



Energy law in the housing industry

Introduction & Structure

Speakers



Dr. Torsten Wielsch

Regulatory & Compliance | Lead Energy Law
Attorney at Law | Partner

Tel.: +49 30 254685579

E-mail: twielsch@deloitte.de



Rebecca Gulden

Regulatory & Compliance | Energy Law
Attorney at Law | Senior Associate

Tel.: +49 30 254685513

E-mail: rgulden@deloitte.de

Outline

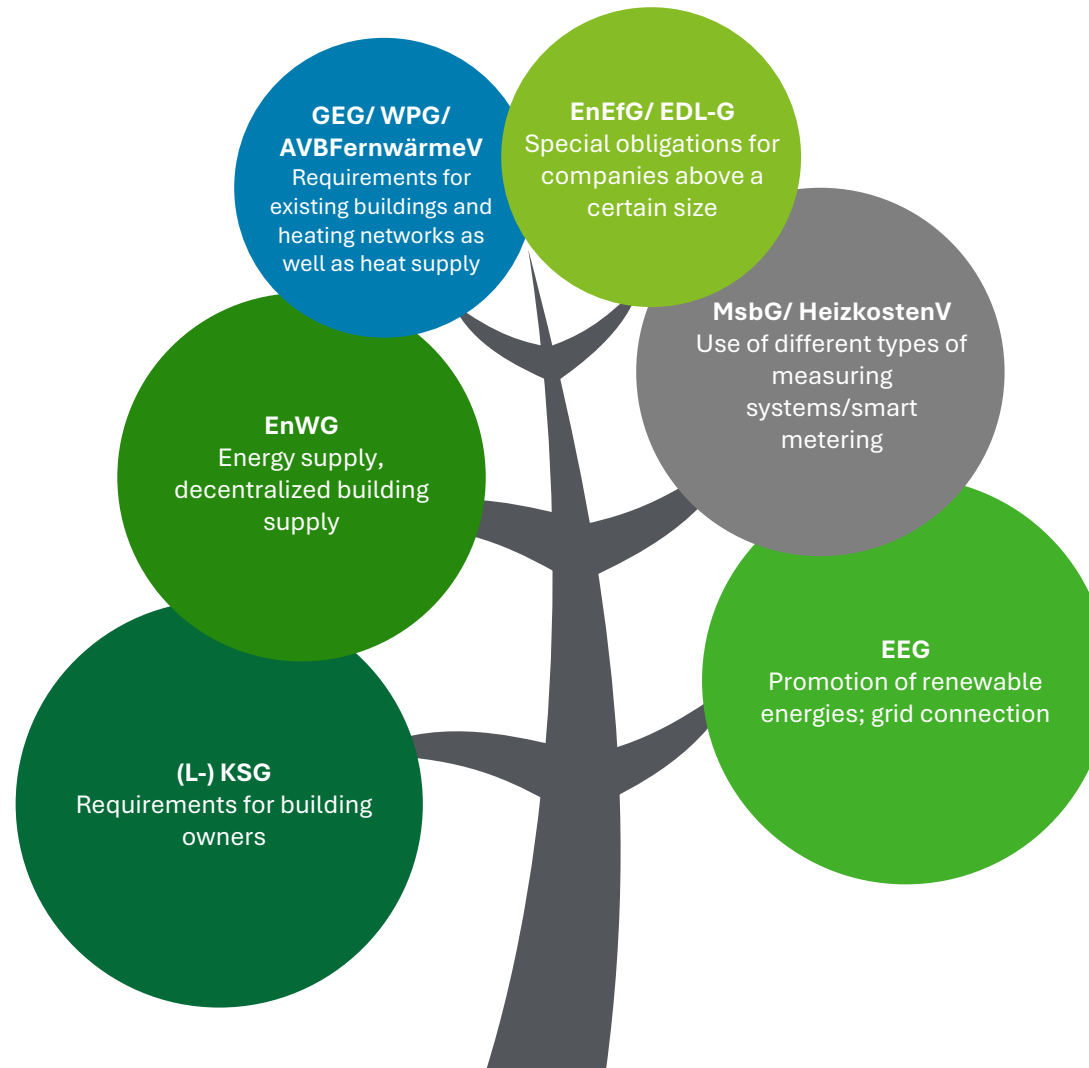
- I. Introduction and overview
- II. Energy law in existing buildings and (project) development
- III. Questions & Answers



I. Introduction and overview

Energy law plays an important role in the housing industry

The building sector has a special responsibility in achieving European and national climate targets. A number of national laws are relevant in this regard.



