

Solar Package I

significant envisaged adjustments



Oppenhoff

Overview on the Solar Package I



Legislative process since Q3 2023

- first cabinet draft from August 2023
- in December 2023: adoption of few regulations for wind power
- adoption expected for mid-March 2024



Reducing bureaucracy and acceleration

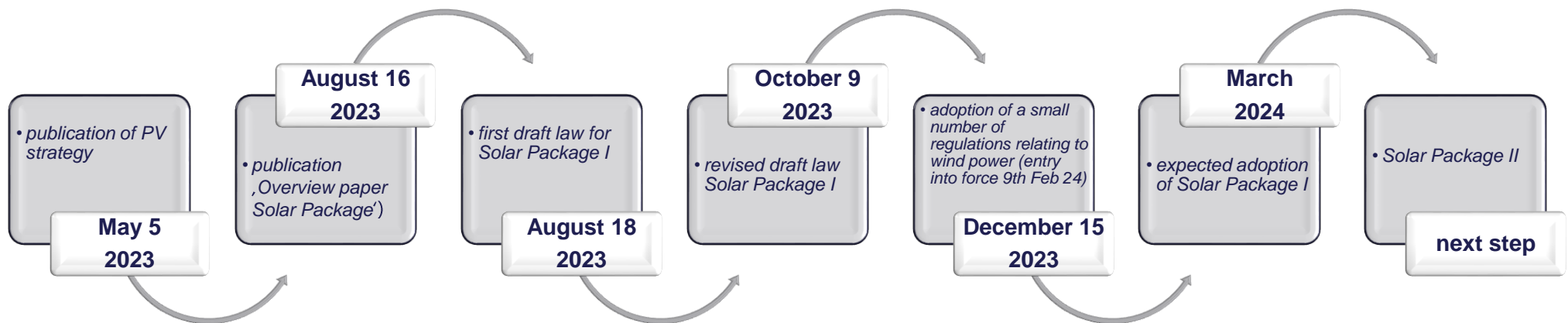
- strengthening the expansion of ground-mounted plants
- simpler processes for PV plants (*photovoltaic plants*) on roofs and buildings
- changes to the EEG (*Renewable Energies Act; the draft is hereinafter referred to as EEG-D*), the EnWG (*Energy Industry Act*) and other German laws, ordinances, etc.



Context

- builds on the expansion targets of the EEG 2023 (80% renewable energies by 2030)
- implementing the sustainability goals of the UN 2030 agenda

Legislative process - from the PV strategy to entry into force



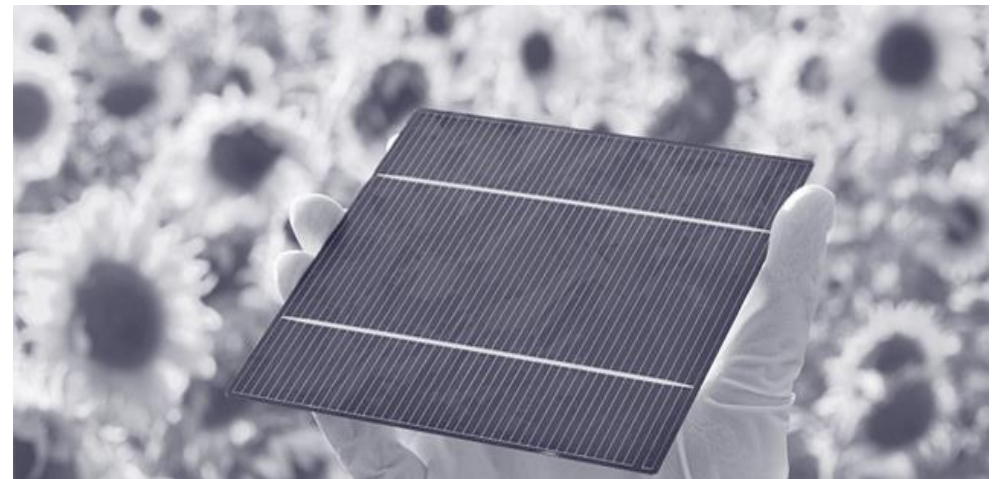
Solar Package I - innovations for ground-mounted plants

New regulations for subsidies for special solar plants (*Besondere Solaranlagen*)

