

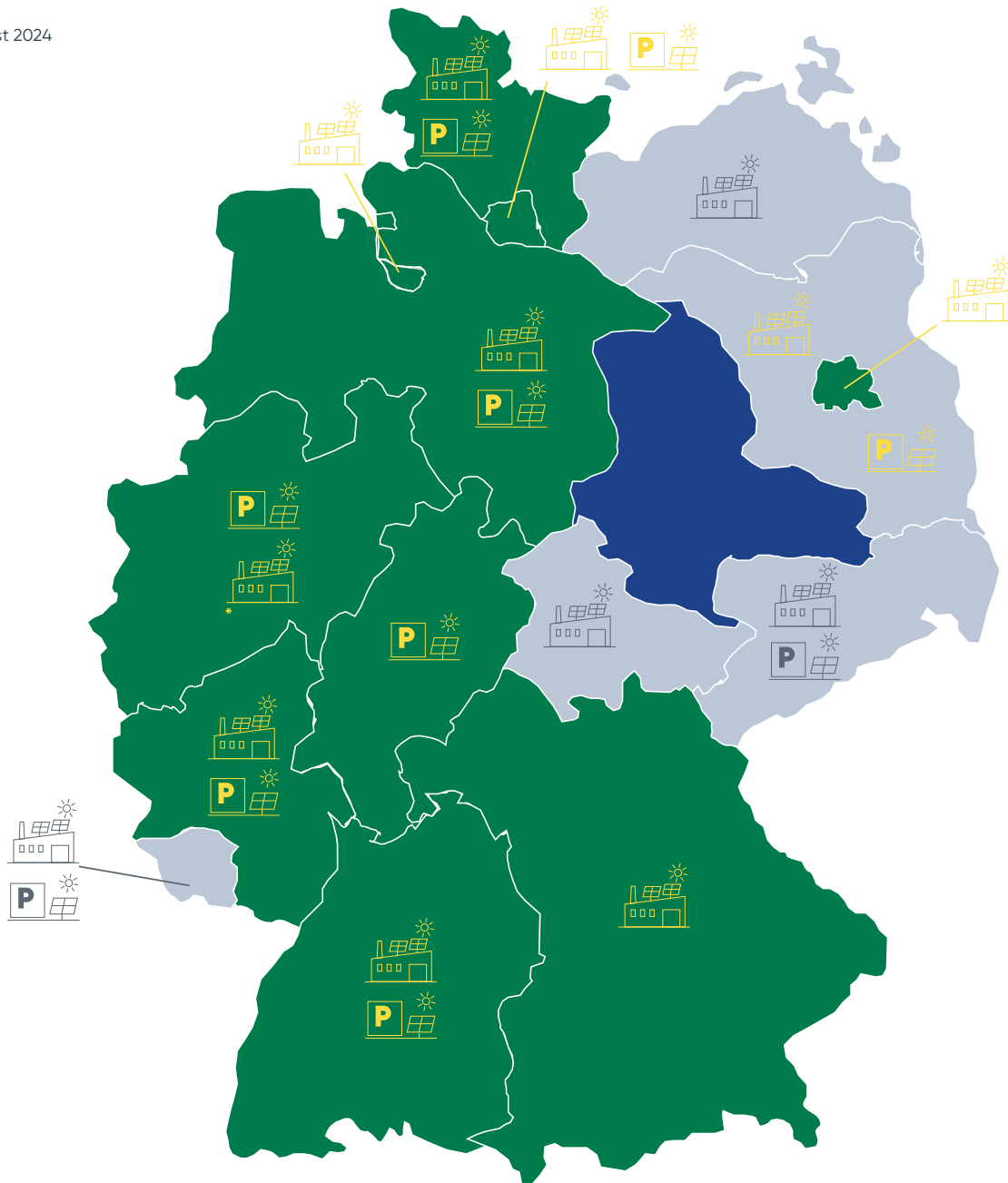
Real Estate, Infrastructure & Energy

Rooftop Solar PV Systems



Obligation to go solar in Germany: Where it already applies or is being planned

As at:
end of August 2024



Key

Existing solar obligation for roofs and / or parking spaces.

Solar obligation for roofs and/or car parks has not yet been decided on, but is being planned (legislation may be in progress or corresponding applications pending).