II. Energy law in existing buildings and (project) development

Energy law to-dos for the housing industry



Selection of current topics from energy law

01

Heat utilization and decarbonization roadmap/upgrading of heating networks

Many companies are legally classified as heat network operators due to their ownership of heat supply pipelines. This entails a number of obligations under the Heat Planning Act (WPG). By December 31, 2026, a heat network expansion and decarbonization roadmap must be drawn up and submitted to the competent authority.

What needs to be done?

- Determine whether heating or building networks are operated!
- Check whether the legally prescribed share of renewable energies/unavoidable waste heat is being complied with.
- Check whether there is an obligation to draw up a heat network expansion and decarbonization roadmap or whether an exception applies.
- Check whether you are eligible for funding (e.g., federal funding for efficient heating networks (BEW)).

02

Determination of total final energy consumption in the portfolio

The Energy Efficiency Act (EnEfG) and the Energy Services Act (EDL-G) require companies to determine their total final energy consumption and to take efficiency measures if certain thresholds are exceeded.

What needs to be done?

- Check which scope of application applies based on the size of the company.
- Determine total final energy consumption
- If necessary, take further measures depending on the consumption determined (e.g., setting up an energy or environmental management system; identifying final energy saving measures; creating implementation plans)

03

Review of the impact of the elimination of customer installations

The German regulation on customer installations has been declared contrary to European law by the European Court of Justice. Installation operators must now check whether the pipeline infrastructure they operate is affected by this.

What needs to be done?

- Take stock: how is energy supplied within the property? Who operates the pipeline infrastructure?
- Does the pipeline infrastructure fall under the definition of customer facilities according to the EnWG? Is it classified as a distribution network? Does another exception to the regulated network definition apply?

Tenant electricity and communal building supply

Decentralized supply models can be an economically attractive alternative to centralized supply via the general supply network.

Decentralized energy supply

Unlike a centralized energy system, a decentralized energy system uses smaller, locally based energy generation units such as rooftop PV systems, small wind turbines, and combined heat and power (CHP) plants. These systems produce energy close to the point of consumption, thereby reducing transmission losses. The EnWG contains regulations on two specific decentralized supply models for buildings.

Tenant electricity, Section 42a EnWG/Section 21 EEG

Electricity generated by solar systems with a maximum installed capacity of 100 kW on the roof of a residential building and supplied and consumed directly from there, i.e., without passing through a grid, to end consumers in this building or in residential buildings/ancillary facilities in the immediate vicinity.

- **Subsidy** via tenant electricity surcharge pursuant to Section 21a (3) EEG
- Tenant electricity contract must not be part of the rental agreement; no coupled notice periods
- The system operator **must ensure that the tenant is supplied with electricity** even during periods when tenant electricity cannot be supplied.

