



Federal Office
for Economic Affairs
and Export Control

Guidelines for Energy Audits

in accordance with the statutory provisions of §§ 8 ff. EDL-G

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Abbreviations

§	Section
BAFA	Bundesamt für Wirtschaft und Ausfuhrkontrolle Federal Office for Economic Affairs and Export Control
DIN	Deutsches Institut für Normung German Institute for Standardization
EDL-G	Gesetz über Energiedienstleistungen und andere Energieeffizienzmaßnahmen Law on Energy Services and other Energy Efficiency Measures
EN	European Norm
EnEV	Verordnung über energiesparenden Wärmeschutz und energiesparende Anlagentechnik bei Gebäuden (Energieeinsparverordnung - EnEV) Order on energy-saving heat insulation and energy-saving plant technology in the case of buildings (Energy Savings Order)
EMAS	Eco-Management and Audit Scheme
i.c.w.	In conjunction with
ISO	International Organization for Standardization
nr.	Number
para.	Paragraph
SME	Micro, small and medium sized enterprises in accordance with the Commission's Recommendation of 6 May 2003

Modifications history

1. Modification in the Guidelines (as at 8 July 2015)

- Revision of Chapter “2.1 Definition of a company”
- P. 11 correction: “which do not meet the criteria of a non-SME” -> “which do meet the criteria of a non-SME”

1. General

1.1 Background

Germany and the European Union have set themselves ambitious goals to improve energy efficiency. In order to contribute to achieving the European energy savings target, Energy Efficiency Directive 2012/27/EU was adopted and came into force on 4 December 2012.

The Energy Efficiency Directive contains numerous measures, which Member States are required to implement. This includes Art. 8 paras. 4-7, which provides that all Member States must require companies that are not Small and Medium-sized Enterprises (SMEs) to conduct energy audits.

One of the measures implemented in order to transpose the EU Energy Efficiency Directive into national law was an amendment of the Law on Energy Services and other Energy Efficiency Measures (EDL-G).¹

The amendments came into force on 22 April 2015. The implementation of this measure is also part of the National Action Plan for Energy Efficiency (NAPE) and contributes towards national and EU-wide energy and climate protection objectives.

These guidelines are aimed at simplifying the application of the Law for companies. Companies remain solely responsible for determining whether they fall under its scope of application. The final objective of these guidelines is not to provide a conclusive or binding answer to all possible questions arising from the application of the law.

1.2 Key provisions of the amended EDL-G

§§ 8-8d of EDL-G provide that all companies which are not a Small or Medium-sized Enterprise (SME) as defined by the Commission's Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124 of 20 May 2003, p. 36), are required to conduct their first energy audit by 5 December 2015, and at least once every four years from the date of the first audit.

Under § 8 c EDL-G, BAFA is required to conduct sample checks on the energy audits. To this end, the companies concerned will given an reasonable deadline to provide evidence of having performed an energy audit, or that they are exempt from this obligation. Should companies which are SMEs be asked to provide evidence of an energy audit, then they must provide a self-declaration stating that they are not required to perform an energy audit.

If a company has a duty to perform an energy audit, but does not perform it, performs it incorrectly, incompletely or not on time, then it can be asked to pay a fine of up to EUR 50,000. Fines may also be imposed on a company falsely claiming to be an SME.

In addition, in compliance with § 7 para. 3 EDL-G, the Federal Office for Economic Affairs and Export Control (BAFA) keeps a public directory (Directory of Energy Auditors), listing persons who are professionally qualified to perform audits under § 8 EDL-G. In order to be included in this directory, energy auditors must provide evidence to BAFA of the necessary expertise and reliability. Alternatively, energy auditors can provide evidence of expertise and reliability when requested to do so by BAFA, by handing in the relevant documentation. The regulations relating to requirements and qualifications for persons performing energy audits are outlined in a separate leaflet.

¹ Law on Energy Services and other Energy Efficiency Measures (EDL-G) of 4 November 2010 (BGBl. I p. 1483), amended by Article 1 of the Law of 15 April 2015 (BGBl. I p. 578).

2. Entities required to perform energy audits under § para. 1 i.c.w. § 1 nr. 4 EDL-G

The guidelines in this chapter have deliberately been described extensively so as to make it easier for companies to determine whether they are subject to the obligation to perform energy audits under § 8 para. 1 i.c.w. § 1 nr. 4 EDL-G.

All companies, which are **not** micro, small or medium enterprises according to the Commission's Recommendation, are required to perform energy audits.² The status of a company subject to the obligation is thus derived from the **reversal of the definition of an SME**. Therefore, non-SMEs are subject to the obligation, **regardless of their sector or field of activity**.

The notion of a company is to be understood in its broad sense and includes:

- any legally autonomous entity regardless of its legal form, which keeps books and records for trading or tax purposes and is economically active
- public companies, as long as these do not predominantly provide public services

The following entities are not required to perform energy audits:

- communal administrations
- entities which predominantly provide public services

2.1 Definition of a company

The definition of a company is based on the Commission's Recommendation on SMEs of 6 May 2003. Any entity, regardless of its legal form, which engages in an economic activity, is considered a company. In particular, this includes those entities engaged in craft activities or other activities as sole proprietorships, family businesses, as well as business partnerships or associations which regularly undertake economic activities.

The decisive element is thus an economic activity. An economic activity is an activity aimed at the exchange of services or goods on the market, i.e. on the participation in the commercial exchange of services through the offering of goods and services on a market.

