



vonBredow Valentin Herz

Grüne Energie hat Recht.

Selling electricity from PV directly to third parties: opportunities and obstacles in Germany

PV Financing Workshop:

“Suitable Business Models & Financial Schemes for PV development in Europe”

Brussels, February 19, 2016

Dr. Steffen Herz

About us...



We offer comprehensive legal support for projects in the field of renewable energy and CPH

- ▶ Conceptual and strategic advice
- ▶ Drafting and reviewing of contracts
- ▶ Expert analysis of legal inquiries
- ▶ Representation in administrative proceedings, proceedings concerning energy industry law and civil litigations

Our clients are plant operators, utilities, project developers, equipment manufacturers, energy traders, farms and financing banks.

Facts:

- **7 attorneys**
- **seated in Berlin-Mitte**
- **We speak: German, English, Spanish, Italian, French**

Content



Facts and Figures

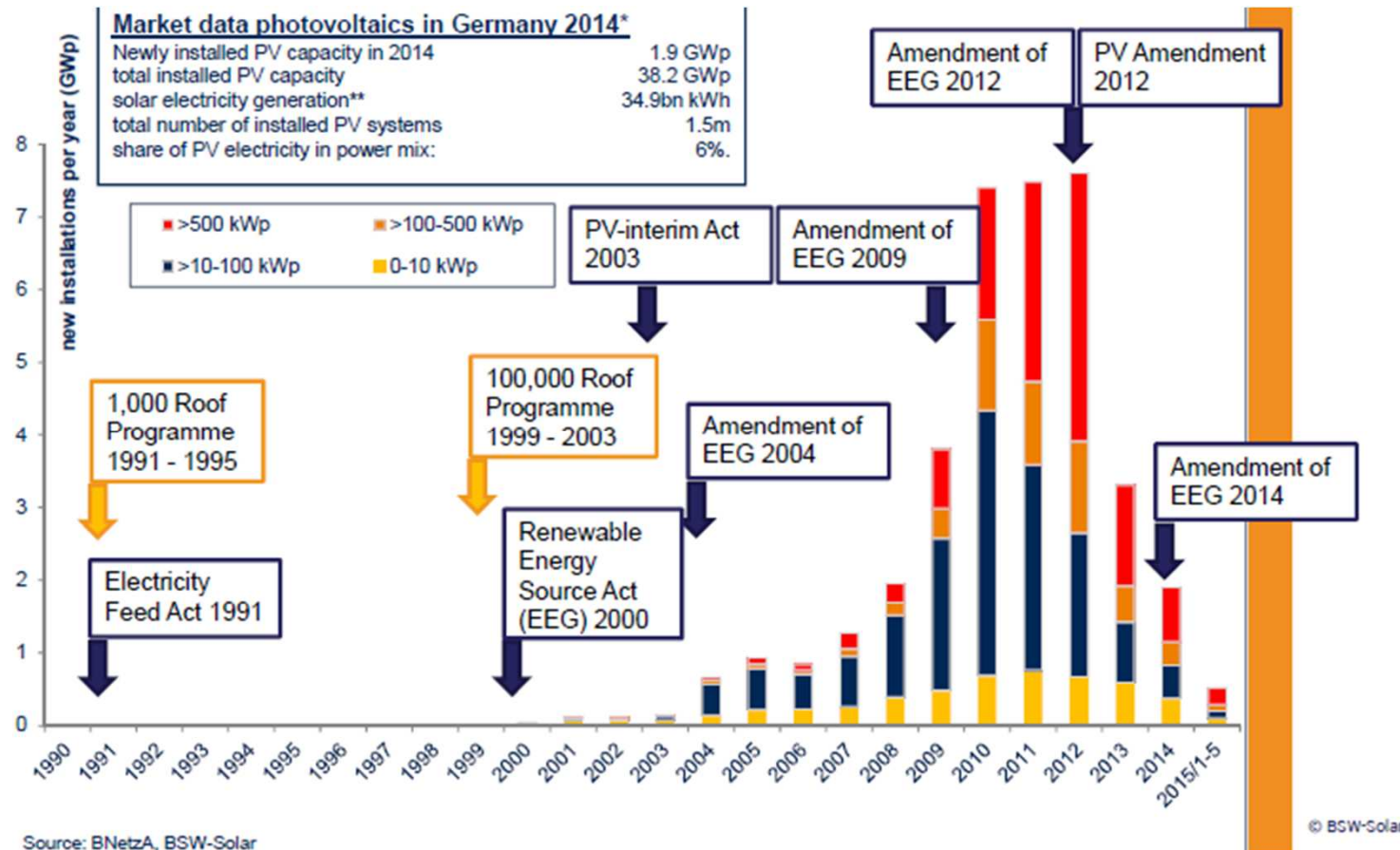
Legal Framework

**Local Direct Selling as
a Business Model**

Obstacles

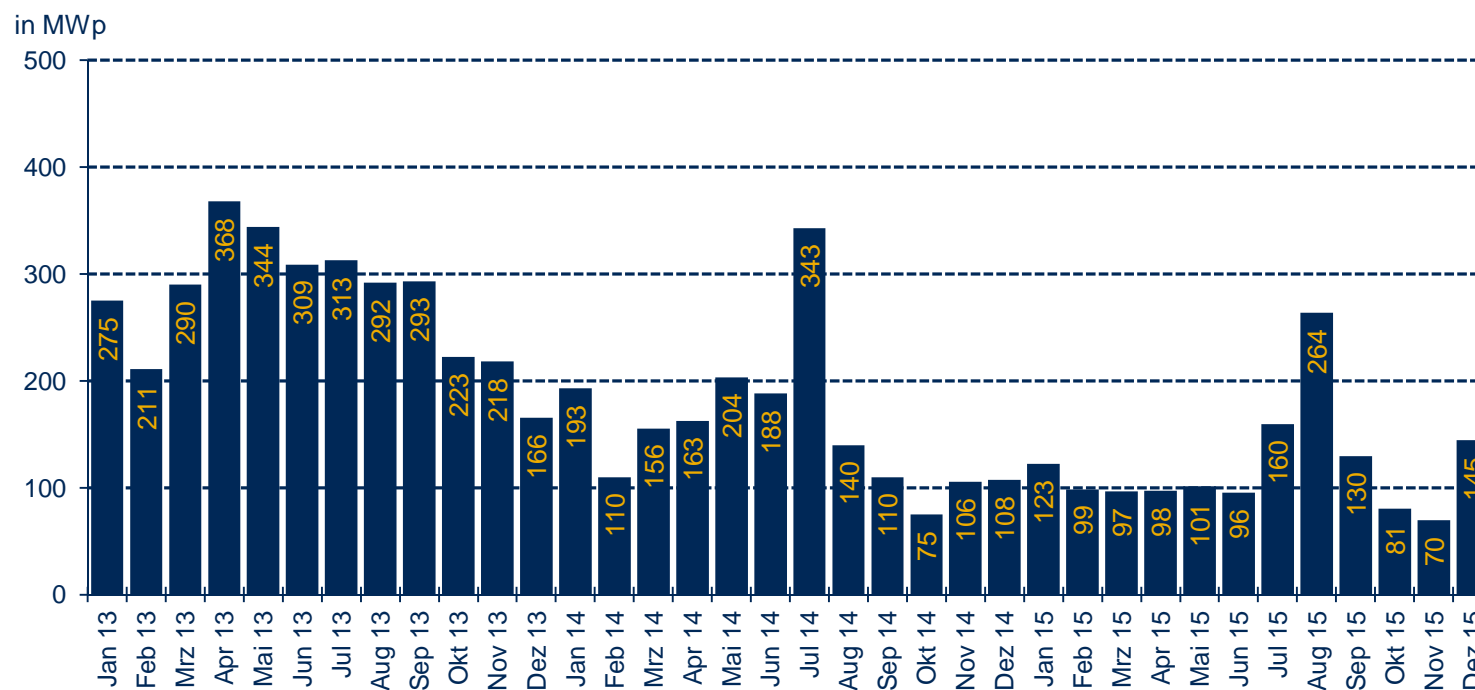


Feed-in-Tariffs as market drivers





New PV-Installations per month (2013 – 2015)

