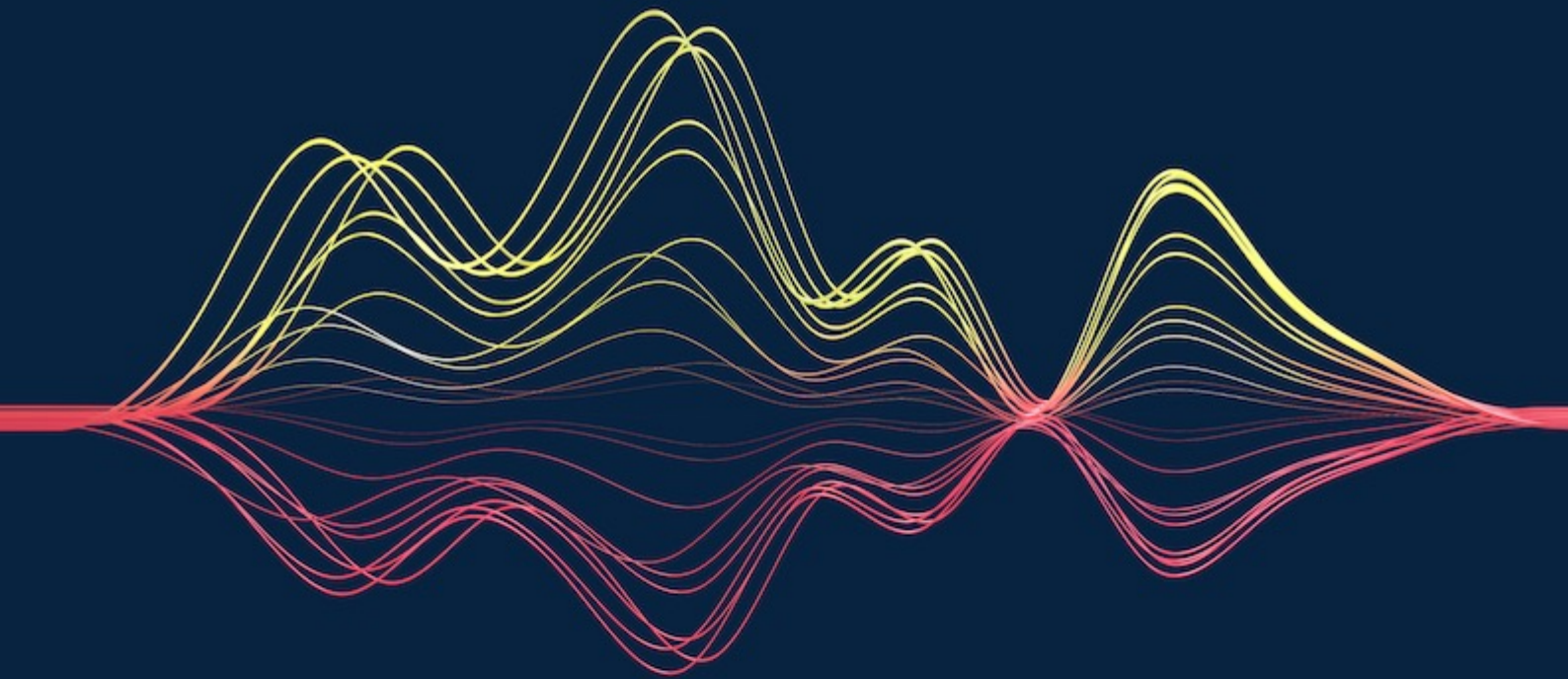


GERMANY

Corporate Power Purchase Agreements





Germany

Last modified 16 December 2020

PPA structures and parties involved

To what extent are corporate PPAs presently deployed and what sort of structure do they take?

Although corporate PPAs are generally permitted in Germany, they are not widely deployed. This is mainly due to the way in which the German renewable energy support scheme works.

In Germany, when marketing electricity generated through renewable energy sources, provided they meet certain criteria, installation operators generally have two options: they will either use (1) a form of financially supported marketing which allows operators to benefit from a "market premium" (which is a financial bonus for the operators of systems that generate energy from renewable sources and market their power directly on the free energy market), or (2) the so-called "other direct marketing form" (*sonstige Direktvermarktung*), which is not financially supported.

Being able to utilize the "market premium" method mitigates market price risks and provides installation operators with a degree of comfort regarding their revenues. However, a precondition of being able to benefit from the market premium is that the installation operator must transfer the right to label electricity produced in the installation as 'electricity generated in renewable energy installations' to the competent network operator. If the installation operator transfers this right in order to utilize the market premium, it will no longer be permitted to also sell electricity as green energy to third party purchasers because to do so would cause it to be in breach of the so-called prohibition of multiple sales (*Doppelvermarktungsverbot*) under the German Renewable Energy Act.