- ▶ concerns Agri-PV (means dual use agriculture and PV; min. 2.1 m height), Floating-PV, Peat-PV and Parking-lot-PV
- ▶ introduction of a new sub-segment in the tenders with an **adjusted maximum value** (= maximum bid value) pursuant to sec. 37b para. 2 EEG-D
 - amounts to **9.5 ct/kWh in 2024** (for comparison, the maximum value for ground-mounted plants in 2024: 7.37 ct/kWh)
 - **from 2025 on**, it will be calculated from the average of the highest bids with an award from the last three bidding dates and increased by 8% (just as for normal ground-mounted plants), up to a **maximum of 9.5 ct/kWh**
 - the German Federal Network Agency (*BNetzA*) can set the maximum value for the next twelve months if the tenders provide indications that the maximum value is too high or too low (sec. 85a EEG-E), as is already the case for normal ground-mounted plants)
- ▶ the regulation requires EU Commission's **approval** according to the **State aid rules** (sec. 101 EEG-E)

Award procedure for special solar plants sec. 37d EEG-D

- ▶ Initially, **500 MW** will be put out to tender in **2024**, then **500 MW** will be added each year until 3,000 MW are put out to tender in 2029
- ▶ valid bids without an award are also taken into account in the award procedure for normal ground-mounted plants



Solar Package I - innovations for ground-mounted plants (2)

Bonus for Agri-PV

- ▶ the value to be applied for Agri-PV increases by 0.3 ct/kWh (sec. 38b para. 1a EEG-D), if
 - the proportion of land used for agriculture is reduced by a maximum of 15%;
 - the clear height is 0.8 m for vertically aligned PV plants or 2.1 m for other PV plants;
 - nitrogen fertilization on the area is generally reduced by 20%, herbicides are no longer used and 5% of the area is planted with flower strips or grass strips
- ▶ the regulation requires EU Commission's approval according to the State aid rules (sec. 101 EEG-E)
- ▶ the Federal Ministry of Economics and Climate Protection (,BMWK') may issue deviating regulations on the technical and ecological requirements by ordinance in accordance with sec. 94a EEG-D

Biodiversity Plants

- ▶ BMWK can determine requirements for solar plants that particularly promote the preservation and expansion of biodiversity (new PV plant category) by ordinance in accordance with sec. 94 EEG-D
- ▶ for this purpose, BMWK can determine an **appropriate increase in the values to be applied** (these are the values from which the final subsidy is calculated)

„A nutrient supply geared towards high yields, especially nitrogen, the lack of accompanying flora that serves as a food source for insects, field birds and mammals, as well as insufficient refuge areas and structures for biotope networking are among the main causes of the continuing decline in species in agricultural landscapes.

The extensive Agri-PV plants make a further contribution to the creation of valuable structures and achieve particular synergies between agricultural production, renewable electricity generation and nature conservation in one area.'

Explanatory memorandum, BT-Drs. 20/8657, p. 95

Solar Package I - innovations for ground-mounted plants (3)

Maximum level of PV plants on agricultural land

- ▶ regulation applies to all PV plants on agricultural land (Agri-PV, normal PV, etc.)
- ▶ it is no longer possible to submit bids for such plants, if the installed capacity of PV plants on agricultural land commissioned since 2023 exceeds 80 GW in Germany (sec. 37 para. 4 EEG-D)
- ▶ from 2031 on, this threshold will be increased to 177.5 GW



Adaptation of the regulations for disadvantaged areas

- ▶ so far, federal states had to designate disadvantaged areas (*Benachteiligte Gebiete* = areas that are to be used preferentially for PV due to their locational disadvantage or structural weakness) ("opt-in") so that subsidies for PV plants on arable land or grassland (without simultaneous cultivation with, for example, Agri-PV) were possible.
- ▶ sec. 37c EEG-D changes the system to "opt-out"
 - the state governments **can exclude** arable land and grassland that is not to be farmed at the same time from the **tenders**
 - it must be ensured that the area covered by PV plants amounts to more than 1.0% of the country's agricultural land by the end of 2030, and more than 1.5% thereafter

Solar Package I - acceleration for grid connections

Right to lay cables sec. 11a EEG-D

- ▶ owners and authorized users of land and traffic routes must generally tolerate the laying, construction, maintenance, repair, protection and operation of cables
- ▶ the operators of these cables may enter and drive on the properties or traffic routes for this purpose
- ▶ this generally only applies to the most economically advantageous connection
- ▶ the claim can also be enforced by means of interim relief (*„einstweiliger Rechtsschutz“*); the need for urgency is rebuttably presumed
- ▶ compensation: 5% of the market value of the area used when the cable is commissioned; however, claims for damages by the owner or authorized user remain unaffected

Only for wind turbines: Right to pass sec. 11b EEG-D

- ▶ owners and authorized users of land and traffic routes must tolerate the crossing and overturning of the land for the erection and dismantling of wind turbines as well as the upgrading of the land for the crossing by the operator of the wind turbines and by third parties commissioned by him