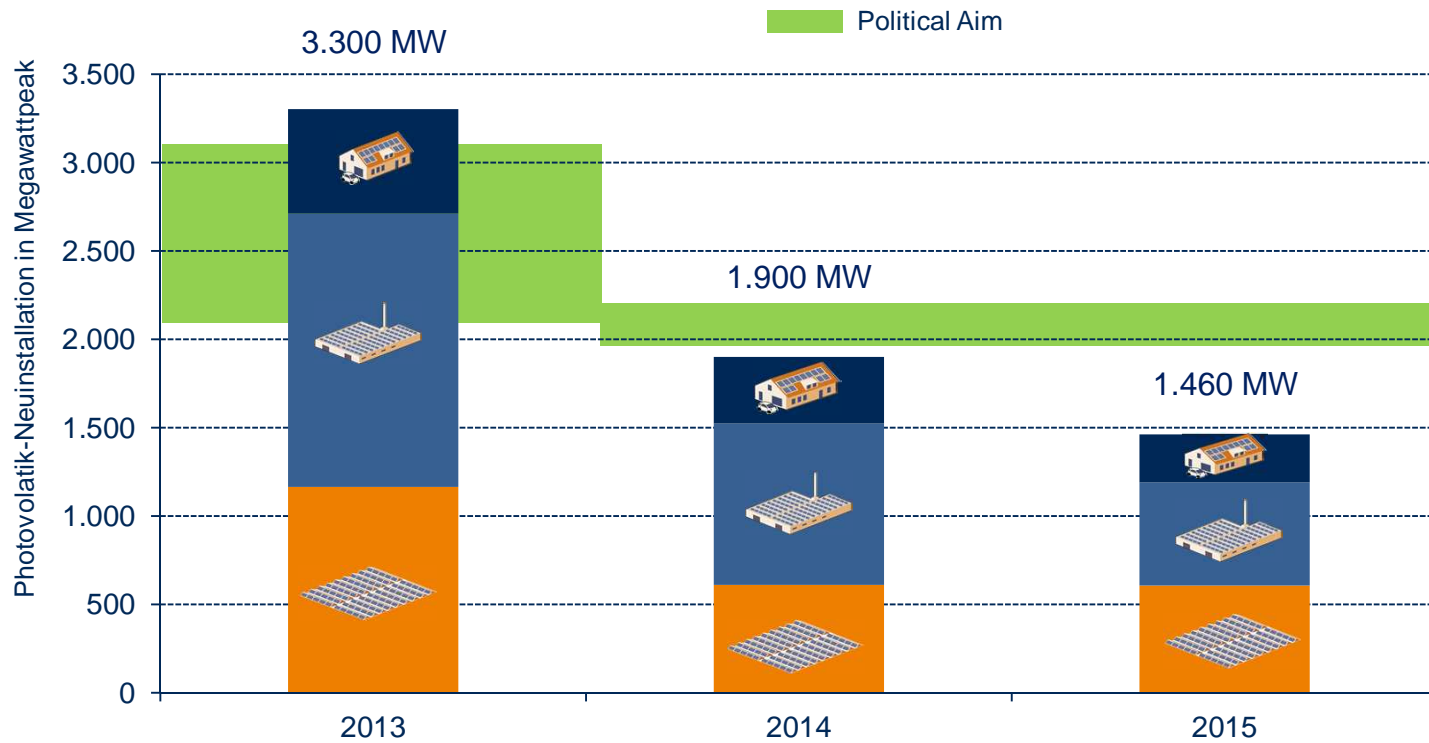


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Source: BNetzA, BSW-Solar

Without special effects, ca. 100 MWp new PV-installations per month on average

Political aims were missed 2 years in a row