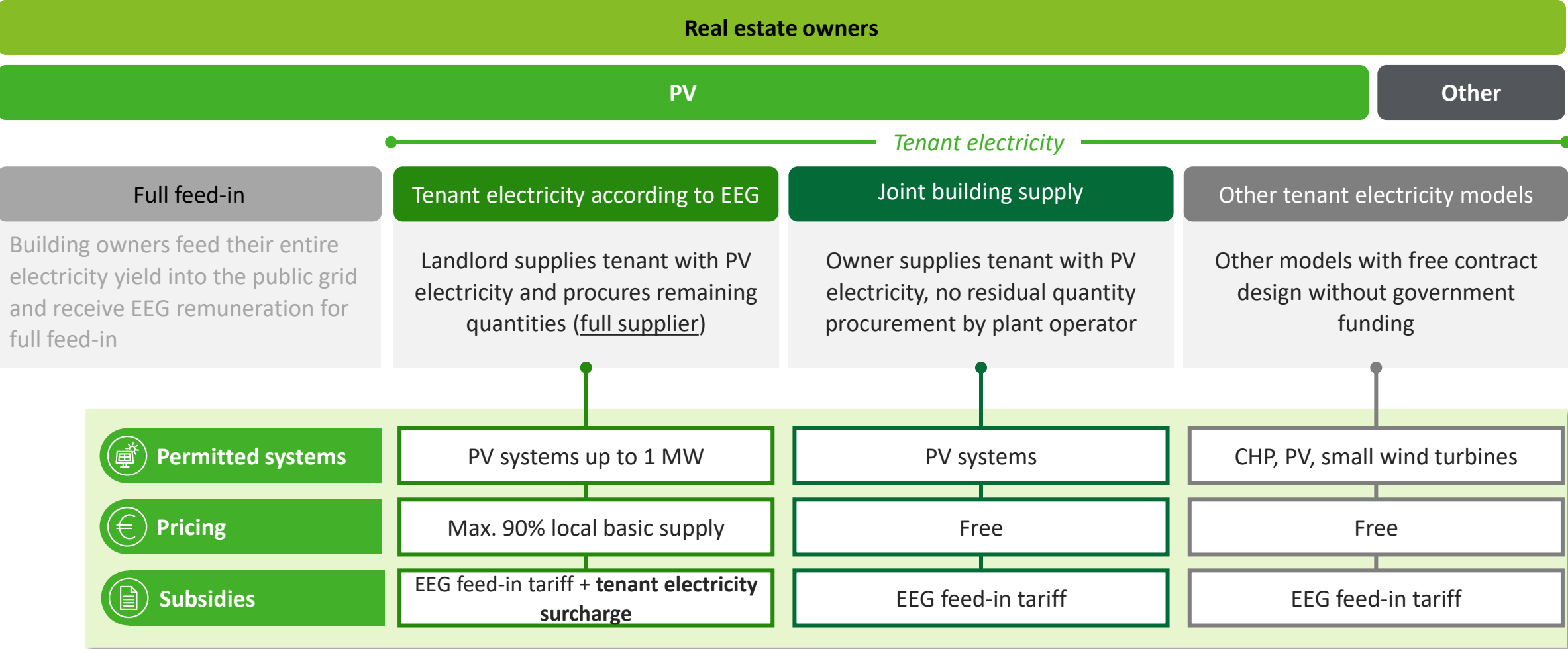
Joint building supply, Section 42b EnWG

Requirements as for the tenant electricity model. In addition, the end consumer's electricity consumption must be measured every quarter hour and the end consumer must conclude a building electricity usage contract that must meet the specific requirements of Section 42b (2) EnWG.

- **No subsidies** under the EEG
- Plant operators **do not have to ensure comprehensive electricity supply to end consumers** – they have their own electricity supply contracts with third parties for the purchase of residual electricity.

Decentralized building supply

The legislator allows various ways of implementing decentralized supply concepts.



Customer installations violate European law

Following the ruling that the German regulation on customer installations violates European law, there is legal uncertainty. Decentralized supply models are directly affected by this.



Judgment

- German exemption of customer installations from grid regulation is **contrary to European law** – exemptions under EU law are exhaustive (citizen energy communities, closed distribution networks, small interconnected networks)
- According to the Federal Court of Justice, a line infrastructure can only (still) be a customer installation if it is not a distribution network according to the Internal Electricity Market Directive (EltRL)



Consequences

The ruling initially has only indirect effects:

- Section 3 No. 24a EnWG remains in force. However, the provision must be interpreted by courts and authorities in accordance with the directive.
- Network operators may not connect new installations for the time being.
- Authorities and courts will assume illegality in the event of a dispute.
- Many decentralized self-supply plants may lose their economic viability (subsidies are based on the fact that there is no transmission through a "grid"; payment of grid fees).



Outlook

- Legislators must take action and amend the Energy Industry Act (EnWG)
- BNetzA has not yet taken a position

Incompatibility of customer installations with European law

Following the ruling that the German regulation on customer installations violates European law, there is legal uncertainty. Decentralized supply models are directly affected by this.

Relevance of the regulation

The EnWG recognizes four grid categories:

1. Customer installations
2. Distribution grids
3. Closed distribution grids
4. Transport grids.

The Act imposes various regulatory requirements on these grid categories. Customer installations within the meaning of Section 3 No. 24a and No. 24b EnWG are exempt from these requirements. This means, in particular, that no grid usage fees are incurred.

For this reason, customer installations were economically attractive.

Finding of illegality under EU law

In November 2024, the ECJ ruled that the legal concept of customer installations within the meaning of Section 3 No. 24a EnWG contradicts EU law.

This was confirmed by the Federal Court of Justice (BGH) in its ruling of May 13, 2025.

The case concerned the connection of two CHP plants for the tenants of residential complexes with 96 and 160 residential units respectively in two areas (9000 and 25000 m²) to the general supply grid. The Federal Court of Justice referred the case to the European Court of Justice for a preliminary ruling because it had doubts about the compatibility with EU law of the classification as a non-regulated customer installation based on the national regulation.

Consequences of the decisions

As a result of the decisions, customer facility operators could be subject to the regulatory obligations under the EnWG and Directive (EU) 2019/944 for distribution grids. Specifically, this concerns compliance with the following requirements:

- Accounting unbundling (Sections 6 et seq. EnWG),
- Approval of grid operation (Section 4 EnWG)
- Grid connection and access (Sections 17 et seq., 20 et seq. EnWG)
- Industry rules, e.g., in the form of balancing group settlement (MaBiS) or supplier switching (GPKE).

In addition, grid fees could now be charged (§ 20 EnWG) and assessed for energy supply. This requires a license (§ 23a EnWG).

