

A small icon of the German flag (black, red, and gold horizontal stripes) is positioned in the upper right area of the slide, flanked by two light blue curved lines that sweep across the top.

Bird & Bird & EFELA's Energy Law and Regulations Perspective

How EFELA's 13 Countries coped with the Coronavirus Pandemic

Webinar, 2 July 2020

Dr. Matthias Lang, Düsseldorf, Germany

Overview

1. Public Participation & Corona Challenges
2. Energy Transition & Corona Costs





1. Public Participation & Corona Challenges

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The Coronavirus Public Participation Challenge (1)

- Energy installation planning and permitting requires participation of the affected public, e.g.
 - Aarhus Convention (Council Decision 2005/370/EC)
 - Industrial Emissions Directive (Directive 2010/75/EU)
 - Environmental Impact Assessment Directive (Directive 2011/92/EU)
- Depending on participation method, coronavirus related restrictions make public participation difficult or even impossible
- Under European (and German) law effective public participation in administrative procedures is necessary to enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions

1. Public Participation & Corona Challenges

The Coronavirus Public Participation Challenge (2)

- Coronavirus restrictions
 - Restricted access to places where files could previously be inspected, if offices open at all (file inspection)
 - Restricted maximum number of people at events (public hearing)
 - Minimum distance requirements (venue size)
 - Hygiene requirements (microphones, tables, food, etc.)



1. Public Participation & Corona Challenges

How to ensure participation in times of Corona-virus? (1)

Two-pronged standard public participation procedure in Germany

- Relevant documents have to be made available in paper form to the public, for inspection ("Auslegung") for comment
 - Internet availability as add-on
- Comments discussed in separate public hearing, with physical presence of applicant, authority officials, people who have commented, and other affected parties ("Erörterungstermin")
 - Internet not excluded by law, but not used in practice
- Both involved personal, physical contact and therefore were at least difficult, if possible at all, and not desirable

1. Public Participation & Corona Challenges

How to ensure participation in times of Corona-virus? (2)

- Solution: Digitalisation of public participation
- New Planning Assurance Act (Planungssicherstellungsgesetz) inverts physical/internet regime
 - introduces digital participation opportunities for all environmental and infrastructure licensing procedures
 - Paper/physical as add-on
- Test balloon: New rules shall apply for a limited period until 31.03.2021



1. Public Participation & Corona Challenges

How to ensure participation in times of Corona-virus? (3)

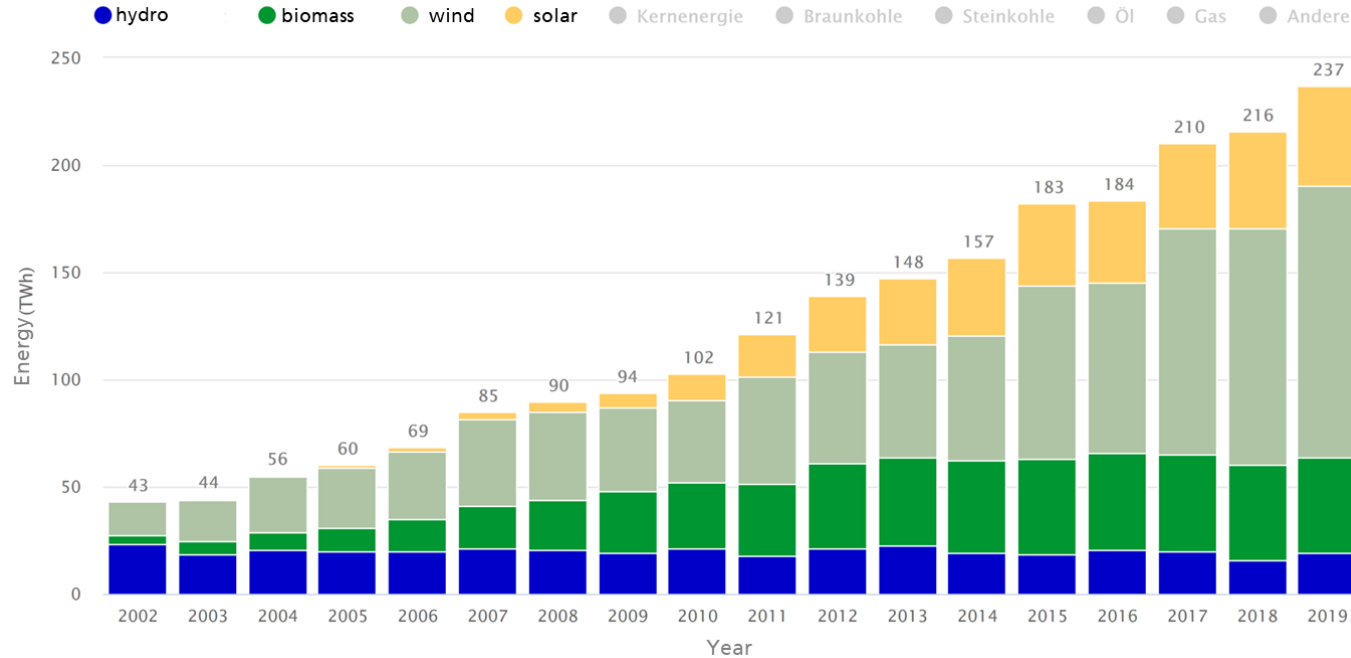
- The new rules provide opportunity to carry out procedures effectively without pandemic-related restrictions or delays
 - Documents can be made available on the internet
 - Hearings may be waived or replaced by online consultations
- "Online consultation" new instrument in German administrative law
 - Procedural details still unclear
 - With the consent of affected parties, the online consultation can be replaced by a telephone or video conference
 - How do get the consent of all "affected parties" in contested energy planning or permitting procedures?