The federal states do not yet have concrete plans for a solar obligation for roofs and/or car parks. Here, however, a Germany-wide solar obligation may apply.

Climate change is one of the key challenges for our society and for politics. Governments at European and German level have committed to achieving climate neutrality in the approaching decades. ESG and sustainability are also becoming increasingly important for companies, contractual partners and customers.

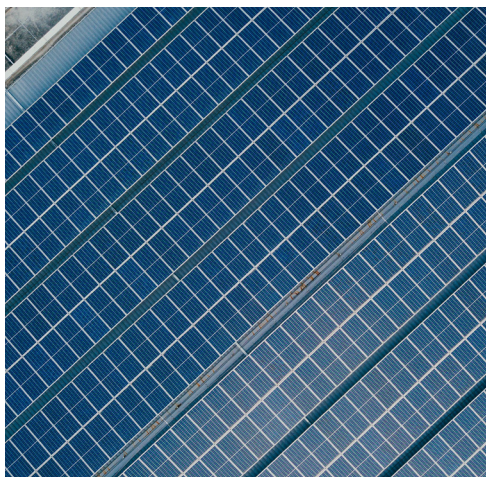
In the building sector in particular, PV systems have enormous potential to reduce CO₂ emissions and create new business opportunities at the same time. The value of properties can be increased without the need for continuous investment. Solar energy is one of the fastest growing sources of green electricity, plays an important role in the future global power generation mix and is key to a successful energy transition. Nevertheless, many industrial buildings, warehouses, production facilities and retail outlets remain unutilised, even though they offer ideal conditions for generating additional income from PV systems.

Taylor Wessing's interdisciplinary and international Real Estate, Infrastructure & Energy Team advises on all aspects of PV systems, including early and late-stage transactions and financings, regulatory and planning aspects as well as plant construction and related contracts and project agreements. The team has extensive expertise in providing top-quality legal advice on investment, development and operations in the solar energy sector.

We now provide an overview of the most important legal aspects when establishing **commercial rooftop solar PV systems**.

The implementation of a viable business model for rooftop solar PV systems encompasses various legal areas:

- Real Estate
- Energy & Infrastructure
- Environmental Planning & Regulatory
- Projects & Construction
- Corporate & M&A
- Banking & Finance



The construction and operation of rooftop PV systems can sometimes be complex due to the different interests of many parties involved:

- Project planners and construction companies
- Property owners
- Plant operators
- Financiers
- Competent authorities
- Grid operators
- Metering point operators
- Housing construction companies
- Industrial and commercial enterprises

Taylor Wessing brings together experts from all relevant legal fields and sectors to ensure the success of your rooftop solar PV project. Our team has in-depth expertise, long-standing experience and market knowledge and can advise on the following areas:

Solar energy on roofs

Business Case: Electricity generated in PV systems can be marketed in different ways (feed-in, tenant electricity, self-supply). The appropriate business case or the best combination of the various marketing options depends on the size of the system, the amount of electricity generated, the electricity demand, the tenant structure and the company's own personnel and technical resources.

Contractual partner: Contracts with building or property owners, project developers, construction companies, PV module manufacturers, grid operators and energy suppliers are often required for the realisation of the PV project. With our industry expertise, we can help you to choose the right partner. For larger projects, structured procurement within the framework of private tenders is also an option.

Challenges: The generation of electricity depends on solar radiation and is therefore a volatile energy source. Integration into the electricity grid and the electricity market can be legally challenging, especially as the legal requirements for grid connection, subsidies, self-supply and tenant electricity models have changed several times recently.