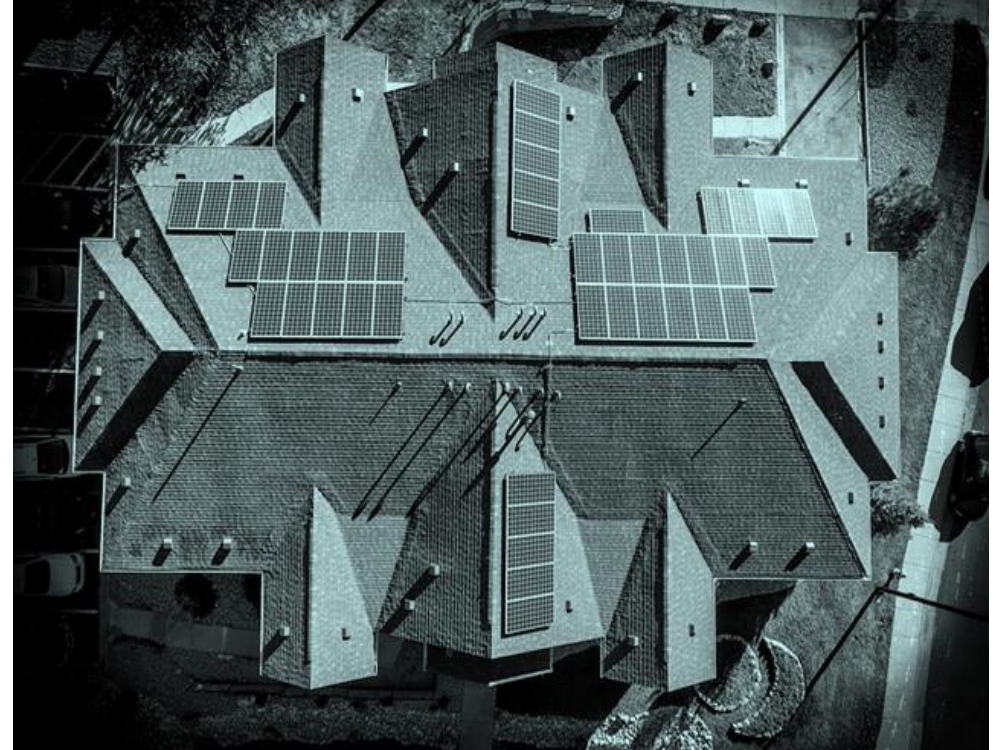
Securing in rem is no longer absolutely necessary due to the legal regulation. However, due to the long periods of use of PV plants and the dynamic changing the legal framework, it may still make sense to secure cable rights in rem.

Our practical recommendation

Solar Package I - acceleration for grid connections (2)

Expansion of simplified grid connection procedure

- ▶ the adjustment of sec. 8 para. 5 cl. 3 EEG-D extends the simplified grid connection (*vereinfachtes Netzanschlussverfahren*) to plants with an installed capacity of up to 30 kW that are located on a property with an existing grid connection
- ▶ In case grid operators do not provide the exact schedule for processing the grid connection request within one month, plants up to 30 kW can be connected in compliance with the technical regulations by the plant operator
- ▶ this aims to accelerate the connection of PV roof plants in particular



Solar Package I - strengthening consumption nearly power generation

Shared building supply sec. 42b EnWG-D (*„gemeinschaftliche Gebäudeversorgung“*)

- ▶ new, independent model alongside tenant electricity, in which only the solar electricity generated on or in the building is provided for participating end-consumers (*„teilnehmende Letztverbraucher“*) in the same building (no full supply as with tenant electricity and no subsidy)
- ▶ the prerequisite for this is that
 - (1) there is no grid pass-through,
 - (2) the reference quantities are measured every quarter of an hour, and
 - (3) a building electricity usage contract (*„Gebäudestromnutzungsvertrag“*) is concluded between the operator of the building electricity plant (*„Gebäudestromanlage“*) and the end-consumer
- ▶ the building electricity usage contract regulates, among other things, the right to purchase electricity via a **distribution key** for the participating end-consumers, the **price** as well as operation, service and maintenance of the building electricity plant
- ▶ the mathematical allocation of the electricity in a quarter of an hour to the participating end-consumers is based on the allocation key (*„Aufteilungsschlüssel“*; in case of doubt in equal shares) and is **limited** by the **amount of electricity generated** on the one hand and the **consumption of the participating end-consumers** on the other hand
- ▶ the participating end-consumers must **procure the remaining electricity needs themselves**

„If the electrical energy generated by the building electricity plant is not or only partially consumed by the participating end-consumers, the electrical energy not consumed can be fed into the general supply grid in accordance with the applicable regulations, whereby remuneration under the EEG can also be claimed if applicable.“