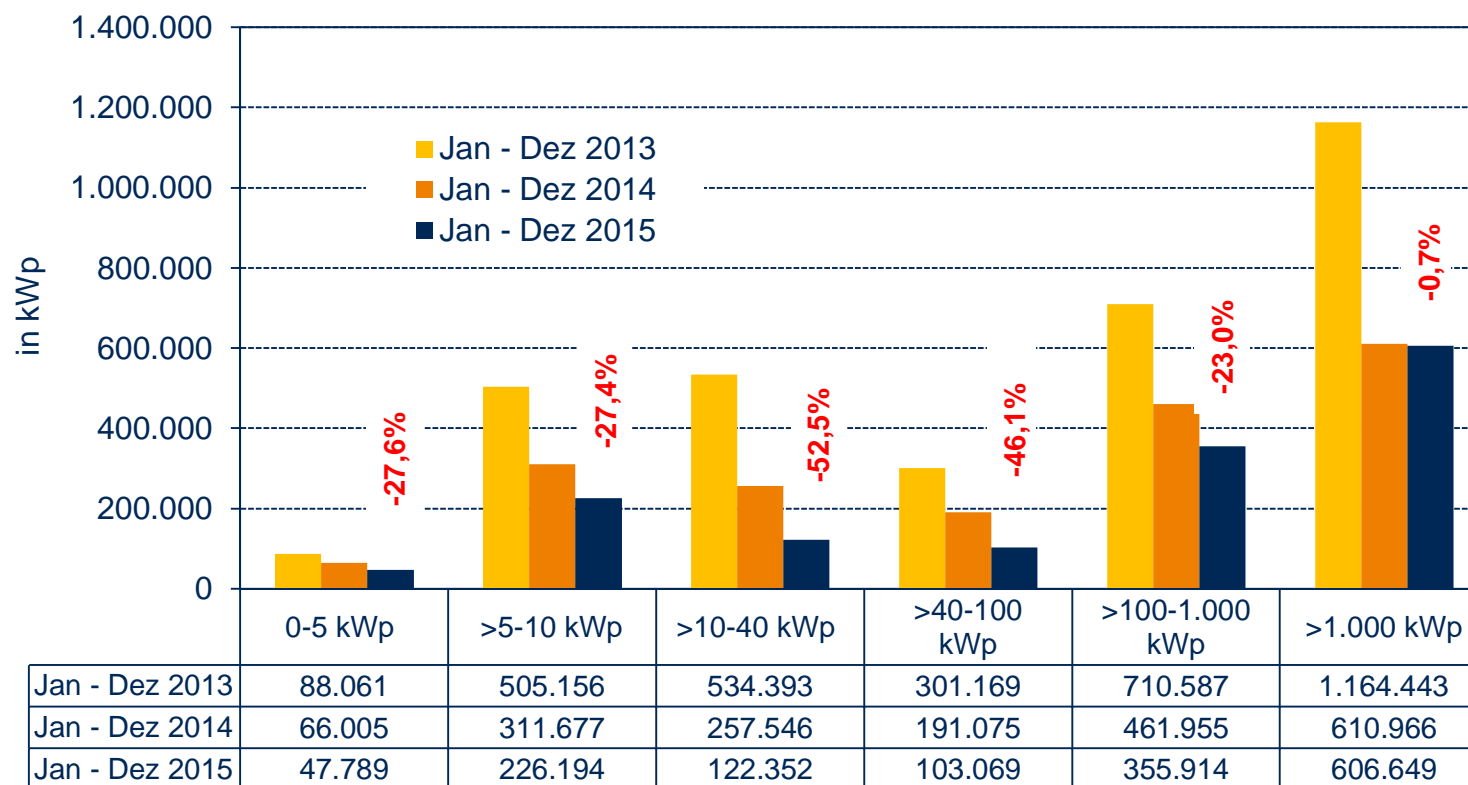


Source: BNetzA, BSW-Solar

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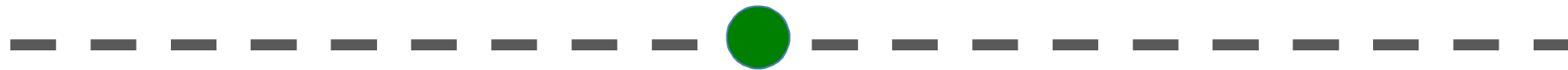
Less new installations in all segments