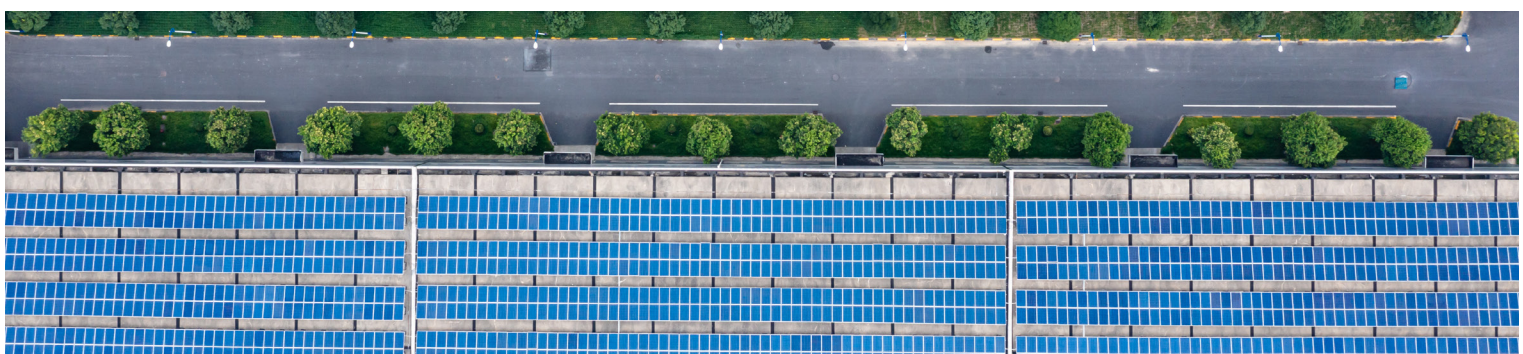
Legal responsibilities: In addition to economic incentives, more and more federal states are making the installation of PV systems mandatory for new build and refurbishment projects. Municipal statutes can also contain such regulations. In particular, the current requirements of the EU Buildings Directive must be observed. The new version of the EU Buildings Directive was published in the Official Journal of the European Union on 8 May 2024 and came into force on 28 May 2024. The new regulations must therefore be transposed into national law by the Member States by the end of May 2026.

Property-related legal issues

Property owner: If the system operator is not the building owner, the roof areas on which the PV systems are installed must be leased from the owners and are usually rented out. The diverging interests of the property owner, the tenants of the building and the PV system operator must be reconciled in rental agreements, which are structured differently depending on the type of building.

Financing banks: The buildings on which the PV system is installed are almost always financed by different banks. The respective banks require different collateral for the financing in question and the corresponding collateral must be harmonised. Our experts know how to harmonise the relevant collateral without disadvantages for either side.

Approvals: In rare cases, it is also necessary to check whether the construction of the PV system requires planning permission. This depends largely on the size and location of the system.



Our legal services

Advice on contracts

Our experts specialise in drafting, reviewing and negotiating the contracts required to implement your rooftop solar PV system. This includes the following contracts:

- Installation contracts such as EPC contract
- Module supply contracts
- Maintenance and operation management contracts
- Lease agreements
- Financing agreements
- Onsite power supply agreements (onsite PPAs) / direct marketing agreements
- Insurance agreements
- Amendment of existing leases with tenants

Regulatory advice

- Examination of all remuneration requirements for optimum utilisation of the EEG (German Renewable Energy Sources Act) remuneration, including advice on the EEG tendering procedure
- Utilisation of tenant electricity models: simplified funding conditions under the EEG, notification obligations to the regulatory authority, billing requirements, compliance measures for recording energy taxes and levies
- Reporting obligations such as to the market master data register and grid operators
- Advice on the fulfilment of building efficiency requirements through the integration of PV systems
- Coordination with the responsible grid operator, amendment or conclusion of grid connection contracts
- Coordination with the responsible metering point operator and development of a metering concept
- Options for utilising public subsidies for OPEX and CAPEX

Financial and tax law advice

Several legal and tax challenges in the financing, construction and operation of a rooftop solar PV system can have an impact on the project's business model. It is therefore important to consider the following aspects:

- Coordination of the collateral for the PV financing with the financing of the outbuildings
- Ensuring the bankability of all project-related documents
- Possibilities for utilising tax depreciation
- Options for utilising tax-efficient structures
- Structuring of loans
- Consideration of the tax treatment of financing expenses
- VAT advice in connection with the acquisition, operation and sale of rooftop solar PV systems

