The legislative package for the expansion of renewable energies - great potential for energy communities

As a significant Austrian contribution to the climate and energy transition with the goal of covering 100 percent of Austria's electricity demand from renewable sources by 2030, the government bill on the draft Renewable Energy Expansion Act Package (*Erneuerbaren-Ausbau-Gesetzes-Pakets* – EAG Package) was published. Taking advantage of the framework conditions for the new energy communities in the regional and supra-regional area offer opportunities, but also contain numerous challenges in the practical implementation. The legislative package is expected to come into force before the summer of 2021.

The Renewable Energy Expansion Act Package (EAG Package), which among other things aims to implement the European Directive on the Promotion of the Use of Energy from Renewable Sources (RED II) and to ensure compliance with the national reference values for renewable energies in accordance with the Governance Regulation, pursues the goal of covering 100 percent (balance) of the total electricity consumption in Austria from 2030 from renewable energy sources. The share of renewable energy sources is to be expanded by 27 TWh, with a focus on photovoltaics with a share of 11 TWh (followed by 10 TWh of wind, 5 TWh of hydropower and only 1 TWh of biomass).

With the EAG Package the legislative package creates a central new law for subsidies for renewable energy sources within the framework of a market premium model (*Marktprämienmodell*) and through investment grants (*Investitionszuschüsse*). In addition, the EAG Package provides for the establishment of a Renewable Energy Sources Promotion Agency (*EAG-Förderstelle*), basic principles for energy communities, regulations for monitoring and transparency, including provisions on guarantees of origin. The EAG Package also amends the Gas Industry Act 2011 (*Gaswirtschaftsgesetz 2011*) and the Electricity Industry and Organization Act 2010 (*Elektrizitätswirtschafts- und -organisationsgesetz 2010*).

Subsidy and Market Premium Models as a Key Driver

A key aspect of the EAG Package is the financial support measures, with a volume of one billion euros targeted per year. These support measures take the form of either one-off investment grants or ongoing, variable market premiums for electricity production to compensate for the production costs of electricity from renewable sources and the average achievable market price for electricity. Market premiums are generally to be granted for a period of 20 years.

The market premiums for photovoltaic and biomass plants will be awarded on the basis of competitive tenders, while those for wind and hydropower plants as well as for smaller biomass plants and plants based on biogas will be awarded on the basis of an application system. From the year 2024 the application system for wind power plants can be replaced

by a tendering system if more efficient results can be achieved. Investment subsidies will be granted for the construction and expansion of photovoltaic plants and electricity storage facilities, as well as for the construction of new wind power plants up to 1 megawatt, depending on the respective ranking and the available subsidies.

Die Aufbringung der Fördermittel wird insbesondere durch die Einhebung einer Erneuerbaren-Förderpauschale sowie eines Erneuerbaren-Förderbeitrages erfolgen. Alle an das öffentliche Elektrizitätsnetz angeschlossenen Endverbraucher (eine Ausnahme gilt für Pumpspeicherkraftwerke) haben die Erneuerbaren-Förderpauschale und den Erneuerbaren-Förderbeitrag zu leisten. Einkommensschwache Haushalte, die ein Anrecht auf eine Befreiung von der GIS-Gebühr haben, sollen von den Ökostrom-Beiträgen generell befreit sein.

The subsidies will be raised in particular by levying a flat-rate subsidy for renewable energy and a subsidy for renewable energy. All final consumers connected to the public electricity grid (with the exception of pumped-storage power plants) will have to pay the renewable subsidy flat rate and the renewable subsidy contribution. Low-income households entitled to exemption from the GIS fee (the Austrian fee for radio- and television consumption) should generally be exempt from the green electricity contributions.

No Acceptance Guarantee

The EAG Package is based on the principle of direct marketing. There is no central office that guarantees the purchase of the generated electricity. The operator or investor of the renewable energy facility must therefore take care of the marketing of the generated electricity himself. Small plant operators (below 500 kW) are exempted from this principle. In addition, there is the possibility of an allocation procedure for failed direct marketing: Producers of renewable electricity who can prove that three electricity traders have refused to conclude a purchase agreement for electricity from a plant supported under the Renewable Energy Sources Act have a claim against the balancing group coordinator to be assigned an electricity trader for the respective plant.

Energy Communities at the Heart of the EAG Package

Energy communities are associations of one or more electricity producers and consumers for the purpose of generating, consuming, storing and selling renewable energy. Furthermore, energy communities can be active in the field of aggregation and providing of energy services for their members, such as charging services for electric vehicles.

Energy communities are divided into "regional" renewable energy communities (*Erneuerbare-Energie-Gemeinschaften* – "EEGs") on the one hand and "supraregional" citizen energy communities (*Bürgerenergiegemeinschaften* – "BEGs") on the other. The main similarities and characteristics of these forms are shown in the table at the end of this blog post.