In addition, the economic activity needs to exceed an occasional or temporary participation in the economy. However, it is not necessary for the company to aim at making a profit in order to be considered as taking part in the economy. Companies which serve charitable, benevolent or religious purposes could therefore be economically active and as a result be required to conduct energy audits.

The company subject to an energy audit is, in this context, the smallest legally autonomous entity, which keeps books and records for commercial and/or tax purposes, including its branches, subsidiaries and plants. This is derived from the Commission's Recommendation of 6 May 2003. The Recommendation starts with autonomous companies and continues to consider the relations between autonomous companies and other companies. A legally autonomous entity is thus the basis for evaluation.

Public administration entities can also be considered companies, if they serve the purpose of exchanging services on the market. The only requirement is a certain organisational autonomy. Therefore, public utility companies are considered companies in accordance with the Commission's Recommendation, if they pursue an economic activity. Communal administrations lack the required autonomy with regard to regional authorities, and are therefore not considered as companies under the Commission's Recommendation.

In the case of municipal companies, the company required to perform an energy audit is each organisationally autonomous entity; there is no requirement for an individual legal personality.

Because of the broad definition of the notion of "economic activity", only a few sectors of economic activity fall outside the scope of application because of their public authority characteristics. Delimitation problems in the definition of a company can occur especially in the case of public institutions and entities in which public authorities own a share. Whether an institution or entity is considered to be part of public administration depends not on the (private or public) legal nature of the institution or entity, but on the services it provides or activities it undertakes. The decisive element is to what extent it pursues an economic activity.

An economic activity is in any case absent when the state or government agencies exercise public functions in their capacity as a public authorities. This is the case when the activity in question represents part of the key responsibilities of the state or is

² See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

related to such a responsibility by its nature, its objectives and the applicable legal provisions. Provided that there are no existing market mechanisms in the respective sectors, activities which are an inextricable part of a public authority's prerogatives and are performed by the state, are not generally considered to be economic activities. Likewise, certain activities related to social security can be considered non-economic.

Therefore, the following applies for public institutions and entities in which a public authority holds shares: if the activity in question cannot equally be performed by a private third party, then the activity is to be considered a public function and therefore not an economic activity.

Examples of public function / non-economic activities or responsibilities:

- responsibilities in the areas of security, policing and the justice system
- responsibilities in the area of public water supply or waste disposal, so far as these responsibilities cannot be transferred to private third parties under relevant federal or Länder law with the effect of exempting said authorities of their responsibilities. Whether the responsibility was effectively transferred is irrelevant.
- responsibilities of publicly funded education institutions, especially schools and nurseries
- responsibilities in the administration of legal systems of social security under state control (e.g. statutory health insurance)

In case of ambiguity in the classification, the principles under § 4 of the Corporate Tax Act (Körperschaftsteuergesetz, KStG) can be applied as help for the delimitation between an economic activity and a public function. The reference to the Corporate Tax Act is only made in relation to the delimitation between an economic activity and a public function.

All institutions which **predominantly perform public activities** are exempt from the obligation to perform an energy audit.

If an institution performs both economic activities and public functions or non-economic activities, then the EDL-G is applied depending on which activities are predominant. In order to determine the activity, the focus is on the core of the activity. The economic activity can only be a subordinate activity within the institution exercising a public function. If the activities with the purpose of exercising a public function are so tightly intertwined that a distinction is impossible, then the institution is considered to be predominantly exercising a public function, if the exercise of public functions predominates. This is especially the case when areas with economic activities and areas with public functions do not have their own operating sites nor their own human or material resources.

If public functions predominate, an energy audit is not required.

If, however, an institution predominantly performs economic activities, then the obligation to conduct an energy audit in principle only extends to those economic activities, and not to the public functions of this institution. Moreover, institutions with predominantly economic activities can only be subjected to an energy audit, if the activity sectors are clearly and organisationally separated from the public functions, and if the energy consumption of the economic activity sector are ascertainable and assignable.

2.2 Definition of a non-SME

The following notes use the definition of micro-enterprises as well as small and medium enterprises by the EU Commission and its relevant publications as a basis for the definition of a non-SME.³

To classify a company as a non-SME, employee numbers and financial thresholds are to be taken into consideration. Moreover, a distinction is to be made between autonomous companies, partner companies, linked companies and companies in which the state is a shareholder. If the company is not autonomous, but is a partner company or part of another company or holds shares itself, then this must be taken into consideration in determining whether it is an SME. Therefore, an individual assessment must be made in any case. It is the responsibility of the company itself to assess whether it is a non-SME and thus subject to an energy audit.

A **non-SME** is a company which

- employs more than 250 people or
- employs fewer than 250 people, but has an annual turnover⁴ of more than EUR 50 million and more than EUR 43 million balance sheet total.

A company will also be considered a non-SME if 25% or more of its capital or voting rights are directly or indirectly controlled by one or more public bodies or public corporations, individually or jointly.

Companies acquire or lose the SME status only if, for two consecutive financial years, they fall below or exceed the above-mentioned thresholds. For companies which never maintained the same status for two consecutive years as well as for newly established companies, the status on the year of establishment will determine whether the company is to be considered an SME or a non-SME.

Employee numbers and financial thresholds

The first decisive element for whether a company is an SME is the employee number of 250 people or more. If this threshold is exceeded, a company cannot be considered to be an SME, even if its annual turnover or balance sheet total is below the set thresholds.