Models such as communal building supply within the meaning of Section 42b EnWG or tenant electricity are now at risk of becoming uneconomical, as they require that no transmission through a distribution network takes place.



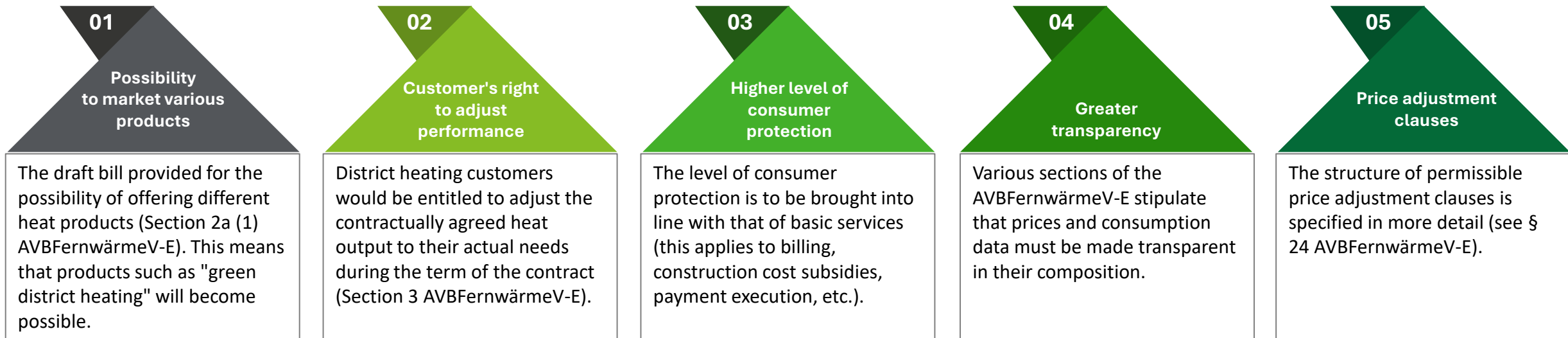
Note the exceptions to the discontinuation of customer installations!

- Self-supply system
- House distribution system
- Direct line

AVBFernwärmeV

A comprehensive amendment to the regulation is pending – heat supply contracts should be reviewed for any necessary adjustments after it comes into force.

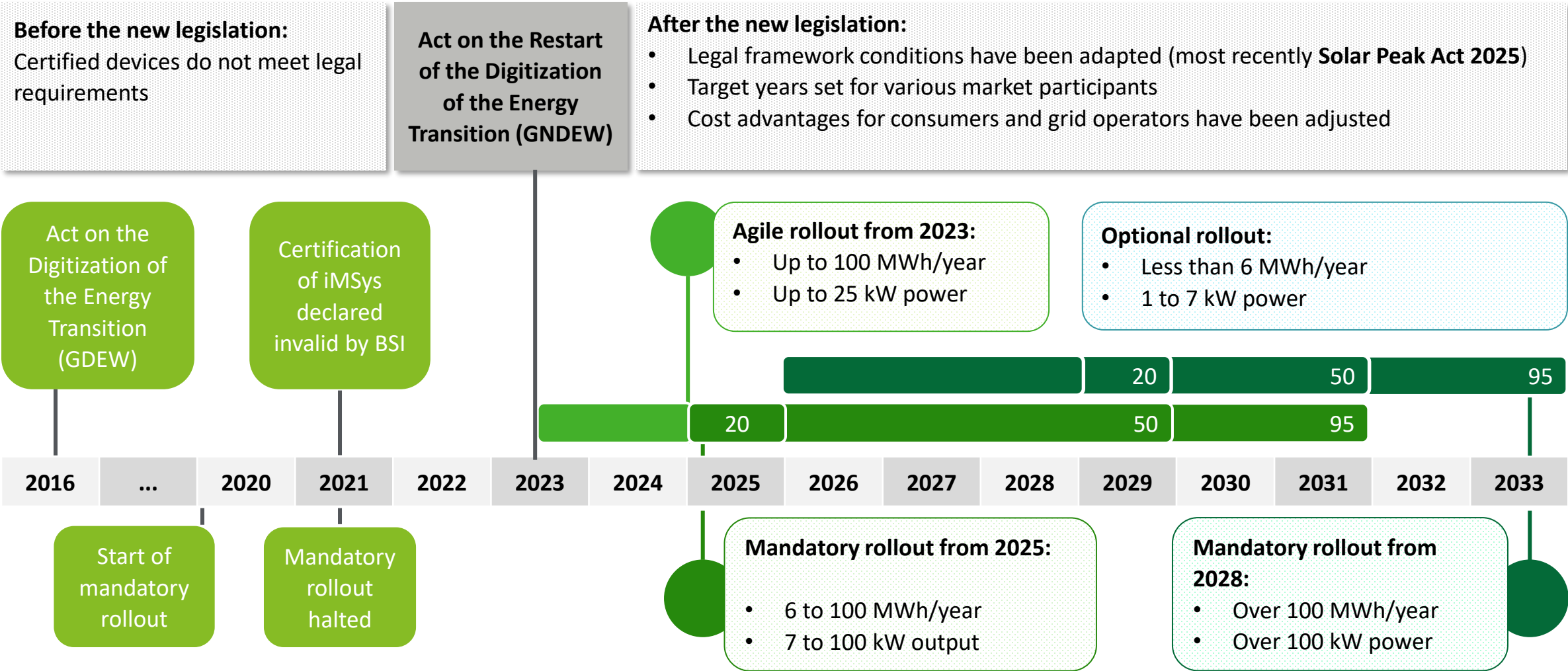
The following significant changes were already included in the draft bill of the former federal government to amend the AVBFernwärmeV:



The BMWV has not yet presented a new draft bill. According to the coalition agreement, the government wants to "quickly revise and modernize" the AVB-FernwärmeV, "taking into account the interests of consumer protection and utility companies in a balanced manner."

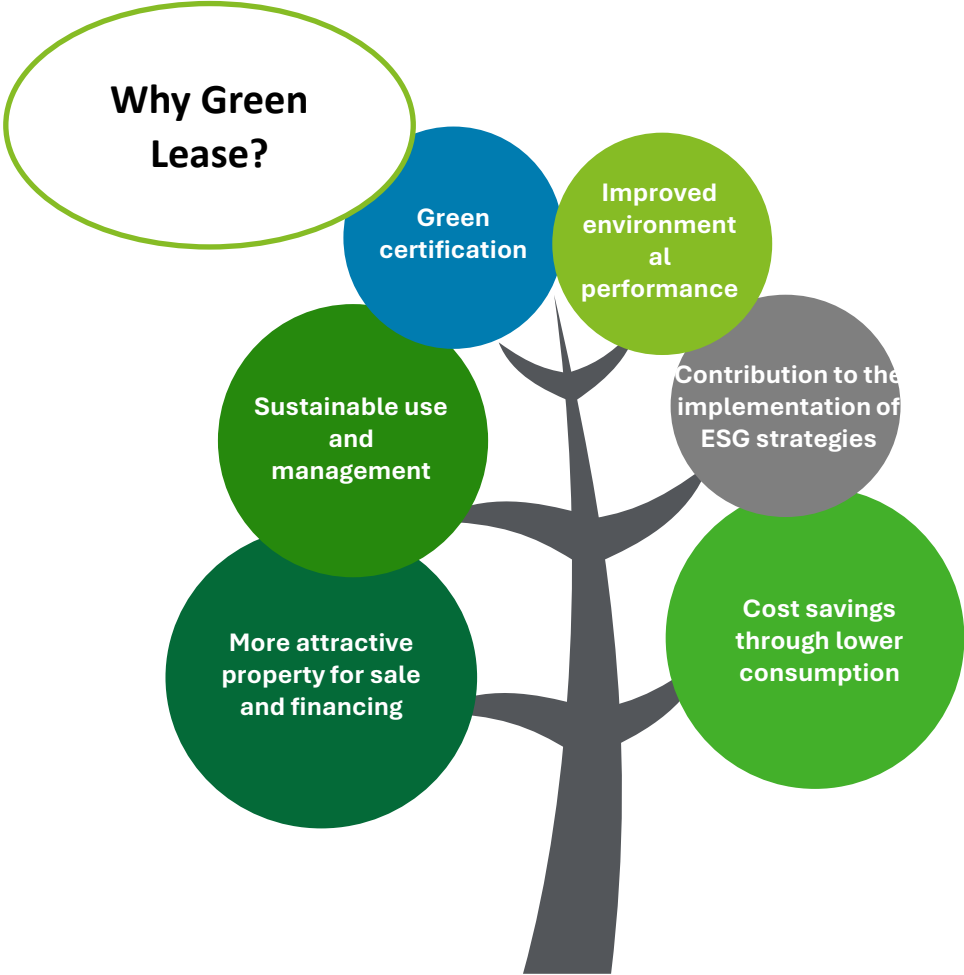
Smart meter rollout

The first smart meter rollout failed in 2021 and was relaunched by the Act on the Restart of the Digitization of the Energy Transition (GNDEW).



Special features of tenancy law and billing

Green Lease 2.0 – ZIA framework for green leases



Possible elements of a green lease agreement	
Mutual exchange of consumption data	Promotion of sustainable energy sources for energy and heat supply
Cost allocation for energy efficiency measures	Tenant participation in investments
Resource conservation (energy and water)	Waste reduction
Sustainable implementation of construction and repair measures	and much more

Relevance of energy law in project development

When developing new projects, it is also important to keep energy law requirements in mind.