In their basic conception, energy communities are primarily geared to citizen and not to entrepreneur participation. Thus, in the case of EEGs, large companies and electricity and natural gas companies as defined by the Gas Industry Act 2011 and the Electricity Industry and Organization Act 2010 are generally excluded from membership. However, there is an explicit exception in the case of EEGs for producers that supply electrical energy to a grid (e.g. wind farm, photovoltaic or hydropower projects): These may participate in EEGs provided they are not controlled by utilities, suppliers or electricity traders as defined in Electricity Industry and Organization Act 2010.

The challenges for new projects but also the inclusion of existing renewable energy facilities in the regime of BEGs and EEGs are manifold. Significant opportunities for design and optimization exist in particular in the following areas:

(i) choice of form of association / cooperation;

(ii) (corporate) legal or contractual involvement of other stakeholders (such as plant manufacturers and operators, land or building owners, "non-profit stakeholders").

(iii) external and internal financing options as well as (asset) leasing options.

	Erneuerbare-Energie-Gemeinschaften (EEGs) (§§ 79 ff EAG sowie 16c, 16d, 16e ElWOG 2010)	**Bürgerenergiegemeinschaften (BEGs)** (§§ 16b, 16d, 16e ElWOG 2010)
„Consumer Proximity"	Local & regional: Connection of the participants' consumption systems with the generation systems via a medium-voltage (regional area) or low-voltage (local area) distribution network in the same network area.	Supraregional: Can extend across the entire Austrian territory. This means that the concession areas of various distribution system operators may be affected.
Foundation & Form	At least two or more members or partners. Organization as an association, cooperative, partnership or corporation, community of owners under the Austrian Condominium Act (*Wohnungseigentumsgesetz*), or similar association with legal personality.	
Main Prupose	Providing environmental, economic or social community benefits to its members or the areas in which it operates ("public benefit"- *Gemeinnützigkeit*). Thus, there must not be a primary focus on financial gain. If the non-profit status does not already result from the chosen corporate form, such must be specified in the articles of association.	

	Erneuerbare-Energie-Gemeinschaften (EEGs) (§§ 79 ff EAG sowie 16c, 16d, 16e ElWOG 2010)	**Bürgerenergiegemeinschaften (BEGs)** (§§ 16b, 16d, 16e ElWOG 2010)
Activity	Generation, consumption, storage, sale of renewable energy. Provision of aggregation and other energy services. (Sec 79 para 1 EAG).	Generation, consumption, storage, sale of electrical energy. Provision of aggregation and other energy services, such as energy efficiency services or charging services for electric vehicles. (Sec 16b para 1 ElWOG 2010). No restriction to renewable sources.
Participation & Membership	Members or shareholders may be natural persons, municipalities, legal entities of public authorities in relation to local services and other legal entities under public law or small and medium-sized enterprises. In the case of private companies, participation must not be their main commercial or professional activity (Sec 79 para 2 EAG); thus, large companies and, in general, electricity and natural gas companies within the meaning of the ElWOG 2010 and the GWG 2011 are excluded; however, the participation of generators supplying electrical energy to a grid in the local or regional area is permitted, provided that these generators are not controlled by a supplier, electricity trader or supplier within the meaning of the ElWOG 2010 (Sec 16c para 1 ElWOG 2010).	Members and shareholders may be natural persons, legal entities and local authorities (Sec 16b para 2 ElWOG 2010). Restriction of decision-making powers to members which do not engage in commercial activities on a large scale and for which the energy industry is not the primary area of business activity; large and medium-sized enterprises and those enterprises which have the function of an electricity undertaking within the meaning of Sec 7 para 1 cif 11 ElWOG 2010 are excluded from control (Sec 16b para 3 ElWOG 2010).
Ownership relations related to generation facilities	Owners can be the community itself, its members, shareholders or third parties. The power of operation and disposal over the generation plants (with the exception of the self-consumption of members who bring in a generation plant) shall lie with the energy community. With regard to operation and maintenance, the community may use a third party. In particular, contract and leasing models are permissible.	
Surplus-energy	The community can conclude a purchase agreement with an electricity trader for the surplus energy not used; alternatively, this can also be allocated to the individual members according to their ideal share.	
Power production & consumption	The quantities of electricity generated and consumed within an energy pool shall remain outside the balancing group system; the provisions of the ElWOG 2010 applicable to electricity traders or suppliers shall not apply in the internal relationship. Furthermore, the provisions	

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	contained in the EAG, the ElWOG 2010 and the GWG 2011 regarding guarantees of origin, electricity or gas labeling and invoicing do not apply in the internal relationship.	
Relationship EC & network operator	The energy community must conclude a grid access contract with the grid operator for each generation plant. In the case of existing grid access contracts, the energy community can enter into the contractual relationship with the grid operator instead of the owner of the generation plant. Initially, a generation plant can only belong to one community at a time (from 1 January 2022 membership with a consumption or generation plant in more than one BEG or EEG is also to be permitted). Grid users have a legal claim against grid operators to be allowed to participate in energy communities. Accordingly, distribution system operators are obliged to cooperate in order to facilitate energy transfers within energy communities as well as the feed-in of surplus quantities. Energy communities can also be owners and operators of a distribution network themselves.	

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