For new installation operators, corporate PPAs for the supply of green energy are only permitted under the German Renewable Energy Act where the electricity is marketed by way of the "other direct marketing form". Accordingly, operators of new installations cannot benefit from the "market premium". This often makes corporate PPAs financially less attractive to operators of new installations and/or corporations/utilities as potential counterparties.

The situation may be different where market prices of electricity from renewable energy installations continue to move towards grid parity, meaning operators of new installations would not need to rely on the financial support offered under the "market premium" method. Further, the increasing desire of companies to be (or at least appear) sustainable means that many companies are willing to pay a higher price for green labelled energy. As a result, installation operators may opt for the "other direct marketing form" as doing so becomes increasingly financially rewarding.

Moreover, the financial support offered under the "market premium" method is for a finite period of 20 years only. Corporate PPAs are, therefore, beginning to play an important role for existing installations that, after 20 years following their commissioning, fall outside of the support scheme.

The development of standardised documentation for PPAs (e.g. as recently endorsed by the European Federation of Energy Traders - EFET) will likely lead to further interest in corporate PPAs in the German market and facilitate further engagement in them.

Finally, interest in PPAs might further increase where the above-mentioned prohibition of multiple sales (*Doppelvermarktungsverbot*) under the German Renewable Energy Act is eased. In this respect, there is a growing debate on the limitations for the further development of renewable energy production in Germany this prohibition is creating.

Do the country's regulators allow corporate owners to purchase (1) directly from a facility, or (2) from a choice of suppliers?

Yes. Direct purchases from a renewable energy installation operator and purchases from a choice of suppliers are both generally possible.

Other than the generator and the off-taker, are any third parties commonly party to the PPA structure (e.g. a utility or other market agent)?

To date, there have been few corporate PPAs deployed in Germany and there is little publicly available information on the specifics of relevant transactions. As a result, it is difficult to comment on common PPA structures and it is unclear, for example, how frequently intermediate marketing companies and/or third parties providing balancing services become part of PPA structures. Still, it seems not to be uncommon that utilities or trading companies become intermediaries to renewable energy installation operators and corporate offtakers.

Is a generator permitted to sell electricity directly to an end user? If so, do they require a licence or other form of authorization?

Save in circumstances where energy supply companies are supplying household consumers, there is no licence (or other form of authorisation or notification) requirement for a generator to sell electricity directly to an end user. However, registration with the market master data register (*Marktstammdatenregister*) will be required. Also notification requirements and tax related requirements may apply.

Challenges

What are some of the technical, political, financial or regulatory challenges to corporations adopting green energy in the short/medium term in your country and how have these challenges been overcome (or how can they be overcome)?

The challenges for corporations in adopting green energy are largely of a financial nature. In general, renewable energy generators are only willing to sell renewable electricity to corporations by way of "direct marketing", where they can be certain they will receive the market price in return for the electricity they provide, as well as the financial support payment (which a generator would otherwise receive from the network operator for the utilisation of the "market premium" (for new installations)). For these reasons, and until market prices of renewable installations reach (or at least come close to) grid parity, corporations are often reluctant to use corporate PPAs unless they are specifically willing to pay a higher price for green labelled energy.

However, as financial support under the "market premium" method has reduced substantially since the introduction of a tendering process to determine the "market premium" (with support of 0 Euroct./kWh in some of the recent offshore wind auctions), it is likely that corporate PPAs will start to play a greater role for renewable energy generators and corporate buyers. Also, the development of standardised documentation and potential amendments to the prohibition of multiple sales (*Doppelvermarktungsverbot*) under the German Renewable Energy Act may further support the development of this market.

Regulatory changes

Are there any anticipated regulatory changes which will alter the regulatory landscape for corporate green energy and corporate PPAs?

For new installations which may benefit from financial support under the "market premium" model, there are currently a number of financial obstacles to entering into a corporate PPA in Germany as a result of current regulations.

However, the German regulatory framework in relation to renewable energy is constantly under review and development. As such, amendments may be brought in to encourage the deployment of corporate PPAs.

The German Federal Government has commissioned a study to ascertain how the current support schemes may be further developed, and whether, for example, the introduction of Contracts for Differences (CfDs) may be appropriate (especially in order to reduce the need for statutory support). The study also aims to address whether alternative marketing forms (such as corporate PPAs) may be effectively

utilised. However, as the results from this study are not expected until autumn 2021 (following which any proposed legislation or regulations would need to be developed), substantial short term changes to the regulatory framework in Germany in relation to renewable energy are unlikely.

Nevertheless, the introduction of tendering and auction processes and the reduction in financial support payments for the production and sale of renewable energy, together with the growing appetite of corporate buyers for this type of energy, mean that it is likely that Germany will see an increase in the frequency of corporate PPAs. As highlighted above, also a potential loosening of the prohibition of multiple sales (*Doppelvermarktungsverbot*) under the German Renewable Energy Act could enhance interest in corporate PPAs.