Selected references

Project developer	Legal advice on the planning, financing and construction of rooftop PV systems in Germany (> 30 MWp) and on the sale of the SPVs holding the systems.
Project developer	Legal advice on the drafting and negotiation of EPC contracts and O&M contracts for rooftop PV systems.
Property developer	Legal advice on rooftop PV systems on existing and new-build logistics properties (in particular roof rental agreements, EPC agreements, maintenance and operation management agreements and electricity supply agreements).
Investor and asset manager	Legal advice on the acquisition of a company for the construction and long-term leasing of rooftop PV systems including EPC contracts, end customer lease / purchase agreements as well as maintenance and operation management contracts.
Investor and asset manager	Legal advice to an asset manager on the establishment of a joint venture for the financing of rooftop PV systems including the acquisition of individual project SPVs.
Property developer	Legal advice on the planning, construction and marketing of rooftop PV systems on existing and new properties (in particular roof rental contracts including BaFin enquiries, electricity supply contracts and review of metering concepts).
Property developer	Legal advice on the planning and construction of rooftop PV systems in a new residential neighbourhood, including cable infrastructure and other energy supply (in particular project development agreements, roof rental agreements and leasehold contracts).
Project developer	Legal advice on regulatory issues relating to the Renewable Energy Sources Act and the Innovation Tendering Ordinance as well as drafting rooftop PV supply contracts.
Property developer	Legal advice on PV rooftop systems on existing and new buildings (in particular rooftop rental contracts, EPC contracts and electricity supply contracts as well as advice on tax and tenancy law).
Project developer	Drafting and negotiation of PV rooftop supply contracts.
Project developer	Legal advice on the regulatory implications of implementing a rooftop PV system offer in Germany.



The team provides us with excellent interdisciplinary advice. The cooperation across several locations also functions smoothly. [Legal 500 Energy Sector 2024](#)

Taylor Wessing works in a very client-orientated manner, the lawyers there are always available for their clients, with very short response times. The firm has experts with specialised knowledge in all areas of law who can offer comprehensive advice. [Legal 500 Energy Sector 2022](#)

Taylor Wessing's lawyers have in-depth knowledge of the industry and are therefore able to offer customised solutions in the shortest possible time. The cooperation with our in-house colleagues runs smoothly and is always very professional. [Legal 500 Energy Sector 2022](#)

JUVE 2023/2024

- Energy Sector: ★★ ★
- Transactions ★★ ★
- Project development & plant construction ★★ ★★
- Planning & environment law ★★ ★
- Real estate law ★★ ★

Your Team



Dr Markus Böhme, LL.M.
Environmental, Planning &
Regulatory, Düsseldorf
+49 211 8387-430
M.Boehme@taylorwessing.com



Carsten Bartholl
Head of International Energy &
Infrastructure, Corporate/M&A,
Hamburg
+49 40 36803-108
C.Bartholl@taylorwessing.com



Dr Tillmann Pfeifer
Head of Energy &
Infrastructure Germany,
Corporate/M&A, Hamburg
+49 40 36803-131
T.Pfeifer@taylorwessing.com



Dr Janina Pochhammer
Head of Projects, Energy &
Infrastructure, Hamburg
+49 40 36803-105
J.Pochhammer@taylorwessing.com



Dr Anja Fenge, LL.M.
Commercial Real Estate,
Hamburg
+49 40 36803-120
A.Fenge@taylorwessing.com



Dr Roland Schmidt-Bleker
Environmental, Planning &
Regulatory, Düsseldorf
+49 211 8387-299
R.Schmidt-Bleker@taylorwessing.com



Hannes Tutt
Commercial Real Estate,
Hamburg
+49 40 36803-377
H.Tutt@taylorwessing.com



Dr Jörg Henkel
Environmental, Planning &
Regulatory, Düsseldorf
+49 211 8387-126
J.Henkel@taylorwessing.com



Julian C. Ludwig
Tax, Frankfurt
+49 69 97130-261
J.Ludwig@taylorwessing.com



Dr Angela Menges
Energy & Infrastructure,
Corporate/M&A, Hamburg
+49 40 36803-179
A.Menges@taylorwessing.com



Dr Christian Ertel
Environmental, Planning &
Regulatory, Munich
+49 89 21038-184
C.Ertel@taylorwessing.com



Dr Niels L. Lange, LL.M.
Projects, Energy &
Infrastructure, Hamburg
+49 40 36803-368
Ni.Lange@taylorwessing.com



Dr Julia Wulff
Environmental, Planning &
Regulatory, Munich
+49 89 21038-245
J.Wulff@taylorwessing.com



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