Explanatory memorandum, BT-Drs. 20/8657, p. 107

Solar Package I - strengthening consumption nearly power generation (2)

Expansion of the tenant electricity model sec. 21b cl. 3 EEG-D

- ▶ in future, the tenant electricity model (*Mieterstrommodell**) becomes generally applicable to all buildings and their ancillary facilities, **not just to residential buildings**
- ▶ according to sec. 100 para. 22 EEG-D, this applies to solar plants that are commissioned after the Solar Package I has entered into force

Supply without subsidy (*unentgeltliche Abnahme*')

- ▶ if this new form of remuneration is selected, **the value to be applied is reduced to zero**, sec. 21 para. 1 no. 2 EEG-D; plants with an installed capacity of over 100 kW (which are therefore subject to the direct marketing obligation) and high self-consumption are to benefit from this
- ▶ in these cases, the costs of direct marketing (*Direktvermarktung* ') may outweigh the profits and supply without subsidy offtake may then make sense
- ▶ in case of commissioning until the end of 2025 applicable for an installed capacity up to 400 kW (sec. 100 para. 18 EEG-D), thereafter up to 200 kW

Solar Package I - PV on and in the building

Bundling of Plants sec. 9 para. 3 sen. 2 EEG-D

- ▶ the bundling of plants (*„Anlagenzusammenfassung“*) for the determination of the installed capacity does not apply to solar plants that have **separate grid connection points** and that are installed on or in a building

Plug-in solar plants (*„Stecksolargeräte“*) sec. 3 no. 43 EEG-D

- ▶ are devices consisting of one or more solar plant(s), an inverter, a connecting cable and a plug for connection to the final circuit of an end-consumer
- ▶ can be connected and operated with an installed output of up to 2 kW and an inverter output of up to 800 volt-amperes without notification to the grid operator; only a notification in the Market Master Data Register is required (*„Marktstammdatenregister“*)

Repowering building PV sec. 38h sen. 2 EEG-D

- ▶ in future, a **new subsidy entitlement** with a subsidy period of 20 years can be established for the **additional installed capacity** provided the regular statutory requirements are met

Simplification of direct marketing up to 25 kW

- ▶ the statutory requirements for the technical equipment of plants in direct marketing will only apply to plants above 25 kW in future (sec. 10b para. 1 EEG-D)
- ▶ at parties' discretion, they can contractually agree on specific technical equipment, if required

Solar Package I - adjustments to the regulation of sanctions

Cushioning of undue hardship sec. 52 para. 3 sen. 2 EEG-D

- ▶ to date, plant operators must make payments to the grid operator in accordance with sec. 52 EEG in case of breach of EEG provisions or the Market Master Data Register Ordinance (EUR 10 per kW of installed capacity)
- ▶ the change means that the payment for the month in which the breach of duty occurs and for the following month would no longer apply, if the breach occurs due to a defect in a technical device

Sanction for special solar plants sec. 53 para. 5, 54 para. 3 EEG-D

- ▶ BNetzA shall, in accordance with sec. 85c para. 1 sen. 4 EEG-D, issue specifications on the requirements for continuous proof of simultaneous crop cultivation for special solar plants
- ▶ in case evidence is not provided, the value of subsidies to be applied will reduce by 2.5 ct/kWh



Outlook for the Solar Package II

Ground-mounted Plants

- ▶ review of approval requirements and remuneration structure for Parking-lot-PV
- ▶ targeted promotion of small Agri-PVs
- ▶ facilitations of the area backdrop for Floating-PV
- ▶ easier planning permission procedures; e.g. waiving of the building permit (*„Baugenehmigung“*), if a development plan (*„Bebauungsplan“*) is in place

Building PV

- ▶ structural and technical requirements for PV plants on roofs and plug-in PV are being further optimized (e.g. spacing requirements and use of larger modules)
- ▶ interaction with monument protection will be further adapted (PV plants are classified as a priority concern)
- ▶ eliminating difficulties regarding direct access to direct marketing

Outlook for the Solar Package II (2)

Tenant electricity and shared building supply

- ▶ introduction of regulations on electricity from PV roof plants used for heat pumps to enable simple billing as part of the operating cost statement
- ▶ investigation into expanding the shared use of PV electricity using the public power grid (*energy sharing*)

Grid connection

- ▶ standardization of the Technical Connection Conditions (*TAB*)
- ▶ introduction of an industry dialog 'acceleration of grid connections' to develop solutions (e.g. increasing transparency with regard to existing grid connection capacities in the early stages of the grid connection process); no exclusive focus on solar



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