



Germany to tighten energy efficiency requirements for buildings, companies and data centres

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In April 2023, the German government proposed new legislation that aims to significantly increase energy efficiency requirements for buildings, companies and data centres. The government's proposals to ban fossil-based heating systems have grabbed the lion's share of public attention so far. However, the government is also proposing to tighten energy efficiency requirements applicable to companies and data centres located in Germany and these proposals are likely to have a major impact on the need to raise energy efficiency levels, including the treatment of waste heat. All this is to be accompanied by extensive reporting, publication and transparency obligations.

Buildings: ban of fossil-based heating systems & processes to improve energy efficiency

Energy efficiency rules applicable to buildings – both residential and non-residential – are laid down in the German Buildings Energy Act (*Gebäudeenergiegesetz* – **GEG**). The GEG

transposes the EU Energy Directive on the Energy Performance of Buildings 2010/31/EU into German law.

The government's latest proposal to amend the GEG has attracted much public attention in recent days: According to the proposal, new heating systems installed on or after 1 January 2024 must be run with a minimum of 65% renewable energy. As a result,

fossil-based heating systems (gas, oil, coal) will be effectively banned in Germany at extremely short notice. It is expected that only heat pumps will be able to comply with the 65% criterion. Against this background, recent newspaper reports that the German government is even considering amending the purpose of the German Energy Industry Act (*Energiewirtschaftsgesetz* – **EnWG**) by stipulating that it will be a mandatory objective of German energy policy to procure **at least 6 million heat pumps by 2030** appear plausible.

The exceptionally short transition period and the strict focus on heat pumps has been heavily criticised. However, it is possible that a broad consensus will be reached in the German parliament that the country must take drastic measures to reduce its greenhouse gas emissions. On that basis, the impending discussions may well focus on details and support measures (e.g. increased **subsidies for new heating systems** or a delayed entry into force and extended transitional periods at least for some groups of the population such as elderly house owners) rather than jeopardizing the proposal as such.

Non-residential buildings, such as offices, hotels, other commercial facilities or factory buildings, are likely to face additional obligations from 1 January 2024 onwards. If their heating or air conditioning systems reach or exceed a nominal capacity (*Nennwert*) of **290 kWh**, such buildings must have or be upgraded to a **building automation system** (*Gebäudeautomatisierungssystem*) that meets the DIN V 18599-11:2018-09 standard and exhibits certain additional features. Furthermore, a designated person must be responsible for establishing processes that aim to continuously improve the energy efficiency of such buildings ("*Energy Efficiency Officer*").

Companies' operations

Energy efficiency requirements applicable to companies operating in Germany are to be tightened by additional requirements specified in the Energy Efficiency Act (*Energieeffizienzgesetz* – **EnEfG**).¹

This act will build on and supplement the existing regulations set forth in the Energy Services Act (*Energiedienstleistungsgesetz* **EDL-G**).² The EnEfG and EDL-G aim to transpose energy saving and efficiency requirements as foreseen in the EU's Energy Efficiency Directive 2012/27 into German law; the legislative process to amend this Directive has been almost finalised with the tripartite agreement dated 24 March 2023.³

In high-level terms, companies in Germany will have to comply with the following requirements according to the EnEfG proposal:

- Companies with an **energy consumption in excess of 15 GWh** on average over the past 3 calendar years will be obliged to establish either an energy management system (**EnMS**) that complies with the German industry standard DIN EN ISO 50001 or an environmental management system, the latter in accordance with the European Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (**EMAS**). The law provides for a transitional period of 20 months in this context. The government estimates that approx. 3,500 companies in Germany will have to implement an EnMS or an EMAS for the first time as a consequence of the new legislation.
- Companies with an **energy consumption in excess of 2.5 GWh** on average over the past 3 calendar years will be required to establish precise and practicable plans for implementing energy saving measures on the basis of data generated by having implemented an EnMS or EMAS or on the basis of energy audits conducted on the basis of EDL-G. Such plans must be certified by third parties and subsequently published. The law provides for a transitional period of 3 years in this context.
- Companies with an **energy consumption of more than 0.5 GWh** per year are obliged to conduct energy audits in accordance with the German industry standard DIN EN 16247-1 if they do not

¹ Government's draft EnEfG, as well as information on the legislative process, can be found **here** (in German only).