The data to be used as a basis for assessing the number of employees and the financial thresholds as well as the reporting period are set out in Annex Title I Art. 4 of the Commission's Recommendation of 6 May 2003. According to the Annex, it is the data from the last statement of accounts which is to be used to determine the number of employees and the financial thresholds, and they are calculated on an annual basis.

The number of employees is that of full-time employees working over the course of one year. In particular, this includes:

- paid and salaried employees,
- persons working for the company, who are subordinate to it and are considered to be employees under national law (e.g. also temporary workers),
- owner Manager,
- partners engaged in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Part-time and seasonal workers are taken into account on a pro-rata basis. Persons on parental leave, apprentices or trainees with a traineeship contract are not to be taken into account. Employees abroad are to be taken into account in the calculation of the number of employees.

³ See also "The new SME definition – User guide and model declaration"
<http://bookshop.europa.eu/en/the-new-sme-definition-pbNB6004773/>

⁴ For companies, which do not disclose their turnover in their profit and loss account, such as for example banks, the turnover is to be calculated on the basis of operating profits without impairments nor administrative expenses, including net interest income, commission income, net trading income and other operating revenues.

In order to determine the average number of employees in the relevant observation period, the following calculation should be made:

1. Determination of the number of full time equivalents in each month of a financial year
2. Addition of full time equivalents of each month
3. Division of the sum of full time equivalents by the number of months in the financial year

In order to determine the annual turnover, earnings from sales and services which the company has made during the relevant year are to be used as a basis, taking into account all sales reductions. Value added tax (VAT) and other indirect taxes are not included in the turnover. The annual balance sheet total is based on the company's main assets.⁵

Example for calculating the number of employees

Company A's financial year starts on 1 April and ends on 31 March of the following year. On the reference date for determining the company's status for the first commitment period (31 December 2014, see below), the most recent financial statements are those for the financial year up until 31 March 2014. This means that company A is required to calculate the number of its employees for that period.

On 1 April 2013, company A had five working proprietors and 235 employees. On 10 July 2013, 20 more employees joined. No further changes take place. Thus, company A had a total of 240 employees for 3 months of the financial year (April, May and June) and a total of 260 employees for 9 months of the year (July 2013 to March 2014).

The calculation for the entire year is thus as follows: $[(240 \times 3) + (260 \times 9)] / 12 = 255$

Therefore, company A is above the threshold of 250 employees on the reference date. However, since the company only recruited new staff later in the year and thus exceeded the threshold of 250 employees, it needs to be determined whether the employee threshold was also exceeded during the previous year, as the company must exceed the threshold for two consecutive years.

Example for companies, which are close to the threshold of non-SME status

As mentioned above, companies only acquire or lose their SME status if they fall below or exceed the thresholds for two consecutive years.

Therefore, in the case of companies which are close to the threshold of a non-SME status or which recently grew or shrank, the calculation might have to date back over a number of periods in order to determine whether the company is to be considered a non-SME.

For example, a company which has exceeded the thresholds over the past five years and only falls under the thresholds during the last financial year, before or on the reference date for determining its status, is still to be considered a non-SME and is thus required to perform an energy audit. On the other hand, a company which fell below the thresholds over the past five years and was thus an SME, is still to be considered an SME if it exceeded the thresholds during the last financial year, before or on the reference date for determining its status.

For companies which alternately fall under or exceed the thresholds on an annual basis, the status needs to be calculated counting back to a period during which the company had the same status for two consecutive years. For companies which never maintained the same status for two consecutive years, it is the status of the year of establishment which will determine whether the company is to be considered an SME or a non-SME.

⁵ For further details on the definition of main assets, see Article 12 para. 3 of Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ L 222 of 14 August 1978, pp. 11-31

Autonomous companies

A company is considered to be autonomous, if

- it is totally independent or
- it holds less than 25% of the capital or voting rights (whichever is the higher) in another company, and/or outsiders hold less than 25% of the capital or voting rights (whichever is the higher) in the company.

In case there are several investors with shares of less than 25% each, the company is not considered to be autonomous, if said investors are not interconnected companies (see below). Exceptionally, a company is considered to be an autonomous company despite a stake above 25% but under 50%, if the investors are

- public investment corporations, venture capital companies and “business angels”
- universities and non-profit research centres/institutional
- investors including regional development funds or
- autonomous regional authorities with an annual budget under EUR 10 million and fewer than 5,000 inhabitants.

- **Partner companies and linked companies**

If a company is not an autonomous company, its relationship to other companies is to be taken into account.

A company can only be considered in isolation if it is autonomous. It is important to note that for determining whether a company is a linked company or a partner company, it is irrelevant whether there are links to other companies registered in Germany, or inside or outside the European Union. Thus, for instance, multinational corporations in third countries outside the EU are also to be taken into account. For the sake of clarity, it is to be noted that these regulations only apply in the context of determining a company’s non-SME status; under German law, as for performing an energy audit, only the sites located in Germany need to be taken into account (see section 3.1).

Partner companies are companies, which establish major financial partnerships with other companies, without the one exercising direct or indirect control over the other. Partner companies are companies which are neither autonomous nor linked to one another. A company is a partner company of another if:

- it has a holding of 25% to 50% in the other company
- another company has a holding of 25% to 50% in the company
- the company does not draw up consolidated accounts which include the other company and is not included by consolidation in the accounts of this or another company which is linked to it.