Green urban planning

In particular, climate protection requirements for project developers within the framework of urban development contracts; requirements in development plans and the municipalities' obligation to weigh up the interests involved



Energy-efficient construction

Choosing the right building materials and designs so that the building consumes as little energy as possible in the long term. Requirements according to GEG; relevant for eligibility for subsidies.



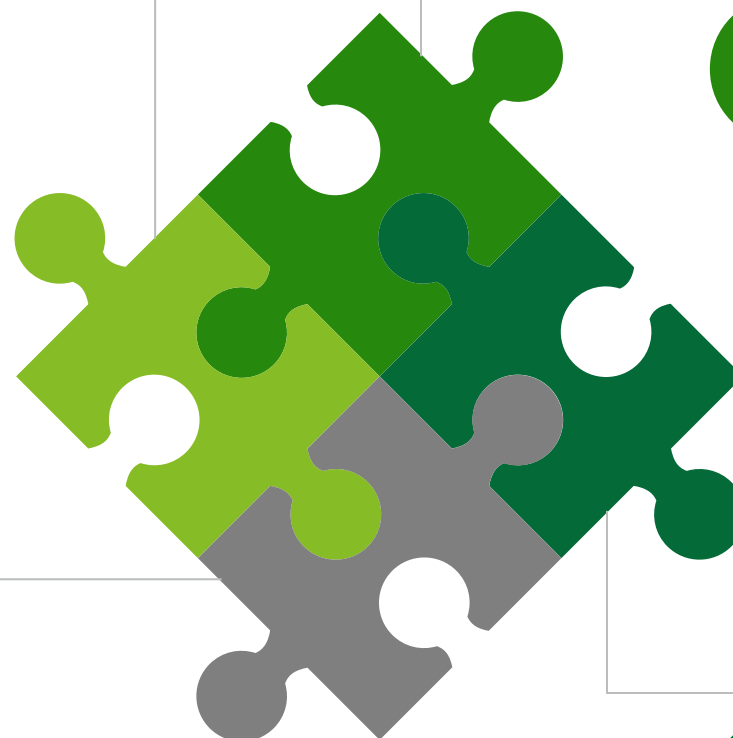
Supply model

It is important to consider at an early stage and, if necessary, coordinate with the building authority/municipality how the energy and heat supply in the new building should be designed.

