

# ENERGY LAW

For some time now, three central topics - decarbonisation, decentralisation and digitalisation – have left the energy sector in a state of flux. This has encouraged market entry, but has resulted in nearly constant change to the framework conditions under energy law. Consequently, European and national requirements have become increasingly complex, and decisions of the regulatory authorities create new challenges, time and again, for all market participants.

The BEITEN BURKHARDT Energy Law Team works with you to master these challenges. We broaden your team: we view our work as complementary to your overall aims. You have a goal, and we do what we can to ensure that you reach that goal. At the heart of our approach is our individual support for our clients: each has a dedicated contact partner, who coordinates our team and ensures that our advice and support are efficient and solution-oriented.

The lawyers of our Energy Law Team have many years of experience in the industry, are selected specialists for energy law and can assist and advise you on all matters related to the energy sector. We clarify legal issues, develop legal opinions, and draft and review all relevant contracts for the electricity, gas and heating industries. We develop solutions, are not afraid to break new ground with you and present arguments your behalf before (arbitration panels and) courts and authorities.

## Generation and storage

As an operator of energy generation plants, we advise you on all legal aspects of your business activities. Proven experts for the complex issue of energy storage are integral members of our Energy Law Team: we can provide you with comprehensive legal advice on all facets of electricity, gas and heat storage.

- Providing support on energy and public law issues with respect to the planning, establishment and operation of power generation plants
- Developing and assisting with cross-sector generation and supply concepts
- Advising on power storage concepts, such as swarm concepts, especially on the regulatory aspects and with respect to balancing energy
- Developing financing and operator models
- Advising on state aid and subsidy law
- Developing, reviewing and negotiating general contractor, maintenance, operation and management agreements, as well as end customer agreements
- Providing representation vis-à-vis regulatory and approval authorities and network operators

## Grids and infrastructure

We advise and support grid operators on all regulatory network issues, especially in connection with the fulfilment of their statutory obligations, connection and network access issues and grid expansion - considering in each case the effect of the regulation of fees – as well as on the regulation of network charges itself. Providing regulatory advice to industrial companies as operators of infrastructure is a further focus of our work. We represent grid and infrastructure operators in court proceedings against decisions of regulatory authorities and in administrative procedures before the authorities themselves.

- Advising grid operators of all voltage levels and pressure ratings on questions of network regulation and the regulation of network charges
- Providing advice to network operators (regardless of voltage levels and pressure ratings) on planning and expropriation law issues in connection with the upgrade and expansion of the grid
- Developing and assisting with compliance concepts, especially the fulfilment of unbundling requirements
- Advising on all issues related to metering operations (smart grids and smart metering)
- Developing, assessing and negotiating the relevant network agreements and metering agreements
- Providing advice on issues related to the reduction of network charges and network apportionment for energy-intensive companies, with a special focus on grid connection constellations
- Advising operators of closed distribution grids and customer installations
- Providing advice and representation in concession procedures

## Distribution and trade

We draft and assess all necessary supply and distribution agreements and lead negotiations on your behalf. We provide legal opinions on the interpretation of contracts and the effectiveness of contractual arrangements and represent you before civil courts.

- Drafting, assessing and negotiating agreements for the procurement and supply of energy or energy trading (in accordance, for example, with EFET, ISDA and German Raiffeisen Association (DRV) standards)
- Advising on regulatory issues in connection with energy trading (REMIT, EMIR and MiFID II)
- Advising on electricity market issues (e.g. balancing energy, interruptible load, etc.) and balancing zone management
- Providing support with emissions trading and emissions trading systems matters

## Renewable energies

We advise and represent plant operators, project developers, investors and banks, as well as network operators on the planning and implementation of renewable energy projects. This includes issues related to financial aid and the sale of generated electricity, as well as self-supply and the associated obligations.

- Advising on financial support and the fulfilment of the relevant aid requirements
- Advising on the marketing of both green power (proof of origin, proof of regional origin) and cogeneration of power and heat.
- Drafting, reviewing and negotiating direct marketing agreements and all project-related contracts
- Providing assistance with tender procedures
- Advising on integrated supply concepts, such as tenant electricity market concepts
- Providing advice on self-supply, e.g. review and drafting of operation and management agreements, and lease agreements

## Offshore energy

We provide you with support in the area of offshore energy with all renewable energy issues, such as on the drafting, review and negotiation of direct marketing agreements.

- Providing advice and representation in capacity allocation procedures for offshore wind farms
- Advising on all issues of grid connection and related disputes
- Drafting, assessing and negotiating agreements for the establishment and operation of offshore wind farms
- Consulting with manufacturers of offshore grid connection systems on tender procedures and providing support in relation to contractual negotiations with principals, members of consortia, subcontractors, etc.

## Planning and approval of plants and projects

We work with you to master any obstacles to the authorisation of your project. We provide you with assistance with everything from regional planning and approvals for specific use, to rights of way and the procurement of the land rights required for the realisation of your project.