Linked companies represent the economic situation of companies which form a group through the direct or indirect control of the majority of the capital or voting rights (including through agreements or, in certain cases, through individual shareholders), or through the ability to exercise a dominant influence on another company. Linked companies are companies which are linked to each other in the following manner:

- a company holds the majority of voting rights of shareholders or shareholders of another company;
- a company has the right to appoint or remove the majority of members of the administrative, management or supervisory body of another company;
- a company has the right to exercise a dominant influence on another company by virtue of a contractual agreement or a clause in its statutes;
- a company which holds shares in another company, has the sole control over the majority of voting rights of the other company’s shareholders by virtue of an agreement with the other company.

Companies which draw up consolidated accounts or are included in another company’s accounts by consolidation are generally considered to be linked companies.

Companies which fall into one of the above categories through a natural person or a jointly acting group of persons are also considered to be linked companies, in so far as these companies are partly or wholly active in the same market or adjacent markets. An adjacent market is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

Calculation of the data for partner companies and linked companies

In the case of partner companies, the number of employees and the financial data of the other company have to be added on a pro-rata basis to the company's own data. This amount represents the percentage of shares held or voting rights, in consideration of the higher percentage. If, for example, the company owns a 30% share in another company, then 30% of the number of employees, turnover and balance sheet total are to be added to the company's own data. In the case of several partner companies, the same calculation is to be made for every partner company which is situated directly upstream or downstream of the company.

In order to determine the SME status in the case of linked companies, the number of employees and financial data are to be added at 100% to the company's own data, so long as these are not already included in the company's consolidated financial statement.

Shareholdings of public bodies

A company is also to be considered a non-SME, if 25% or more of its capital or voting rights are directly or indirectly, individually or jointly controlled by one or several public bodies or public corporations. As noted above, a company will, inter alia, not lose its SME-status despite a shareholding of more than 25% but less than 50%, if the shares are held by an autonomous regional authority with an annual budget of less than EUR 10 million and fewer than 5,000 inhabitants.

2.3 Reference date for determining non-SME status

The reference date for determining the thresholds and the status of a company for the first commitment period is 31 December 2014. The company's status is thus to be determined on the basis of the data for the financial year ending on 31 December 2014, or financial years ending on 31 December 2014. The reference date for the following commitment periods is 31 December of the third year after the previous energy audit. Therefore, if the energy audit was performed on 15 August 2015, the next reference date for determining the SME / non-SME status of the company will be 31 December 2018. If the first energy audit was already performed in 2013, the next reference day for determining the SME / non-SME status would be 31 December 2016.

If the status of the company changes between the reference date and the date of performance (first date of performance being 5 December 2015), for example, if the number of employees is considerably reduced or increased, then this has no effect on the requirement determined under § 8 EDL-G. A change in the number of employees would only be relevant if the company fell under the threshold for two consecutive years and would thus be exempted from the obligation to perform a new energy audit.

Newly established companies

In the case of newly established companies, which on the reference date do not yet have a complete financial statement for the accounting period, the thresholds are to be estimated in good faith on the relevant reference date.

Only companies which first started operations predominantly through newly created assets are to be considered newly established companies; and not those which were created as a result of business transformation. Newly created assets exist when other fixed or current assets have been acquired, rented or leased, beyond the equity and share capital.

The term 'business transformation' covers all changes of already existing structures, whether through acquisition, spin-offs or the transfer of parts of the business to third parties and similar cases. Thus, the following constellations are not considered to be newly established companies:

- mergers, scissions (split-ups, split-offs or spin-offs) or a change of form,
- creation of a new company through a singular or universal succession, acquisition of a company undergoing insolvency proceedings in the framework of an asset deal through an investor.

In the case of newly established companies, which do meet the criteria of a non-SME, transition periods are available for the performance of an energy audit. From the start of their operations, companies are granted a period of 20 months for the performance of their first energy audit, in order to give companies the opportunity to cover a representative period for the assessment of their energy-related performance.

Restructuring / transformation

A "transformation" is any transformation of a company under the Transformation Act or any transfer of all business assets of a company by way of universal succession.

If a company, which has already performed an energy audit in accordance with the requirements of § 8 EDL-G, undergoes a transformation whereby its business and organisational unit is almost entirely transferred to another company, then the already completed energy audit serves as evidence of its performance for BAFA. In this case, the rules relating to repeat audits apply. The formulation "business and organisational unit" implies that, for the use of the relevant data, the substance of the company remains in essence unchanged after the transformation. Slight deviations are negligible.

2.4 Exemption from the obligation to perform an energy audit

Companies are exempt from the obligation under § 8 para. 1 EDL-G if at the relevant time they either have

- an energy management system under DIN EN ISO 50001 or
- an environmental management system in accordance with Regulation (EC) No 1221/2009 of the European Parliament and of the Council (EMAS)

This still applies if companies with several sites operate different systems (i.e. several DIN EN ISO 50001 certificates, EMAS or both DIN EN ISO 50001 and EMAS certificates). Individual sites can be exempted from providing the required evidence, if the total energy consumption is recorded and the exempted sites do not make up more than ten percent of the company's total energy use.

Moreover, it is also admissible for companies with several sites to operate mixed systems made up of energy management systems and/or environment management systems and energy audits according to DIN EN 16247-1 (i.e., several DIN EN ISO 50001 certificates and DIN EN 16247-1 energy audits or several EMAS certificates and DIN EN 16247-1 energy audits or certificates both under DIN EN ISO 50001 and EMAS as well as DIN EN 16247-1 energy audits).