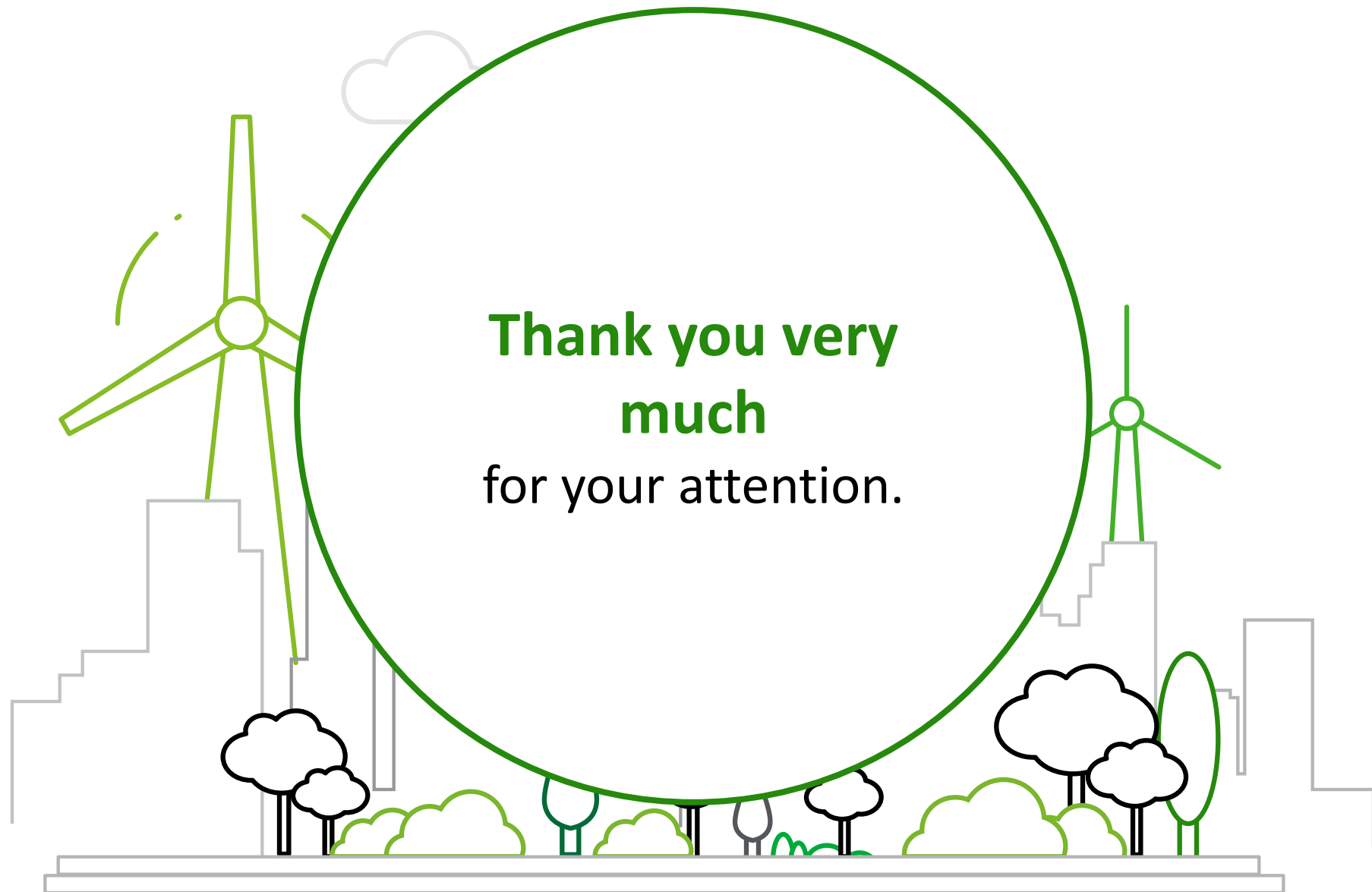


Charging infrastructure and e-mobility

Both the GEIG and the state building regulations and parking space statutes of the municipalities often stipulate the installation of a certain number of e-charging stations.



III. Questions & Answers



Deloitte Legal

Your contact



Dr. Torsten Wielsch

Regulatory & Compliance | Lead Energy Law
Attorney at Law | Partner

Tel.:

Email: twielsch@deloitte.de



Rebecca Gulden

Regulatory & Compliance | Energy Law
Attorney | Senior Associate

Tel.: +49 30 254685513

Email: rgulden@deloitte.de

Deloitte Legal has a strong global presence

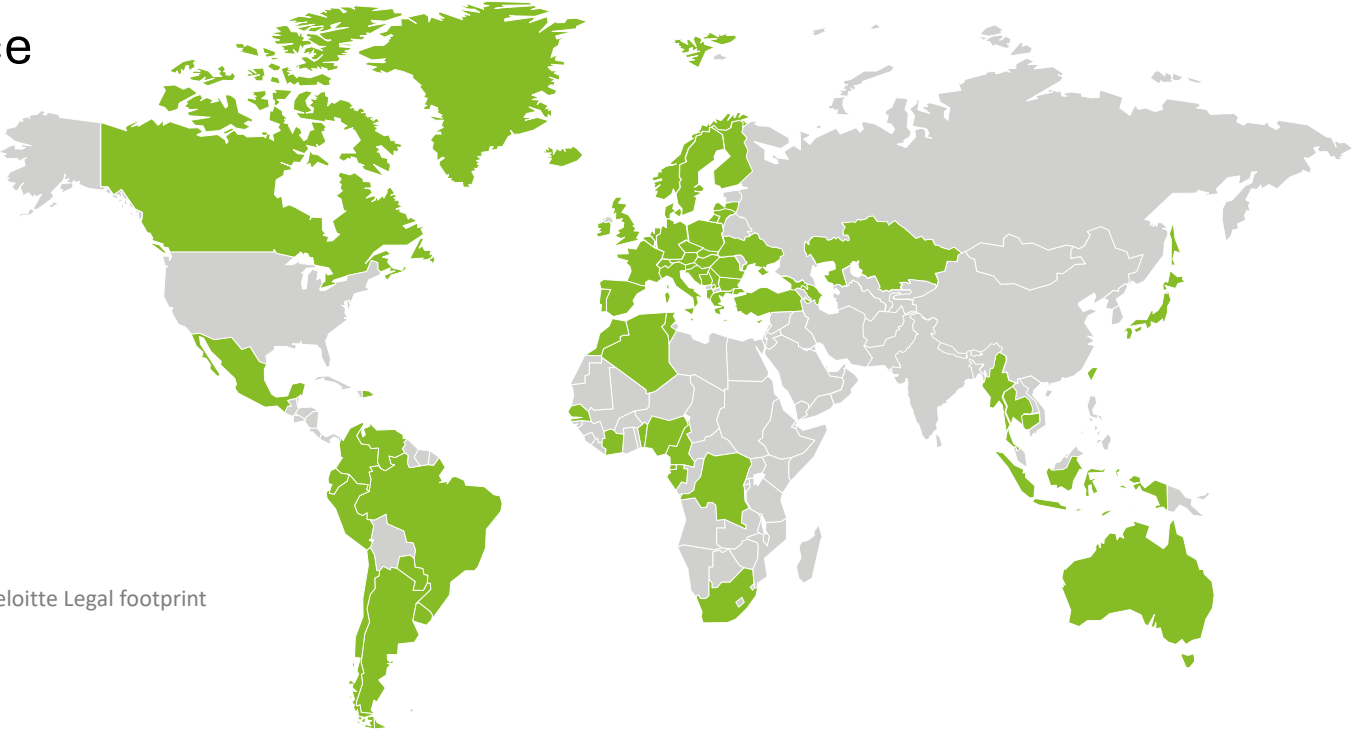
It can be very challenging to coordinate a large number of legal advisors around the world without losing sight of individual aspects.

