



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

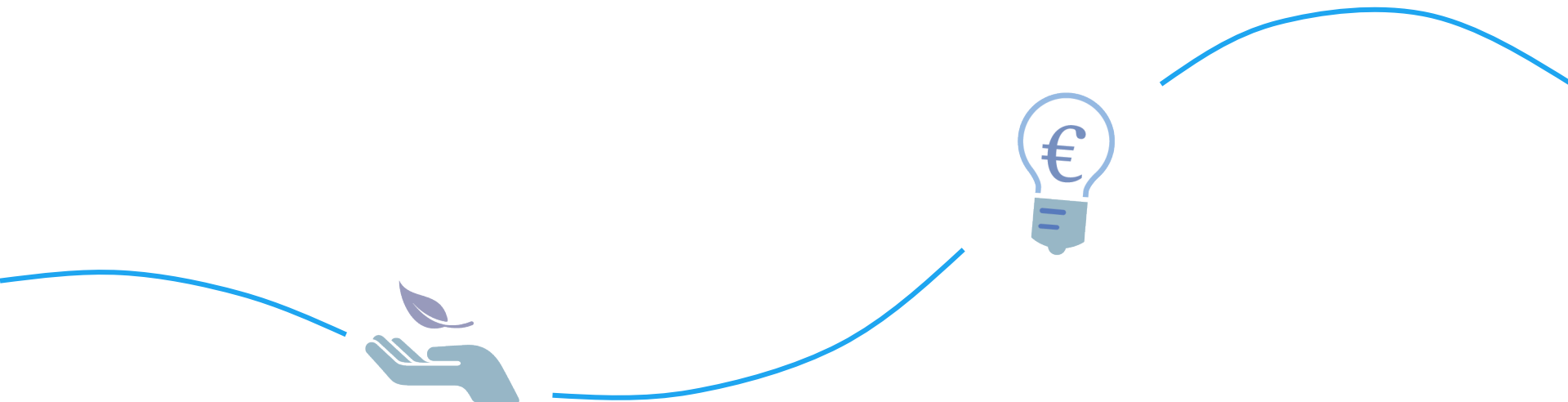
How EFELA's 13 Countries coped with the Coronavirus Pandemic

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

1. Public Participation & Corona Challenges

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?



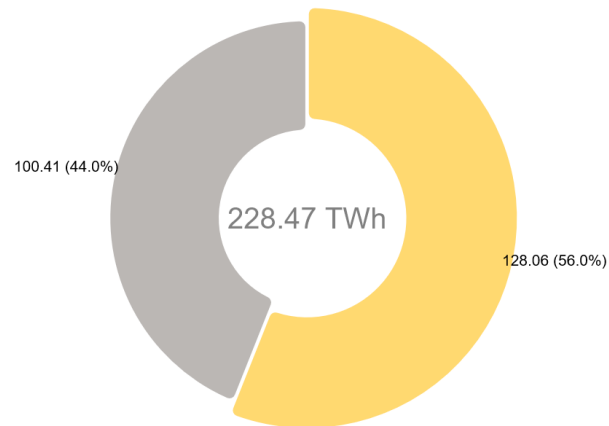
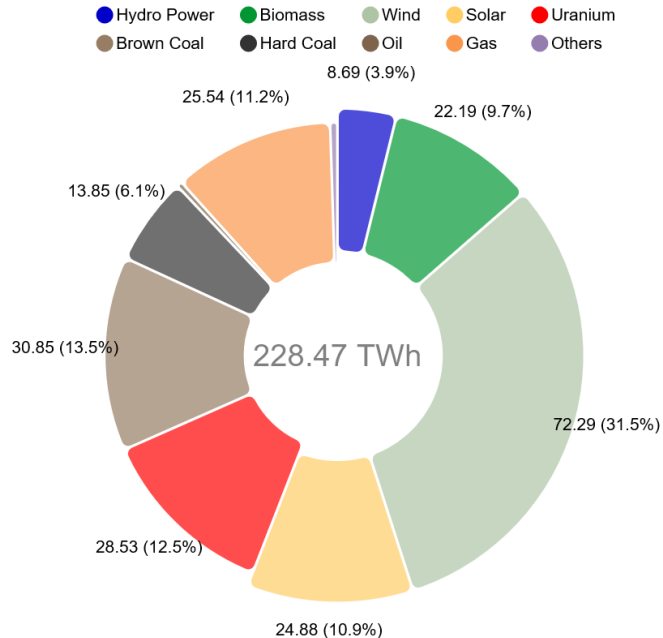
2. Energy Transition & Corona Costs