Companies which decide to go beyond their obligation to perform an energy audit and implement an energy management system under DIN EN ISO 50001 or an environment energy system according to EMAS, should not suffer a disadvantage as a result of having implemented an ambitious measure to improve their energy efficiency. To take account of the fact that the certification of an energy or environment management system takes longer than the performance of an energy audit and thus may not be fully completed by 5 December 2015, those companies are exempt from providing evidence of having conducted an energy audit until the first year after the reference date.

Further details about the provisions on verification management are outlined in Chapter 5.

3. Compliance with the obligation to perform energy audits

3.1 Determination of the total energy consumption

The energy audit is in any case assumed to be representative, if at least 90 percent of the company's total energy consumption are included in the energy audit. Therefore, the basis of total energy consumption first needs to be defined, so as to be able to focus on the main energy users during the energy audit.

The total energy consumption is defined as the amount of energy used and consumed by the company itself, over the relevant period in the entire company. In this context, all sources of energy are to be taken into account (electricity, combustibles, (district/local) heating, renewable sources of energy, fuels, etc.). A company is the legally autonomous unit, which keeps books and records for commercial or tax purposes, including on its branches, subsidiaries and operations or operating parts. Accordingly, legally autonomous subsidiaries are considered companies in their own right; the total energy consumption of a subsidiary is not part of the total energy consumption of the respective company.

All plants, sites, processes, facilities and transportation of the company must be recorded. Sales premises, administrative premises, storage rooms or similar spaces must be taken into account in the calculation of the total energy consumption, if the company uses or consumes energy in such spaces.

The energy audit is to be considered proportionate, if it is limited to the calculation of total energy consumption of plants, sites, processes, facilities and transportation of the company in Germany, which therefore fall under the scope of application of the EDL-G.

At the same time, such sites located abroad can be subjected to a locally applicable obligation to perform an energy audit.

Particularities for buildings

In the case of buildings, energy consumption is in principle to be taken into account in the energy audit for those spaces of the building which the company uses for business purposes (e.g. individual rooms in a building complex), and which use and consume part of the total energy. This applies irrespective of ownership structures, usually the individual user or tenant who has direct influence on the energy consumption.

In the case of rented or leased buildings, where the company has no direct influence on the energy consumption, these buildings can be excluded from an energy audit. This is because constructors and owners are subject to the regulations of the Energy Savings Order (EnEV), which records energy consumption as well as the potential for saving energy in a way similar to an energy audit.

Proportionality and representativeness are also considered to be existent, if monuments for which the regulations regarding the submission of energy certificates for sales and rentals do not apply (§ 16 para. 5 EnEV) are excluded.

Sites which temporarily or for a longer time period do not employ any employees are also to be taken into account in the total energy consumption.

For employees who work from home, these employees' energy consumption need not be taken into account.

Particularities for temporary sites

The required proportionality and representativeness of energy audits exists, when the energy audit is performed on permanent sites. Therefore, temporary sites which are set up by an organisation in order to complete certain works or provide a service over a limited period of time, and which will not become permanent sites (e.g. construction sites), are excluded from the requirement to perform an energy audit. Therefore, the energy consumption of these temporary sites is not to be taken into account in the determination of the total energy consumption.

Particularities for transportation

Transportation (by road, rail, sea and air) is also to be taken into account in the energy audit. However, only the energy consumed by vehicles, which serves the purpose of the company and which is born by the company, shall be taken into account.

Plausible estimations on the basis of verifiable data can be used to calculate the energy consumption of transportation activities (e.g. expenses) in those cases where the actual consumption data is absent (e.g. consumed amounts in litres).

The following consumptions can be excluded from the total energy consumption:

- energy consumption of company vehicles by employees, who also use the vehicles privately

- energy consumption through the transportation of goods and persons, undertaken by third parties (the fuel is to be taken into account as part of the third party's total energy consumption (as long as it is a non-SME).

Cross-border traffic is to be taken into account, if the journey begins or ends in Germany.

Excluded energy consumption

The following energy consumptions are not to be considered as part of the total energy consumption:

- energy which is not being used by the company, but only supplied to third parties
- energy consumed outside of the German Federal Republic
- energy used by cross-border transportation, which neither starts nor ends on Germany (unless the company chooses to include this energy consumption)

Reference period

A reference period of 12 consecutive months should be used for the calculation of the total energy consumed, which includes the reference date for the determination of the company's non-SME status. The reference period should be the same for all sources of energy. If data for certain portions of the reference period are missing, estimations can be used to close possible gaps.

Verifiable data

The data used for determining the total energy consumption should be verifiable. This especially includes invoices, delivery notes, accounting records and meter readings as well as possibly load profiles provided by the supplier. If verifiable data are not available, plausible estimates can be used on the basis of other (where possible verifiable) data.

3.2 Performance of the energy audit

The company is required to perform an energy audit under § 8a EDL-G if on the date of performance (the first date being 5 December 2015) it has no valid, certified

- energy management system under DIN EN ISO 50001 or
- environment management system in accordance with Regulation (EC) No 1221/2009 of the European Parliament and of the Council (EMAS) or
- a mixed system of energy and environment management systems (see section 2.5),

which covers at least 90% of the company's total energy consumption (and the company does not commit to introducing such a system during the first period).