Source: BSW-Solar, BNetzA

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Obstacles

Relevant Legal Framework

☺ Renewable Energy Source Act (RESA)

-▶ Feed-in tariffs
-▶ Technical requirements
-▶ RESA-surcharge

☺ Energy Industry Law

-▶ General obligations for energy suppliers
-▶ Labeling of electricity
-▶ Contract design
-▶ Reporting obligations
-▶ Grid costs
-▶ Grid operation
-▶ Measurement

☺ Civil Code

-▶ Contract design
-▶ Law on General Terms of Service

☺ Energy Tax Law

☺ Tax law

-▶ Business tax
-▶ Income tax
-▶ VAT

How does it work? The three central principles of RESA

🕒 Priority access

.....▶ RESA plants are granted priority access to electricity grids.

🕒 Priority purchase and transmission

.....▶ of all electricity from renewable energy sources.

🕒 Guaranteed fixed minimum feed-in fees

.....▶ to be paid for electricity generated in these plants using renewable energy sources only.

Guaranteed fixed minimum feed-in fees

U Guaranteed period of fixed feed-in fee payment

.....► 20 calendar years following the date of commissioning, plus the remaining year of commissioning

U Minimum feed-in fees may not be reduced by contract, the amount of fees depends on various factors:

.....► The type of renewable energy source

.....► The plant's capacity (sliding scale fees)

.....► The year of commissioning

- Statutory annual degression depends on year of commissioning
- Once commissioned, a plant is granted the same feed-in fee of the commissioning year over the full feed-in period of 20 years!

Changes in RESA 2014 concerning direct selling

🕒 New funding scheme

-▶ Instead of fixed feed-in tariffs direct marketing as a rule
-▶ Feed-in tariffs only as an exemption (existing and small plants
≤ 100 kW (since 2016), 80 % of the guaranteed fee in „emergency“ situations)
-▶ From 2017 on funding granted through tenders (amount of funding determined by tender)

🕒 Deletion of the „Solar Greenpower Privileg“

-▶ No further reduction of 2 ct/kWh on the RESA surcharge for the local direct selling of Solar-Power