² **EDL-G** can be found here (in German only).

³ More detailed information can be found **here**.

implement a more complex EnMS or EMAS. In any case, such obligation only applies to (large) companies that do not qualify as small or medium-sized enterprises (**SME**) as defined by EU regulations.

- Companies with an **energy consumption of max. 0.5 GWh** are not subject to any specific regulations, except (larger) companies that do not qualify as SMEs; such companies must report a relatively limited set of data to the competent authority.
- In addition, as regards **waste heat**, companies with an energy consumption of more than 2.5 GWh on average over the past 3 calendar years will be obliged to consider implementing measures that aim to avoid and reduce waste heat. Where waste heat cannot be avoided, it should be re-used, either by the company itself or by a third party. Upon request, such companies must disclose specific information to operators of heating grids who may be interested in re-using the waste heat. Further, such companies will have to report data on their waste heat to the authorities on an annual basis.

At present, the following details appear most significant:

- Companies operating in Germany will have to invest in order to meet the new energy saving and efficiency requirements. According to German government estimates, additional costs of around EUR 400m are likely to be incurred solely in complying with the new rules applicable to the companies exceeding the 15 GWh limit.
- A number of companies will be obliged to publish plans and data. It is neither clear where such plans are to be published (likely on the companies' websites) nor is it fully clear to what extent such documents can be redacted to protect business secrets.
- Last but not least: **The definition of "company" is unclear.** In particular, there are at present no rules at all governing corporate groups (holding structures, private equity structures etc.). There will be a high degree of legal uncertainty in determining the addressees of the new rules if

this should fail to be clarified in the legislative process.

“Climate-neutral” companies

The German government will be empowered to define by way of a separate federal ordinance the criteria that are to be met by companies who wish to promote themselves as being “*climate-neutral*” companies. This would appear to be a useful approach to avoid misleading statements and advertising – as well as the corresponding litigation that has already been witnessed in German courts.

Focus: energy efficiency for and use of waste heat from data centres

The proposed EnEfG will provide for a highly detailed framework governing energy and waste heat related features of data centres in Germany.

Key principles and objectives of the new regulations can be summarised as follows:

- The EnEfG will establish rules applicable to both the operator of a data centre and “the operators of IT technology” (*Betreiber von Informationstechnik*), i.e. the **users of co-location data centers**.
- The new rules will **apply to both new and existing data centres**. By way of example, existing data centres will also have to ensure a power usage effectiveness (**PUE**) of max. 1.5 by 1 July 2027 at the latest (current average PUE in Germany is 1.7 according to the German government). More urgent is the need to procure 50% of electricity from non-subsidised renewable energy sources (e.g. by procuring guarantees of origin via PPAs) by 1 January 2024 at the latest.
- Operators of data centres will be obliged to **implement either an EnMS or an EMAS** as of 1 July 2025 at the latest. The results of such assessment must be certified by a third party.
- Energy efficiency-related data is to be published in an “**Energy Efficiency Register**” (*Energieeffizienzregister*). It is the legislator's

explicit intention to foster competition between data centres by making energy-related data accessible to private and public customers who may want to consider such data when procuring data center services.

- **Customers will be entitled to obtain energy related data** from data centres so that such data can be taken into account in the customers' ESG and CSR reporting.
- A particular focus of the new legislation is, however, the use of **waste heat from data centers**. Such waste heat is to be re-used more frequently. Consequently, operators of data centres will be obliged to record and transfer data to the authorities, which in turn will make such data publicly available via a dedicated tool ("*Plattform für Abwärme*"). Strict requirements dealing with the re-use of waste heat explicitly

aim to encourage investors to locate data centres in areas where local, regional or industrial heat grids can be accessed which will utilise waste heat. The (potential) impact of such provisions should be carefully considered, not least in respect of data centres that are currently under development.

Legislative procedure – next steps

The legislative procedure has only just started. The lower chamber of the German parliament (*Bundestag*) is expected to debate the new rules in May and June, and the upper chamber (*Bundesrat*) could approve the new law in July. If this timetable is met, the new legislation could still be published prior to the parliamentary summer break.

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