To prevent misunderstandings, it should be noted that the following provisions apply to the performance of energy audits under DIN EN 16247-1. These should not be confused with internal or external audits under DIN EN ISO 50001 or EMAS. These guidelines do not provide any provisions on the performance of a certification process for energy or environment management systems.

The obligation to perform the first energy audit is considered to be fulfilled under § 8 para. 1 nr. 1 EDL-G, if an energy audit, which complies with the requirements of § 8a EDL-G, has been performed between 4 December 2012 and 5 December 2015.

The obligation to perform a repeat audit is considered to be fulfilled under § 8 para. 1 nr. 2 EDL-G, if a further audit is performed in accordance with § 8a EDL-G at least once every four years from the date of the first energy audit or the previous energy audit. The data used for the energy audit must not refer to a time period which was already covered by the previous energy audit.

Requirements of DIN EN 16247-1

According to § 8a para. 1 nr. 1 EDL-G, the energy audit must comply with the requirements of DIN EN 16247-1, which include the requirement that the company provide a person in charge or a contact person for the performance of the energy audit. Compliance with the follow-on norms, DIN EN 16247-2 to DIN EN 16247-5, is not obligatory under § 8 ff. EDL-G.

According to DIN EN 16247-1, an energy audit is a systematic inspection and analysis of the energy use and consumption of a plant, building, system or organisation, with the aim of identifying and reporting on energy flows and the potential for energy efficiency improvements.

The goal is to identify energy flows and the potential for energy efficiency improvements. The next step is to assign a monetary value to various measures through investment and economic efficiency studies, so that companies can see which investments pay off over which time period at one glance. Below is a brief list of the typical elements of an audit process. This list should only serve as orientation, the applicable regulations are outlined in DIN EN 16247-1.

1. **Introductory contact:** the energy auditor must set the framework of the consultancy with the organisation. In particular, the goals and expectations of the consultancy must be defined, as well as the criteria which will be used to measure energy efficiency.
2. **Kick-off meeting:** in this step, in particular the data to be supplied, the requirements for measurements and procedures for installing the measuring equipment are defined. Moreover, concrete agreements about the practical performance of the energy audit should be made. This includes the company nominating a person responsible for assisting the energy audit.
3. **Data collection:** the energy auditor must collect information and data such as for example data relating to the energy consuming systems, processes and facilities and quantifiable parameters, which influence the consumption of energy. Previous analyses in the company regarding energy efficiency as well as energy tariffs, but also documents relating to construction, operations and maintenance as well as relevant economic data are to be taken into account.
4. **Field work:** the energy auditor must inspect the object to be audited in order to assess the energy use and investigate those areas and processes where additional data is required. Workflows and user behaviours and their influence on energy consumption and efficiency are to be assessed. This is the basis for the first recommendations for improvement. Measurements should be taken under real conditions and should be reliable.
5. **Analysis:** in this phase, the energy auditor assesses the existing situation of energy related performance. A breakdown of energy consumption for both consumption and supply should be drawn up. On this basis, the energy auditor recommends approaches to improve energy efficiency. These improvement options should be evaluated on the basis of set criteria. The reliability of the data, the calculation methods used and assumptions made should be demonstrated.
6. **Report:** the energy auditor's report should be transparent, conclusive and comprehensible. It comprises a summary, general background information, the documentation of the energy consultancy and a list of options for improving energy efficiency, with:
 - a. recommendations and plans for implementation,
 - b. assumptions made for calculating savings,
 - c. information about available grants and allowances,
 - d. appropriate profitability analysis,
 - e. recommendations for measurement and verification procedures for an estimation of savings after the recommended measures are implemented,
 - f. possible interactions with other proposed recommendations and
 - g. conclusions.
7. **Final meeting:** in the final meeting, the energy auditor presents his conclusions, explains these where necessary and submits the report.

Further provisions under § 8a para. 1 nr. 2-5 EDL-G

Further provisions under § 8a para. 1 nr. 2-5 EDL-G relating to the performance of energy audits are outlined below:

According to § 8a EDL-G, the energy audit must include a thorough examination of the energy consumption profile of buildings or groups of buildings and of industrial operations or facilities including transportation. The energy audit must be based on up-to-date, continually or periodically measured, verifiable operational data relating to energy consumption and load profiles. Moreover, the energy audit must be sufficiently proportionate and representative, so as to provide a reliable overview of total energy efficiency and reliably derive the most important possible improvements.

The reference to DIN EN 16247-1 thus gains an extension/limitation through the criterium of proportionality and representativeness (§ 8a para. 1 nr. 5 EDL-G). Thus, for instance, in the case of numerous similar sites, elaborate on-site visits can be avoided, so long as those sites covered by the field work provide a representative picture of the company's energy consumption (see also section 3.2.1).

Once the total energy consumption has been determined, those areas, which together provide a reliable picture of the total energy efficiency, should be identified. This is in any event the case, if those areas make up at least 90% of the total energy consumption. These are areas which must be covered by the energy audit.

Therefore, the company can in any case exclude 10% of the total energy consumption from the energy audit. It is for the company to decide whether sites, plants, processes or sources of energy or a combination thereof should be excluded.

Under DIN EN 16247-1, other approved estimation procedures are also permissible in collecting the energy data, aside from the use of measuring procedures. Especially in the case of not continually measured users, for which determining the energy consumption through a measurement procedure is either not possible or very costly, the energy use can be determined through understandable projections of existing operating and load characteristics (e.g. current clamp, heat meter). For lighting and office appliances, an estimation can be made using other understandable measures.