🕒 Introduction of a partial RESA surcharge on self supply

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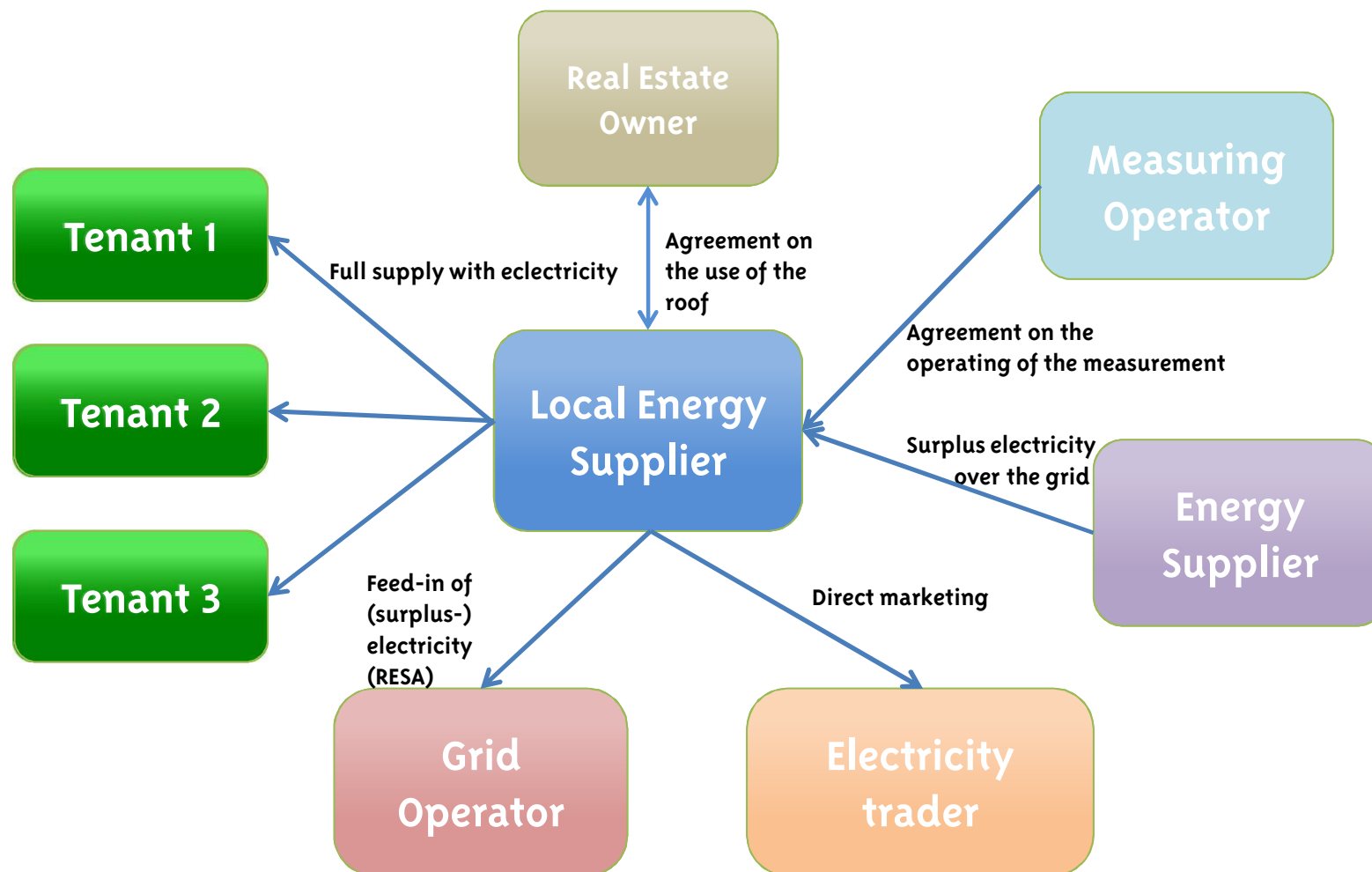
Obstacles

Definition of local direct selling / „Tenant Power“

- ☺ Decentral produced electricity from PV-Plants (and/or CHP-Plants, energy storage facilities, etc.) used on site by commercial or private users of a facility
- ☺ No feeding-in or transmission over the public electricity grid
- ☺ No feed-in tariff or other direct subsidies for the electricity



Stakeholders and legal relations



Tax and levy exemptions in Germany

- U Exemption for Energy tax (2,05 ct/kWh)
 -▶ Energy from a renewable-energy-grid
 -▶ Energy from decentralized small plants (< 2MW)

- U Exemption for concession fee, CHP-levy, offshore levy and grid costs
 -▶ If public electricity grid is not used (e.g. when landlord delivers energy directly to tenants with CHP or solar power or self supply)



Savings in numbers

Savings with local direct selling	
Network Costs	~ 5,76 ct/kWh
Concession Fee	~ 1,66 ct/kWh
CHP-Levy	0,445 ct/kWh
§ 19 StromNEV-Levy	0,378 ct/kWh
Offshore-Levy	0,04 ct/kWh
Energy Tax	2,05 ct/kWh
Summe (Ø, brutto)	10,33 ct/kWh