2. Energy Transition & Corona Costs

2. Energy Transition & Corona Costs

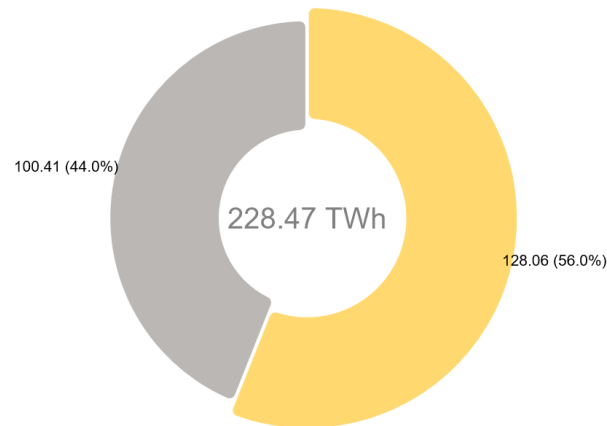
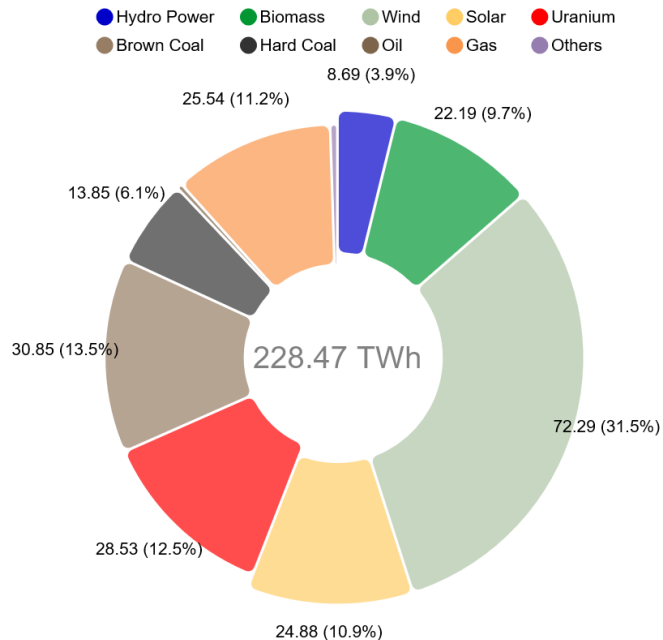
Development of renewables-based electricity generation in Germany



Source: [Fraunhofer ISE](#) (last visit on 04.06.2020)

2. Energy Transition & Corona Costs

German Electricity Mix as of 18 June 2020



Net generation of power plants for public power supply.
Datasource: 50 Hertz, Amprion, Tennet, TransnetBW, Destatis, EEX
Last update: 18 Jun 2020 13:21