However, energy expenses cannot be used as a basis for determining energy consumption. Expenses can only be used to determine energy consumption in the initial measurement of the total energy consumption, to identify areas with major energy consumption.

If load profiles provided by third parties are available, then these are to be analysed and processed.

a) Inspection of buildings

In the case of rented sites or premises, proprietary and operator rights can be used to implement measures derived from the energy audit, in the framework of assessing proportionality and representativeness of the energy audit. For instance, renovation measures, which the company cannot undertake itself but which only the lessor can undertake as the proprietor, need not be taken into account.

An energy audit is also considered to be representative if an inspection of the building envelope and of the plants and facilities for heating, cooling, ventilation and lighting technology and hot water supply are not undertaken because of the existence of a valid, demand driven energy certificate for the building in accordance with § 18 EnEV, which fully covers these areas.⁶

In any case, an energy audit must only include a building, if the energy consumption area „buildings and groups of buildings“ is a major area of energy consumption in the company (an exception of up to 10% of total energy consumption is possible).

b) Economic efficiency calculations

Where possible, the economic efficiency calculations for the energy efficiency measures developed during the energy audit should be based on a life-cycle cost analysis.⁷ Where elaborating a life-cycle cost analysis represents a disproportionately high cost, because the relevant manufacturer's information is not available or only at a significantly high cost, it need not be done. However, amortisation periods will need to be calculated in any case.

If a life-cycle cost analysis cannot be made because of disproportionately high costs, then a profitability calculation must also be made in addition to the calculation of amortisation periods, such as for instance the calculation of the internal rate of return or of the capital value of the investment. For this, the assumptions regarding the useful life of capital goods in years, the interest rate used for the calculation and the used energy prices must be documented. In addition to the investment costs, the expected operating costs should also be roughly estimated. These are, at least, energy and maintenance costs.

c) Traceability of used data

The person conducting the energy audit must transmit the data used for the energy audit to the company in a way which will allow it to keep it for historical analyses and the traceability of the performance.

3.2.1 Companies with several similar sites

In the case of companies which have numerous similar sites, the energy audit is considered to be proportionate and representative, if it is performed at only a representative number of sites. To this end, a so-called multi-site procedure can be applied, in which clusters of sites are formed.

The processes or activities must be in essence similar in all sites, and be conducted using similar methods and procedures. If similar but fewer processes are conducted in some of the eligible sites than in other sites, then these sites can be used for the multi-site procedure, provided that this/these site/s with the highest number of processes or critical processes are subject to a full energy audit.

Companies, which run their operations from various sites through interconnected processes are also eligible for sample checks. If the processes at individual sites are not similar, but clearly interconnected with each other, then the plan for sample checks must include at least one example of each process.

Possible criteria for the formation of clusters at sites are, for example:

- types of activities, or hierarchies (administrative buildings, subsidiaries, etc.)
- energy consumption profiles
- size of site and number of employees on site
- property construction year

⁶ Taking into account the existence of an energy certificate is in accordance with the grounds of the Draft Law for the Transposition of the European Parliament and Council about energy end-use efficiency and energy services (printed paper 17/1719).

⁷ Various tools are available for the calculation of life-cycle costs. Some examples are set out here: LCC-Tool of the ZVEI <http://www.zvei.org/Themen/Energieeffizienz/Seiten/Lebenszykluskosten-betrachten-Energieeffizienz-rechnet-sich.aspx.aspx> /LCC-Tool of the IGLEI and the Eco-Institute http://tool.smart-spp.eu/smartspp-tool/registration/login_de.php /Excel-Tool of the Federal Environmental Agency http://www.umweltbundesamt.de/sites/default/files/medien/515/dokumente/lcc_tool.xls /Calculation tool of the Berlin Energy Agency <http://buy-smart.info/downloads/downloads4>

The energy audit is to be considered proportionate and representative, if energy audits according to DIN EN 16247-1 are performed at a number of sites of each cluster, equivalent to the square root of the sum of all sites of each cluster, rounded to the higher whole number. This means that first, appropriate clusters at similar sites must be derived from the total number of sites. To determine which sites are to be covered by the energy audit, the square root of each formed cluster must be derived from the total number of sites in the cluster. The selection criteria for the sites to be examined within a cluster can contain the following features:

- difference in size of the sites;
- deviations in shift models and work processes;
- complexity of the processes undertaken at the sites;
- geographic distribution of sites;
- results of previous energy audits on sites.

The above described regulations also apply in the case of the repeat audits which are to be conducted every four years. Sites which have already been evaluated in a previous energy audit should not be subject to a repeat audit if there are other, not yet examined sites remaining in the formed clusters.

The lessons learned in the audited sites and possible recommendations for energy efficiency measures must be applicable to the not yet audited sites.

The criteria used to determine each cluster and the sites to be audited must be justified and documented in the energy audit documentation. The energy audit documentation must make it clear to what extent there is comparability with the other audited and not audited sites of each formed cluster.

Multi-site procedures for partner and linked companies

The multi-site procedure can be extended to partner and/or linked companies, so long as these meet the requirements for similar sites and the other regulations as described above. The extension of the multi-site procedure can therefore only be applied to similar sites of the respective companies. All other plants, sites, processes, facilities and transportation, of these companies must, if applicable, be subject to an independent energy audit.