Incentives and benefits

What is the corporate appetite for green energy, including any political or financial incentives available to corporates to adopt green energy?

There are no general political or financial incentives for corporations to adopt green energy. Corporate appetite for green energy is mainly driven by the desire of companies to be, or appear to be, sustainable (for example, in circumstances where a company has made various environmental commitments in furtherance of its level of sustainability). In light of climate change concerns and the growing public debate on sustainability of commercial activities, we expect that the corporate appetite for green energy will increase further in the near future.

What are the key local advantages of the corporate PPA model which can benefit our clients?

The corporate PPA model enables German corporations to be recognised for their renewable energy achievements, potentially giving rise to reputational benefits. Corporate PPAs may also enable corporations to improve their ecological footprint and assist them to meet their sustainability commitments.

What subsidies are applicable to the generation and sale of renewable energy?

The main subsidy or financial support for generating and selling electricity from renewable energy sources is by way of the payment of a "market premium" and, in exceptional cases, by way of a fixed feed-in tariff. In cases where an installation operator does not claim any financial support, there is the opportunity to obtain guarantees of origin (*Herkunftsnachweise* – GoO).

Does your country implement a national support scheme with tradable green certificates (such as guarantees of origins)?

Upon request of the installation operator, and where no support payment (i.e. especially no market premium or feed-in tariff) has been claimed by the installation operator for the relevant amounts of electricity, the German Federal Environmental Agency (*Umweltbundesamt*) may issue guarantees of origin (*Herkunftsnachweise* – GoO) for electricity generated by renewable energy sources, which may be used for trading purposes.

German law additionally provides for the issuance and transfer of guarantees of regional origin (*Regionálnachweise* – GoROs). However, GoROs can only be transferred along the contractual supply chain of the electricity for which they have been issued.

Typical PPA terms and risk allocation

To the extent corporate PPAs are deployed, how are prices, terms and risks affected?

Topic	Details
Do prices tend to be floating or fixed?	To date there have been very few corporate PPAs deployed in Germany and there is a lack of publicly available information on the specifics of relevant transactions.

In many cases, corporate PPAs have only been used for marketing the production and sale of renewable energy from existing installations that – after 20 years following their commissioning – fall outside the support scheme. Therefore, at this stage, it is difficult to comment on general trends.

What term is typically agreed for the PPAs?	As above
Are the PPAs take-or-pay or limited volume?	As above
Are there any other typical risks?	As above

To the extent corporate PPAs are deployed, in whose favour will the risks typically be balanced?

Type of risk	Details
Volume risk	<p>To date there have been very few corporate PPAs deployed in Germany and there is a lack of publicly available information on the specifics of relevant transactions.</p> <p>In many cases, corporate PPAs have only been used for marketing the production and sale of renewable energy from existing installations that – after 20 years following their commissioning – fall outside the support scheme. Therefore, at this stage, it is difficult to comment on general trends.</p>
Change in law	As above
Increase / reduction of benefits	As above
Market liberalisation (if applicable)	As above
Credit risk	As above
Imbalance power risk	As above
Production profile risk	As above

Balancing

Does your country operate a balancing responsibility scheme?

There is a balancing responsibility scheme in Germany. The feed-in and offtake of electricity will be allocated to a specific balancing group assigned to a so-called "balancing responsible party". Relevant balancing groups are held and administered by the competent German electricity TSOs on the basis of contractual agreements between TSOs and the balancing responsible parties.

If your country operates a balancing responsibility scheme, who is the balancing authority and do the generator and offtaker typically undertake balancing themselves?

Relevant balancing groups are held and administered by the competent German electricity TSOs on the basis of contractual agreements with the balancing responsible parties.

In the German market, generators commonly assign balancing activities to third parties, such as direct marketing companies (*Direktvermarktungsunternehmen*) who will then often also act as balancing responsible party towards the TSO. However, the relevant balancing responsible party could potentially also be the generator or the offtaker themselves.

Significant transactions

What significant transactions/deals have taken place in the last 12-18 months?

There have been a number of recent PPA transactions relating to existing installations which have fallen outside the support scheme. In most cases, however, these PPAs have been concluded between the installation operators and utility companies, rather than directly between installation operators and corporations. Mercedes-Benz recently claimed to be the first corporate customer entering into a PPA relating to wind installations which fell outside of the support scheme. Also German technology group Bosch announced the conclusion of long-term (12 to 16 years) PPAs with RWE, Statkraft and Vattenfall each relating to solar installations.

There have also been transactions in relation to installations currently under development. For example, Energiekontor and Innogy had agreed on a PPA regarding a solar energy power plant under development.

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