2. Energy Transition & Corona Costs - EEG Payments

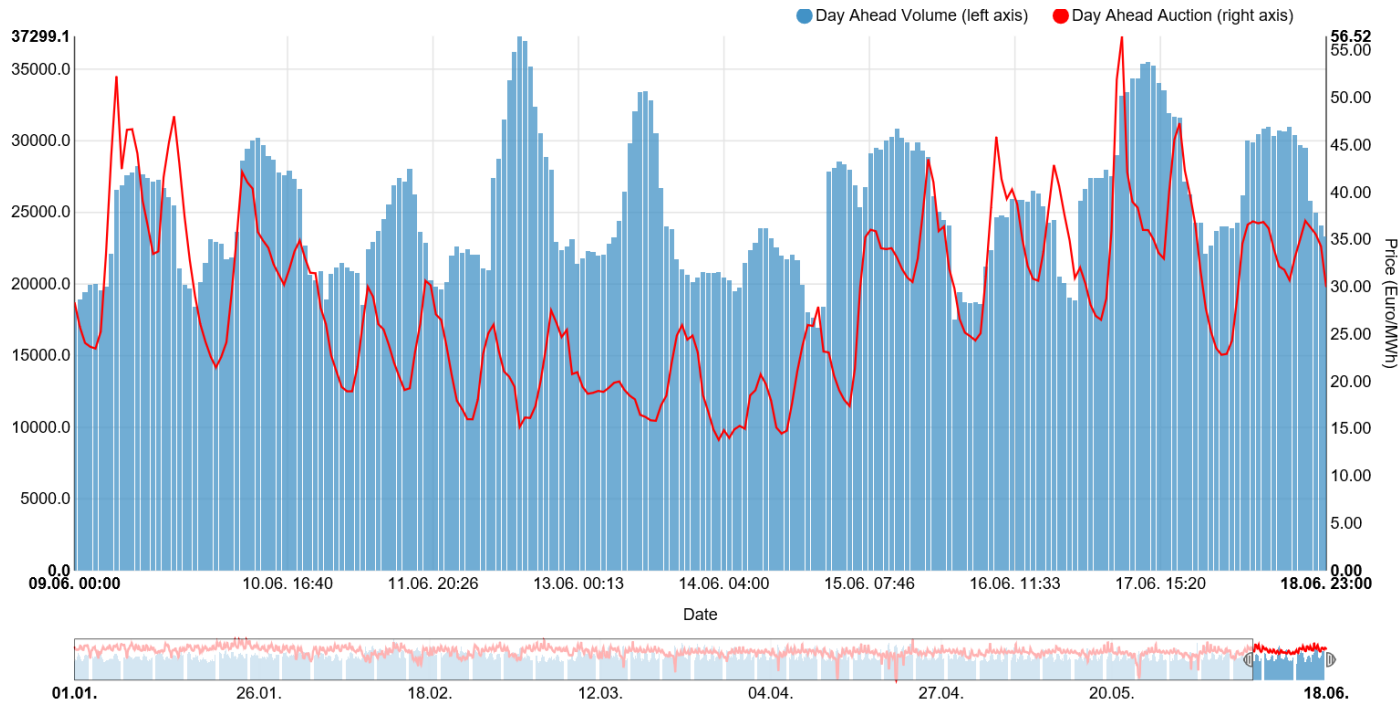
Development of EEG Surcharge and Spot Electricity Price



Source: [Netztransparenz, EEG Surcharge vs. spot electricity price](#) (last visit on 04.06.2020)

2. Energy Transition & Corona Costs - EEG Payments

Spot prices and volumes in Germany in 2020



Source: [Fraunhofer ISE, Spot prices and volumes in Germany in 2020](#) (last visit on 18.06.2020)

2. Energy Transition & Corona Costs - EEG Payments and Corona

The Corona Cost Challenge: Massive Increase in EEG Surcharge

- Renewables policy & weather & Covid-19 add to costs of renewables
- Taken together the EEG surcharge may rise from 6.8 cents per kilowatt hour to a record high of 8.6 cents (or even higher) in 2021
 - EEG surcharge is used to reallocate above-marked renewable energy costs to consumers
 - Analysis green think tank Agora Energiewende
 - [*Kurzanalyse Energiewende Zwischen Rekordhoch und Abschaffung: Die EEG-Umlage 2021 in Zeiten der Corona-Krise*](#)
- This development was considered politically undesirable

2. Energy Transition & Corona Costs - Corona Recovery Package

The Corona Solution: Tax Funding

- Aim: Cap/reduce EEG surcharge
 - 2021: 6,5 ct/kwh
 - 2022: 6,0 ct/kwh
- From 2021 on EEG renewable energy costs will be partially funded by tax transfers (instead of direct consumer EEG surcharge)
- Cost estimate: 11 billion Euro



2. Energy Transition & Corona Costs - Further Development

Corona Solution Problems?

- Legal issues from (partial) tax funding?
- Based on recent European Court of Justice decision (28 March 2019, C-405/16 P) the previous system of EEG surcharges was not state aid
 - This was because public authorities (only) monitor the proper implementation of the EEG 2012,
 - No public control over the funds generated by the EEG surcharge
- Different assessment now with partial tax funding?

Thank you & Bird & Bird



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