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New Challenges for the Solar Industry in 2012

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Within the first three months this year, two legislative changes in Germany and on EU level have been adopted that will bring weighty challenges to the solar industry.

Firstly, the Federal Parliament (Bundestag) adopted the **Act on changes of the legal framework for electricity from solar energy** on March 29, 2012. The exceedingly quick legislative procedure – the cabinet only introduced the bill on February 29, 2012 – was accompanied by considerable criticism from the solar industry. The agreed version of the law has dropped some of the most controversial points and enhanced protection of legitimate expectation with broader interim provisions. This new amendment of the Renewable Energy Act 2012 (EEG), which only came into effect at the beginning of the year, involves a **considerable decrease of the feed-in tariffs for solar energy** and a revision of the system of degressive tariffs.

The European Parliament had previously decided on an amendment of the Waste Electrical and Electronic Equipment Directive (so-called **WEEE-Directive**) on January 19, 2012, providing, inter alia, for an inclusion of photovoltaic modules into the regime of the Directive, with the consequence that manufacturers will have to comply with **manufacturer duties for electronic equipment**.

Overview of the EEG Amendment

The EEG amendment is intended to cut down the “excessive promotion” in the area of solar energy. Therefore, the legislation centres on the decrease of the feed-in tariff, amid reform of the system of solar energy promotion. In particular, facilities with an installed capacity of more than 10 MW will receive no further promotion above this margin.

An overview of the tariffs (all in Cent/kWh):

Current Regulation	Rooftop Facilities				Green Field Facilities	
	up to 30 kW	up to 100 kW	up to 1 MW	over 1 MW	Conversion site	Other green field facilities
	24.43	23.23	21.98	18.33	18.76	17.94
New Regulation	Rooftop Facilities			Green Field Facilities		
	up to 10 kW	up to 1 MW		up to 10 MW	up to 10 MW	
	19.50	16.50		13.50	13.50	

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Furthermore, Section 33 EEG introduces a so-called market integration model, limiting the amount of generated electricity eligible to receive the feed-in tariffs for small and medium size facilities. The limits are 80 percent of the annually produced electricity for facilities with a capacity of up to 10 KW, and 90 percent for facilities with a capacity between 10 KW and 1 MW. Beyond these limits the feed-in tariff is reduced to the market value calculated according to Appendix 4 of the EEG.

According to Section 20b EEG, the feed-in tariffs for new facilities are reduced by 1 percent each month, starting from May 1, 2012. That means that the annual degression will reach 11.4 percent. Additionally, the system of tariff adjustment relative to the overall annual capacity increase (so-called 'breathing cap') is being altered: the range of annual capacity increase within which the tariff will remain unadjusted (so-called increase range) is set at 2,500–3,500 MW for 2012 and 2013. The increase range will be lowered by 400 MW each year, so that in 2017 a range of 900–1,900 MW will be applicable. Under the new system, the monthly tariff reductions will be adjusted every three months in case the capacity increase has exceeded or fallen short of the increase range in the previous reference period. The reference period will be the previous 12 months and up to August 1, 2013 shorter periods will be used to extrapolate annual figures.

Overview of the tariff degression:

Capacity Increase	"Breathing Cap" (percentage points vis-à-vis basal monthly decrease)	Monthly Decrease (valid three months)
more than 7,500 MW	+ 1.8	- 2.8 %
more than 6,500 MW	+ 1.5	- 2.5 %
more than 5,500 MW	+ 1.2	- 2.2 %
more than 4,500 MW	+ 0.8	- 1.8 %
more than 3,500 MW	+ 0.4	- 1.4 %
2,500 – 3,500 MW (increase range)	—	- 1 %
more than 2,000 MW	- 0.25	- 0.75 %
more than 1,500 MW	- 0.5	- 0.5 %
more than 1,000 MW	- 1	0 %
below 1,000 MW	- 1	0 % (one-time increase at 1.5 %)

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Interim Provisions of the EEG

The new tariff regulation will come into force on April 1, 2012. Due to this retroactive application, constitutional concerns have been raised in the legislative process. To address this, the law now includes broader interim provisions that grant protection of legitimate expectation to investments already made.

The present tariffs will apply to all **rooftop facilities** in operation before July 1, 2012, if the application for connection to the grid was filed prior to February 24, 2012. It must be taken into account however, that the new, narrower definition of 'in operation' already applies, requiring that the facility and the equipment for producing alternating current are permanently installed on the site of operation. This is meant to exclude operations installed for short term or interim compliance. The present tariffs will apply to **green field facilities** in operation before July 1, 2012, if the necessary public planning procedures were initiated before March 1, 2012. Green field facilities on conversion sites have a prolonged interim period until September 30, 2012; for these, the feed-in tariff will be 15.95 Cent/kWh from July 1, 2012 onwards.

EU Enacts Take-Back Obligation for Manufacturers of Photovoltaic Modules

According to the amended WEEE-Directive, photovoltaic modules will have to be collected separately from municipal waste in the future. Member States will have to make sure that modules from private households (B2C) can be returned to collecting points, free of charge, and that manufacturers provide for the collection of modules other than from private households (B2B). Furthermore, the manufacturers are to be responsible for the financing of take-back systems, either by acting individually or by participating in a collective system. Every manufacturer has to provide a respective guarantee when marketing B2C products. With regard to B2C equipment marketed before August 13, 2005, the costs will be shared among manufacturers in proportion to their market share at the time the costs are incurred.

The Directive provides for an incremental increase of the collection rate over a seven year period after the Directive enters into force. After this period the annual collection rate must reach 65 percent of all electric and electronic equipment marketed in the previous three years or alternatively 85 percent of all electric and electronic equipment waste incurred within the territory of the Member State. However, the Commission will submit a report to the European Parliament and the Council about the collection rates of photovoltaic modules after three years and make new proposals if necessary.

Overview of the New Duties for Module Manufacturers

Under the WEEE-Directive, Member States in the EU are called upon to take measures in order to make the reuse and the recycling of photovoltaic modules and their parts and materials easier. To this end, the German Act on Electric and Electronic Equipment (ElektroG) already bans certain materials, and mandates certain forms of product design. Furthermore certain labelling duties will apply to photovoltaic modules, and manufacturers will have to comply with information requirements on the collection and recycling of their products vis-à-vis consumers.

In future, manufacturers of photovoltaic modules will need to register with the authorities before marketing their modules. In Germany, the "Stiftung Elektro-Altgeräte Register" in Fürth (a foundation that, inter alia, coordinates the financing of the taking back and the waste management of electric equipment) is responsible. In accordance with general EU principles, if a manufacturer is established in a different Member State, he is allowed to name a representative for the Member State where he sells his modules without being established there himself.

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It is highly recommended that the manufacturers of photovoltaic modules adjust to the new regulation at an early stage. Voluntarily recycling initiatives such as PV Cycle do not meet the requirements of the Directive, which will impose a considerable bureaucratic burden on the solar industry. As each Member State is responsible for implementing the aims of the Directive itself, manufacturers face the prospect of adapting their channels of distribution to different national systems. The new law will not only bring financial and bureaucratic burdens, but could also require technical adaptations of the products.

After the publication of the amended WEEE-Directive in the Official Journal of the European Union, the Member states will have 18 months time to implement the Directive. In Germany an amendment of the ElektroG will be necessary.

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