

Energy Law Quarterly, October 2024

Solar obligation in Switzerland

Introduction

On 9 June 2024, the Swiss electorate approved the Federal Act on a Secure Supply of Electricity from Renewable Energy Sources (also known as the "Mantelerlass" or "blanket decree"). The laws amended by the blanket decree are due to come into force on 1 January 2025. However, the Federal Council will not decide on the definitive date of entry into force until the end of 2024.

Solar obligation enshrined in federal law

As a result of the adoption of the blanket decree, there is a solar obligation throughout Switzerland based on the future Art. 45a of the Energy Act (EnG, SR 730.0). Those cantons that have not yet introduced a solar obligation based on cantonal laws are now bound by the federal requirements. Accordingly, solar installations (e.g. photovoltaic or solar thermal) must be installed on roofs and façades when constructing new buildings with an imputable building area of more than 300 m².

Competence of the cantons

The cantons may make exceptions to the obligation to install solar energy systems on roofs and façades when constructing new buildings of more than 300 m², in particular if the installation of a solar energy system conflicts with other public law regulations, is technically impossible or economically disproportionate.

However, the cantons also have the authority to stipulate the solar obligation on buildings with an imputable building area of 300 m² or less. The

canton of Uri, for example, wanted to introduce a lower limit than in Art. 45a EnG. On 22 September 2024, the cantonal electorate had the opportunity to vote on the cantonal energy ordinance. This stipulated that new buildings with an imputable building area of 100 m² must use solar energy in future. This was mainly because in the years 2015 - 2020, only around 19 per cent of all new buildings in the canton of Uri had an area of over 300 m², while 72 per cent had an area of over 100 m². However, the population voted against this, which is why the federal legislation will continue to apply until further notice.

Cantons that had introduced the model regulations of the cantons in the energy sector (MuKEn 2014) regarding requirements for self-generation of electricity in new buildings (at least 10 watts per m² of energy reference area in accordance with SIA 380, up to a maximum of 30 kW) by 1 January 2023 are exempt from implementing the solar obligation in accordance with Art. 45a para. 1-3 EnG.

22 cantons are already exempt. Two other cantons have opted for an alternative approach (Bern and Vaud) and in two cantons (Aargau and Solothurn) only Art. 45a EnG will apply.¹

In the canton of Bern, for example, the revised cantonal energy ordinance introduced the obligation to use solar energy in buildings of more than 300 m² at the beginning of 2023 (Art. 31a KEnV). According to the cantonal requirement, at least 10 per cent of the eligible building area must be equipped with photovoltaic or solar thermal systems. An exception only applies if the installation of such a system conflicts with other public law

¹ Implementation of MuKEn 2014, status in the cantons, Conference of Cantonal Energy Directors, p. 8, available at www.endk.ch

regulations, is technically impossible or economically disproportionate. According to the Cantonal Office for the Environment and Energy, costs of more than 20 % of the total costs of the new building are disproportionate, for example.

The exception relating to public law concerns, for example, regulations regarding cultural monuments of cantonal or national importance. For such protected objects, a construction permit is always required for solar installations, even if otherwise solar installations are generally only subject to a reporting obligation.

Municipal regulations

Based on cantonal energy laws and corresponding delegation provisions, it is also possible that municipalities have already introduced a solar obligation. If such an obligation exists, it must at least comply with the requirements of Art. 45a EnG from the date of entry into force.

Many cantons also delegate questions of aesthetics to the municipalities. Municipal construction regulations therefore often contain design regulations, for example on the protection of the townscape. Building projects should achieve a good overall effect and take into account features of the street, landscape and townscape, for example.

Such municipal design regulations have independent significance. This gives the municipalities important scope when weighing up the interests of protecting the townscape against the use of solar energy or the implementation of new construction requirements on and around buildings.

Although such design regulations tailored to local conditions can be helpful, they can make the work of planners and installation companies considerably more difficult because such regulations vary from municipality to municipality and also place greater restrictions on cantonal law. Such regulations can also conflict with the higher-level regulations on the solar obligation.

Future practice, in particular cantonal and federal case law, will show how such conflicts of interest are resolved and in which cases the solar obligation can or must be waived. Careful scrutiny is therefore essential for construction projects.

Marc Grüninger (marc.grueninger@valfor.ch)
Patrizia Lorenzi (patrizia.lorenzi@valfor.ch)

valfor is the Swiss member of the Energy Law Group (ELG), the most extensive network of experts in energy and natural resources law. Founded in 1993. 35 independent premier law firms. The top 800 lawyers with special expertise in the energy, mining, projects and natural resources sectors. More than 1,000 major transactions and landmark cases in the last five years. Multiple rankings in Chambers and Partners, Legal500, IFLR, WWL and other international legal directories. For more information on the Energy Law Group and its members, see www.energylawgroup.eu

This newsletter does not contain legal advice. It contains only the opinion of the authors.