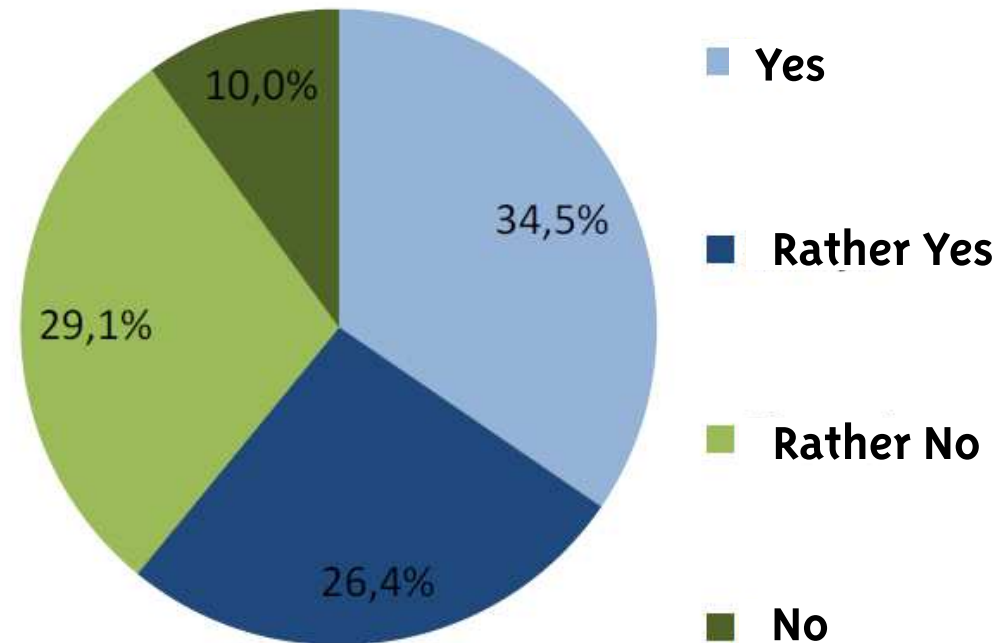
(Assumptions: 2016; Household with 3.500 kWh)

Potential for direct selling in real estate

- U 1 - 1,5 million private or commercial apartment buildings
- U GdW (= German Real Estate Association): A potential of up to 3,4 Mio. apartments for „Tenant Power“ (20 % of the flats in apartment buildings).
- U Other target groups:
 -▶ Owners of apartments
 -▶ Commercial tenants, e.g. in shopping malls
- U Possible providers
 -▶ Landlords
 -▶ Energy suppliers
 -▶ Contractors
 -▶ Cooperatives
 -▶ ...

Interest in the real estate industry

🔄 Is tenant power a potential business model for your company?



Number of Answers: 110

Source: „Möglichkeiten der Wohnungswirtschaft
zum Einstieg in die Erzeugung und Vermarktung elektrischer Energie“,
Endbericht des IWU

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Full RESA surcharge

- 🕒 Strict personal identity between producer and consumer as legal requirement for a self supply and even then only a reduced RESA Surcharge (40 %) applies
- 🕒 Hardly ever met in direct selling or tenant power models with many participants
- 🕒 Therefore full RESA surcharge of 6,354 ct/kWh (2016) applies
- 🕒 Solution:
 -▶ Reduced RESA Surcharge for local direct selling models (possibly with additional requirement)
 -▶ Politically rather not feasible

Full business tax

- ☺ Reduced business tax for real estate businesses in Germany
- ☺ If companies include additional economic activity, like e.g. tenant power, they loose this privilege
- ☺ Solution:
 -▶ Extansion/change of the relevant tax law

Measuring concept

- 🕒 Direct selling and tenant power require complicated and expensive measuring concepts
- 🕒 Reason: Legal requirements of the Energy Industry Law
- 🕒 Solution:
 -▶ Change of the relevant clauses of the Energy Industry Law or implementation of exceptions
 -▶ In individual cases: agreement with the electricity grid operator

THANKS FOR THE ATTENTION!

PLEASE DO NOT HESITATE TO ASK QUESTIONS.....



Grüne Energie hat Recht.

Dr. Steffen Herz

herz@vbrvh.de

von Bredow Valentin Herz

Partnerschaft von Rechtsanwälten mbB

Littenstraße 105

10179 Berlin

T: +49-30-8092482-20

F: +49-30-8092482-30

info@vbrvh.de

www.vonbredow-valentin-herz.de