicle. This article presents the planned innovations – which are of relevance for the creation of nationwide infrastructures.

Introduction

The Federal Government has submitted a draft law on the **promotion of electromobility** and the **modernisation of the German Condominium Act** and the amendment of cost and land register regulations (WEMoG) ([BT-Drs. 19/18791](#)).

By means of the WEMoG, the law on condominium ownership and the right to permanent residence, better known as the Condominium Act (WEG), and other regulations (in particular those of the German Civil Code (BGB)) are to be fundamentally reformed. One focus of the reform is the creation of a right for homeowners and tenants to be allowed to install a charging facility for an electric vehicle.

Legal background

According to current law, any structural alteration to the common property requires the consent of all condominium owners who are affected by the measure beyond what is unavoidable in orderly coexistence (Sec. 22 Para. 1 in conjunction with Sec. 14 No. 1 WEG).

According to case law, the threshold for impairment is relatively low, which is why structural changes to the common property may often only be made with the consent of all condominium owners. Every condominium owner can refuse his or her consent even without a serious reason for as long as his or her rights are affected in any case in the legal sense. In practice, the consent of all condominium owners is hardly achievable, in particular in larger communities.

Even if a measure is to be classified as modernisation in the sense of Sec. 22 Para. 2 WEG, it must be approved by a majority of three quarters of all voting and more than half of all co-ownership shares. These quorums are rarely reached in practice. In

addition, there is a requirement that the "nature of the housing estate" may not be changed by the construction measure.

This leads to a situation in which often also structural changes are prevented which are particularly important for individual condominium owners and/or make sense from a societal perspective or are politically desirable. This applies in particular to the installation of charging facilities for electrically powered vehicles.

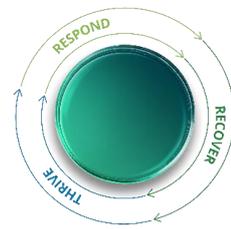
Entitlement of the condominium owners

The WEMoG provides for privileged **construction measures for the installation of a charging device for electrically powered vehicles** (but also for barrier reduction, burglary protection and fibre optic connections). In future, these measures will no longer require the consent of all apartment owners.

The draft version of the WEMoG provides **that condominium owners and tenants be granted a right to have certain structural changes permitted, namely in particular those, which serve to charge electrically powered vehicles** (Sec. 20 Para. 2 WEG-E).

In this context, the term "charging facility" has to be defined in the light of technical and legal developments without recourse to the Regulation on Charges or other regulations. For the same reasons, the term "vehicle" is to be understood without recourse to the Electric Mobility Act (EmoG). In addition to the vehicles mentioned in the EmoG, it also includes, for example, electrically powered two-wheelers or special electric vehicles for people with reduced mobility that do not fall within the scope of this Act.

According to the explanatory memorandum to the Bill, the claim is not limited to the installation of a charging station on the wall



(so-called wallbox), but also concerns, for example, the laying of the cables and the interference with the power supply or the telecommunications infrastructure that is necessary to ensure that the charging facility can be used sensibly.

The claim covers not only the initial installation of a charging facility, but also its improvement. It comprises all structural changes that enable the owner of the flat to feed electricity into vehicles or to discharge it from them. This primarily refers to the installation of a charging facility, e.g. in the form of laying the necessary power lines and installing a charging point, for example a wallbox.

In addition, the claim also exists with regard to the measures required to implement the specifications of the Metering Point Operation Act or to participate in a flexibility mechanism pursuant to Sec. 14a of the Energy Industry Act .

As a rule, the owners' meeting may not refuse the construction measures. It may, however, influence the way in which the measure is carried out and, for example, decide that the community will organise the building measure, so that it can keep an overview of the structural condition of the housing estate. The **costs** of the measure are to be borne **by the condominium owner that is interested in the installation**.

Entitlement of tenants to demand approval for structural changes from owners

In the future, the tenant can demand that the lessor allows him to make structural changes to the leased property, which serve to charge electrically powered vehicles (Sec. 554 Para. 1 BGB-E).

This represents a claim for consent to a change in the contract because the right of use to which the lessee was previously entitled (according to the existing rental agreement) is extended in the form of the right to make structural changes to the rented property.

This also means that the provision does not contain a legal right of the tenant to make structural changes. If the tenant wants to carry out the structural measures described in the regulation, the lessor has to give him/her permission to do so.

However, the claim does not exist if the structural alteration cannot be expected of the lessor even with due consideration of the tenant's interests (Sec. 554 Para. 2 BGB-E).

The provision requires a weighing of the disadvantageous consequences of the structural change for the lessor with the interest of the tenant in the execution of the construction measures. In doing so, the lessor's interest in conservation and deconstruction must be taken into account. On the part of the tenant, his interest in the execution of the structural change is to be considered. For the weighing procedure, this means that it is not permissible to reject the tenant's claim with the argument that

there is generally no interest worthy of recognition in the desired structural change.

The tenant's interest in change depends on his individual situation and the state of the equipment of the rented property. If the tenant already has a loading facility, the installation of a new, technically better loading facility falls under Sec. 554 Para. 1 BGB-E.

In this situation, however, the tenant's interest in change is considerably less than in cases where there is no possibility of charging at all.

Status of the legislative process

On 6 May 2020, the German Bundestag took a first reading of the WEMoG draft and referred it to the relevant parliamentary committees. These committees will submit a draft resolution to the plenary session of the German Bundestag, which will be dealt with in second and third reading before the law is passed.

The German Federal Council (Bundesrat) also dealt with the bill and adopted a statement ([BR-Drs. 168/20 \(Beschluss\)](#)).

On 20 May 2020, the Federal Government adopted its counter-statement to the statement of the German Federal Council ([BT-Drs. 19/19369](#)).

After the law has been passed by the German Bundestag, the German Federal Council will finally deal with the WEMoG.

Evaluation of the WEMoG

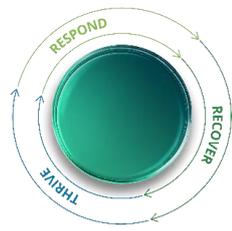
The Federal Government's WEMoG draft law is in principle to be welcomed as part of the implementation of the Master Plan for Charging Infrastructure ([Masterplan Ladeinfrastruktur](#)), which the Federal Government published in November 2019. The planned amendment to the law will create an opportunity to facilitate the development of charging infrastructure in Germany in the future. This will at least partially solve the problems faced by individual homeowners or tenants when trying to implement a charging option for their electric vehicles.

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