As one of the world's leading legal advisory services, Deloitte Legal supports you in overcoming challenges and realizing your vision, acting as your central point of contact for your global legal advisory needs.

Key



Deloitte Legal footprint



Deloitte Legal practices

1. Albania	15. Chile	29. Gabon	43. Kazakhstan	57. Peru	71. Thailand
2. Algeria	16. Colombia	30. Georgia	44. Kosovo	58. Poland	72. Tunisia
3. Argentina	17. Costa Rica	31. Germany	45. Latvia	59. Portugal	73. Turkey
4. Australia	18. Croatia	32. Greece	46. Lithuania	60. Romania	74. Ukraine
5. Austria	19. Cyprus	33. Guatemala	47. Malta	61. Senegal	75. Uruguay
6. Azerbaijan	20. Czech Republic	34. Honduras	48. Mexico	62. Serbia	76. United Kingdom
7. Belgium	21. Democratic Republic of Congo	35. Hong Kong SAR, China	49. Montenegro	63. Singapore	77. Venezuela
8. Benin	22. Denmark	36. Hungary	50. Morocco	64. Slovakia	
9. Bosnia	23. Dominican Republic	37. Iceland	51. Myanmar	65. Slovenia	
10. Brazil	24. Ecuador	38. Indonesia	52. Netherlands	66. South Africa	
11. Bulgaria	25. El Salvador	39. Ireland	53. Nicaragua	67. Spain	
12. Cambodia	26. Equatorial Guinea	40. Italy	54. Nigeria	68. Sweden	
13. Cameroon	27. Finland	41. Ivory Coast	55. Norway	69. Switzerland	
14. Canada	28. France	42. Japan	56. Paraguay	70. Taiwan	



Deloitte Legal refers to the legal practices of the member firms of Deloitte Touche Tohmatsu Limited, their affiliates, or partner firms that provide legal services.

Deloitte refers to Deloitte Touche Tohmatsu Limited (DTTL), its global network of member firms, and their respective affiliated entities (collectively, the "Deloitte organization"). DTTL (also known as "Deloitte Global") and each of its member firms and their affiliates are legally separate and independent entities that cannot obligate or bind each other in relation to third parties. DTTL, each DTTL member firm, and affiliated entities are liable only for their own acts and omissions and not for those of each other. DTTL does not itself provide services to clients. For more information, see www.deloitte.com/de/UeberUns.

Deloitte provides industry-leading services in audit and assurance, tax, consulting, financial advisory, and risk advisory to nearly 90% of the Fortune Global 500® companies and thousands of private companies. Legal services are provided in Germany by Deloitte Legal. Our people deliver measurable, long-term results that help build public trust in capital markets, support our clients through change and growth, and pave the way to a stronger economy, a more equitable society, and a sustainable world. Deloitte builds on a history of more than 175 years and operates in more than 150 countries. Learn more about how Deloitte's approximately 457,000 employees live the mission of "making an impact that matters" every day: www.deloitte.com/de.

This publication contains general information only and neither Deloitte Legal Rechtsanwaltsgesellschaft mbH nor Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, nor their affiliated entities (collectively, the "Deloitte Organization") are providing professional services with this publication. This publication is not suitable for making business or financial decisions or taking action. You should seek advice from a qualified advisor in relation to your specific circumstances.

No representations, warranties, or assurances (express or implied) are made as to the accuracy or completeness of the information in this publication, and neither DTTL nor its member firms, affiliates, employees, or agents shall be liable or responsible for any loss or damage of any kind incurred directly or indirectly in connection with any person relying on this publication. DTTL and each of its member firms and affiliates are legally separate and independent entities.