

German real estate sector to play its part in fostering e-mobility

June 2, 2020 (updated on February 16, 2020)

The CDU/CSU and SPD parties introduced a legislative draft on the expansion of e-mobility on May 5, 2020 (*Gebäude-Elektromobilitätsgesetz* – “**GEIG**”, BT-Drucks. 19/18962). The draft implements EU Directive 2018/844 dated May 30, 2018, into German law. The new regime aims to facilitate the charging of electric vehicles (i.e. at home, at work and during everyday activities).

After the *Bundesratsausschuss* (Federal Council Committee) recommended changes to an earlier draft submitted in March, the parliamentary groups of CDU/CSU and SPD brought forward a slightly modified version of the new bill. The first reading took place on May 7, 2020. The relevant parliamentary committee has now published a drafting aid for the bill (BT-Drucks.-19.26587 – February 10, 2021). This represents an amendment to the previous draft and will be presented to the Bundestag for a second reading. An exact date is not yet scheduled.

The modifications resulting from this amendment represent a stricter approach. The federal government is tightening the reins on the framework conditions for the fostering of e-mobility.

Implications for residential housing

According to the new legislation, each new residential building with 6 or more parking spaces shall be equipped with the cable infrastructure necessary for the potential later instalment of e-chargers. This shall be mandatory for new residential housing projects seeking approval after March 11, 2021. The required cable infrastructure initially comprises empty conduits suitable for electrical and data cables. Additionally, the owner shall provide the necessary space for smart meters and protection elements. The bill is supposed to support the future deployment of e-charging facilities. However, the obligation to build the necessary cable infrastructure does not include the setting up of any real e-chargers. Nonetheless, the thereby already available possibility to install e-charging infrastructure will lower the hurdle to install charging stations when needed in the future.

Implications for non-residential real estate

New non-residential buildings with more than 6 parking spaces will have to include e-chargers for every third parking space. In addition, new projects for non-residential buildings do have to include at least one charging station for actual usage. Furthermore, there has to be set up a charging station at existing non-residential buildings with more than 20 parking spaces from January 1, 2025, onwards. If an owner has the obligation to equip more than one non-residential building with a charging station, he may also fulfil the obligation by installing the total number of charging stations to be installed together in one or more of his properties.

Pursuant to directive EU 2018/844, non-residential means all buildings for – predominantly – other purposes than housing. Nursing homes, dormitories and similar establishments qualify as residential buildings. The new bill does not

apply to buildings that are owned by SMEs in cases where the SME is the primary user of the building. This is in accordance with the requirements set out by the EU in order to prevent inappropriate financial burdens on SMEs.

Mixed-use building

Mixed-use buildings are regarded as partially residential and partially non-residential according to their use: those parts of a non-residential building that provide for housing qualify as residential and vice versa. The predominant use qualifies the building either as residential or non-residential. E.g., the project is regarded as residential as a whole if the non-residential part is insignificant. This shall namely be the case where pre-dominantly residential buildings are also used for medical, legal and tax service purposes.

Builders or owners whose buildings are (deutsch: *Quartier*) may enter into agreements to jointly equip parking spaces with line infrastructure or charging stations in order to fulfil the respective requirements. The same applies to residential and non-residential real estate.

Scope of application

Generally, the GEIG only applies to new buildings. However, buildings that are subject to huge refurbishments, e.g. of more than 25 percent of their facade and which have 10 or more parking spaces, also fall within the scope of the GEIG. The Bundesrat criticized this approach, deeming it rather pointless, the argument being that there is no connection between refurbishing a building's façade, on the one hand, and its electric infrastructure and parking, on the other. In this context, it was proposed that the refurbishment of the infrastructure or parking spaces should be the point of reference. It remains to be seen whether this approach prevails at the end of the legislative process or not.

Another exception regarding the requirements of cable and charging infrastructure is granted for existing buildings if the cost for erecting the relevant infrastructure exceeds 7 percent of the overall costs for refurbishment.

Possible effects

The new bill may lead to significant additional costs for refurbishments of existing buildings. Other than for new buildings, it is not possible to plan to build the required charging infrastructure right from the beginning. Thus, the legal requirements should take into consideration the technical feasibility and the existing condition of the building.

For rented residential buildings, setting up new charging stations shall be considered as a means of modernization. Based on German law, the cost for setting up such a charging station as a means of modernization could then be re-allocated to the tenant. This, however, might lead to unpopular rent increases.

Unfortunately, the draft disregards the tax effects of landlords running a charging station on their property. Lending fixtures, such as charging stations, can negatively affect landlords' ability to benefit from an extended trade tax reduction. Therefore, companies that rent out buildings with one or more charging station at the same time have to pay trade tax and cannot benefit from the extended trade tax reduction. This circumstance will become even more of a focus of the tax law assessment in future leases and transactions of buildings. It may make it necessary to separate the charging station for tax purposes (cf. the most recent ruling of the Federal Court of Finance on the co-letting of fixtures that is detrimental to trade tax of November 28, 2019, III R 34/17).

Considering this, it would be a sensible move of the legislator to make the lending of charging stations tax exempt, making such business more beneficial from a tax perspective. The Bundesrat also proposed such an exception in its statement from May 15, 2020 (BT-Drucks. 19/19366).

Consequences for violation

The addressee of measures is the property owner. An administrative offence is committed in case the requirements set out by the new regime are intentionally or negligently not fulfilled. Fines can amount up to €10,000.

Opinion/Statement

The new provisions will transform the directive EU 2018/844 into German law. Furthermore, the new legislation adds another pillar to the German *Klimapakt 2030* (German Climate Pact 2030) in which the German government set a goal of seven million registered electric cars by 2030. The expansion of cable and charging infrastructure will foster this ambitious goal. Accordingly, the Klimapakt 2030 aims for one million charging stations by 2030.

This clearly shows that e-mobility is the politically preferred mode of driving, while the consequences for other sustainable means of mobility, e.g. fuel cells, remains to be seen.

Takeaways during the transformation process

- Provisions address owners of residential and non-residential buildings;
- Generally, the scope of application are new buildings, while there are a few exceptions for existing buildings that undergo refurbishment;
- Trade tax effects should be closely monitored.

If you have any questions on the topic do not hesitate to contact one of our experts.

Your Key Contacts



Sabine Wieduwilt
Partner, Frankfurt
D +49 69 45 00 12 186
sabine.wieduwilt@dentons.com



Dr. Gabriele Haas
Partner, Frankfurt
D +49 69 45 00 12 393
M +49 160 5065 769
gabriele.haas@dentons.com



Thomas Schubert
Partner, Berlin
D +49 30 26473 430
M +49 1511 6734 227
thomas.schubert@dentons.com



Dr. Dominik Thomer
Partner, Düsseldorf
D +49 211 74074 251
M +49 171 5650 703
dominik.thomer@dentons.com