Development of renewables-based electricity generation in Germany



2. Energy Transition & Corona Costs

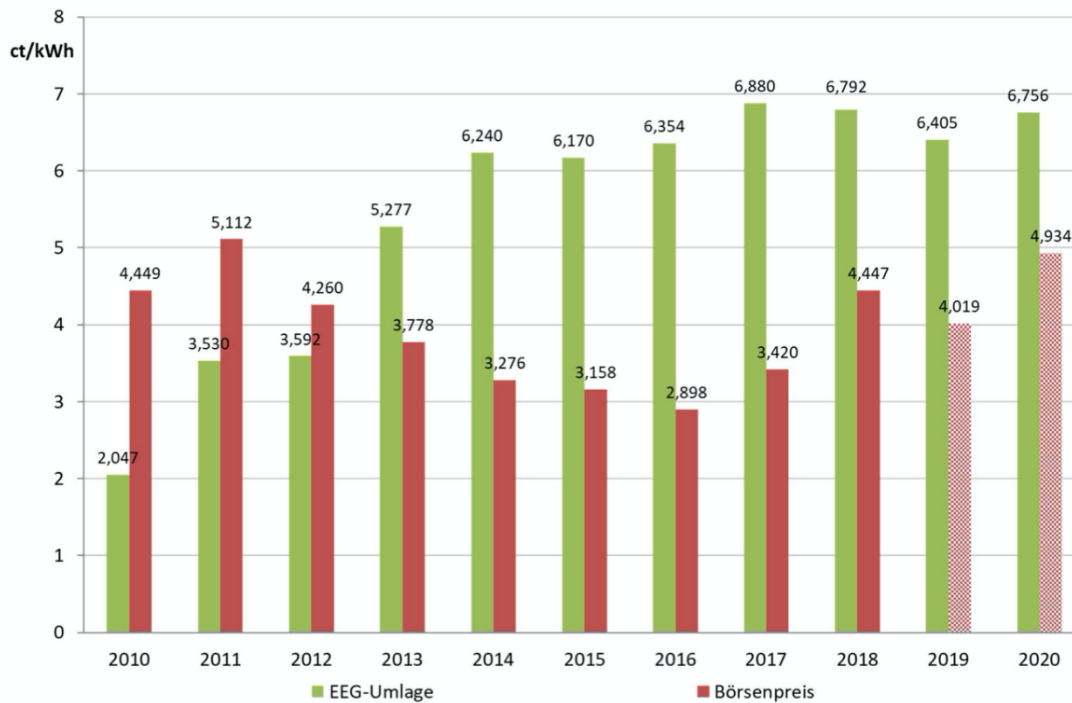
German Electricity Mix as of 18 June 2020



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

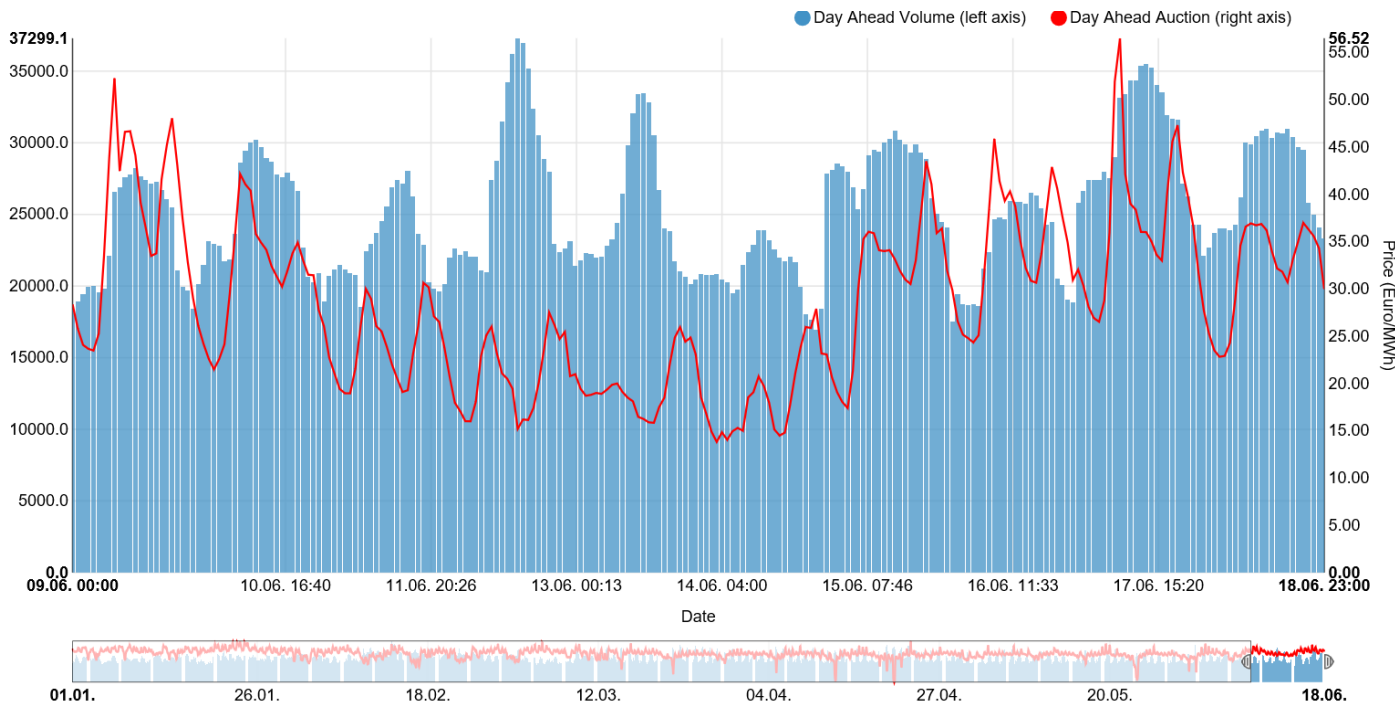


Source: [Netztransparenz, EEG Surcharge vs. spot electricity price](#) (last visit on 04.06.2020)

2. Energy Transition & Corona Costs - EEG Payments

Spot prices and volumes in Germany in 2020

4932



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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