- Consultations with the responsible authorities at Federal and Laender level and the administrative courts on planning permission and site approvals
- Providing support with the preparation of and attendance at hearings
- Negotiating with authorities and ministries
- Advising on mining law issues
- Handling legal disputes before all administrative courts in Germany

## Taxes, duties and charges

We provide advice on all questions related to electricity and energy tax law, concession fee law and the applicable levies for electricity and gas supply. The special equalisation scheme and representing clients vis-à-vis the Federal Office for Economic Affairs and Export Control (BAFA) form further focuses of our work.

- Providing advice and representation in relation to the special equalisation scheme: on applications and procedures before the BAFA, on the available legal remedies in the case of a negative decision, and on the appeal of any negative decision, where necessary up to the Federal Administrative Court
- Providing support with electricity and energy tax law, including providing representation in procedures before the relevant central customs office
- Advising on all fees and levies for the supply of electricity and gas (in particular levies under § 19 Electricity Network Charges Ordinance, surcharges under the Interruptible Load Regulation, co-generation levies, offshore surcharges, and surcharges under the Renewable Energy Act)
- Advising on ways to reduce the tax burden, including commercial solutions such as electricity tax peak shavings (so-called Spitzenausgleich) or self-supply
- Advising on concession levies

## Co-generation

We advise both providers and customers of heat and assist them with the drafting of contracts for supply and with dispute resolution.

- Drafting, reviewing and negotiating heat supply agreements
- Providing representation in legal disputes, e.g. on the application of the Regulation on the General Terms and Conditions for Supply of District Heating, on the permissible duration of district heating supply contracts and on the validity of price adjustment clauses
- Advising on the planning and implementation of contracting projects
- Advising on question related to heating and cooling networks, in particular on the development of such networks and network connections
- Providing support with tender procedures for co-generation plants

## Transactions and projects

We provide you with comprehensive advice on the planning and implementation of projects and transactions in the energy sector. We carry out due diligence assessments and draft, review and negotiate share purchase agreements. In addition, we provide you with support with respect to strategic considerations, and carry out project and transaction management.

- Providing support with the acquisition and sale of renewable energy installations, especially wind farms and solar parks
- Advising on the sale and purchase of shares in energy generators, grid operators, suppliers, distributors and service providers
- Providing assistance with the development and implementation of innovative projects concerning digitalisation, decentralisation and storage

## Representation in litigation and before authorities

We have the necessary tact and experience to help prevent conflicts and resolve disputes – even cross-border disputes – in the energy sector: we provide support and representation in alternative dispute resolution, before courts and in arbitration. In addition, we represent you vis-à-vis the authorities that are responsible for energy law issues

- Providing counsel in legal disputes concerning access to networks and storage or fees for use
- Advising in legal disputes in connection with supply, trade or service agreements
- Providing support with planning permission and site approval decisions of the responsible authorities at Federal and Laender level and the administrative courts
- Providing representation in proceedings before the Federal Network Agency, the regulatory authorities of the Laender and competition authorities, as well as before BAFA, the “clearing institution EEG/KWKG” (facilitator under the Renewable Energies and Combined Heat and Power Acts) and the German Emissions Trading Authority (DEHSt)

## Brussels

With special focus on renewables (especially wind and biofuel) and nuclear energy, our Brussels team boasts extensive experience in the energy sector. Our clients are both significant medium-sized companies and public utilities, as well as major multinational energy corporations. We regularly advise companies active in the energy sector on antitrust, merger control and state aid matters, which concurrently raise numerous regulatory issues. We have advised on the compliance of new energy schemes, pipelines and the decommissioning of power plants.

We also have experience with the drafting of contracts, litigation and administrative law procedures before European and national authorities. Finally, we also represent complainants before the EU Commission.

## Russia

One of our key activities is providing advice on the sale or purchase of interests and the structuring of PPP projects, including their financing. We further support companies in constructing and financing production sites and plants, in procurement procedures and in designing supply agreements.

### AT A GLANCE:

- Advice on and assistance with plant construction projects and project development
- Project financing, also through making use of investment, subsidy and loan programmes
- Joint ventures with Russian partners
- Supply agreements for energy and energy sources
- Real estate leasing agreements
- Trademark protection
- Tax issues
- Financing and delivery of production plants and equipment

## China

Our team advises providers, suppliers, traders and commercial users on all their activities in this important sector: from the establishment of companies and cooperative ventures, to the construction of plants, trading with emission certificates and the financing of such activities.

We have experience with all forms of energy generation and natural resources and naturally with the applicable tax regulations. We also advise on aspects of sustainability, climate change and clean technology.

We have particular expertise with the establishment of foreign-invested joint ventures.

### AT A GLANCE:

- Establishment of companies and cooperative ventures, especially with foreign investment
- Mergers & acquisitions
- Project development
- CDM projects
- Structured finance
- Emissions trading (ERPAs)
- Licensing systems
- Equipment leasing
- Energy related taxes
- Environmental law, environmental due diligence and risk management
- Mining law