If the possibility of extension of the multi-site procedure to partner and/or linked companies is used, a person or company responsible for the performance of the energy audit must be nominated by the management or executive board of the highest parent company of the group. This nomination must be recorded in writing and is to be signed by the management or the executive board of the highest parent company.

Moreover, all companies which take part in the multi-site procedure must obtain a written confirmation about their participation. This confirmation is to be signed by the management of the participating company and the person or company in charge and is to be taken on file. This documentation must be presented in case of a sample check.

The results of the energy audit, especially those in the form of energy audit reports, are to be given to all participating companies. Each company is to be informed about its specific energy efficiency measures.

3.2.2 Audit of companies' transportation

For companies which have numerous similar vehicles, the energy audit is considered to be proportionate and representative if the energy auditor examines certain, representative vehicles during his field work.

The number and selection of the vehicles is to be decided by the energy auditor and the company and must be done in a manner so as to allow for a reliable evaluation of the total energy situation of the vehicle fleet.

3.2.3 Audit of specific similar delivery points

For companies which have numerous similar delivery points where no employees are working, the energy audit is considered to be proportionate and representative if the field work of the energy auditor during the evaluation of those delivery points is limited to specific, representative delivery points. The number and choice of delivery points is to be decided by the energy auditor and the company and must be done in a manner so as to allow for a reliable evaluation of the total energy situation of these delivery points.

3.2.4 Performance of energy audits of linked companies at the same site

For companies which are considered to be partner or linked companies in accordance with the Commission's Recommendation and which operate from the same site, an energy audit of the entire site can be considered as fulfilment of the obligation to conduct an audit for the companies included and located on that site. Sites are defined as buildings or groups of buildings spatially connected with each other.

The energy audit is considered to be proportionate and representative, if at least 90% of the entire energy consumption of the site is covered by the energy audit. Thus, up to 10% of the total energy consumption of a site can be excluded from an energy audit in the context of an energy audit on a site. Here again, it is for the company to decide whether it wants to exclude plants, processes or sources of energy, or a combination thereof.

The results of the energy audit are to be submitted to all participating companies. The companies are to be informed about their specific energy efficiency measures. Any further arrangements are to be decided among participants.

Alternatively, the individual companies can conduct independent energy audits.

3.2.5 Performance of energy audits in the context of energy efficiency networks

On 3 December 2014, the Federal Government and 18 German business associations signed an agreement in order to promote the spread of energy efficient networks until 31 December 2020.

The participating companies are assisted by a qualified energy consultancy. The networking of companies takes place in regular, moderated meetings for exchanges of experience. With the assistance of the qualified energy consultancy, each company sets its own energy savings target and underlays this with measures to be taken. The requirements for persons performing an energy audit are outlined in Chapter 4.

In order to optimally use synergy potentials, companies which are required to perform an energy audit under the EDL-G can also develop this in the framework of a network process, for example by companies which are part of the network jointly commissioning an energy auditor, or auditing each other.

3.2.6 Companies without energy consumption

Companies, which would be required to perform an energy audit as non-SMEs, but demonstrably do not have an energy consumption or energy expenses (e.g. in the case of shelf or shell companies), are not required to perform an independent energy audit in view of the criteria or proportionality and representativeness. It should be noted here, that the notion of 'energy consumption' is not limited to only electricity and gas, but applies to all sources of energy (see section 3.1).

3.2.7 Performance of repeat group audits

The Bundestag has requested the Federal Government to assess how **repeat audits** for linked companies with low energy consumption can be considerably simplified. The following provisions do therefore not apply to the **performance of the first energy audit**.

Companies which are considered to be linked companies in accordance with the Commission's Recommendation and are thus majority shareholders of a company, can perform group repeat audits. This also applies to companies which are majority owned by a municipality. In such a case, in variation of the above-mentioned provision, the entire energy consumption of companies evaluated by the group audit is to be included. In this case, the energy audit is considered to be proportionate and representative if at least 90% of the group's total energy consumption is included in the energy audit.

In the framework of a group audit, up to 10% of the total energy consumptions of all participating companies can thus be excluded. Aside from sites, plants, processed or sources of energy, individual companies with a low energy consumption, which in total do not make up more than 10% of the group's energy consumption, can be excluded.

If the possibility of performing a group audit is used, a company or person in charge of the performance of the energy audit must be nominated by the management or the executive board of the highest parent company of the group. The nomination is to be recorded in writing and signed by the management or executive board of the highest parent company of the group. It is possible to designate two or more groups within a group of companies, whereby in this case, 90% of the total energy consumed is to be applied to the respective sub-groups. Otherwise, the same provisions for determining responsibilities apply as described above.

Moreover, all companies taking part in the group audit must obtain a written confirmation about their participation in the group audit. This confirmation is to be signed by the management of each participating company and the company or person in charge and taken on file. This documentation must be presented in case of a sample check.

The results of the audit, especially in the form of an energy audit report, are to be submitted to all participating companies. The companies are to be informed about their individual energy efficiency measures.

4. Energy auditor

The energy audit is to be performed by a person who complies with the requirements of § 8b EDL-G. The person must have acquired the relevant expertise as a result of training or a professional qualification and practical experiences, so as to properly perform an energy audit.

The expertise requires:

1. a relevant education, evidenced by
 - a. a degree from a university or a technical college in a relevant subject or
 - b. a professional qualification as a state-certified engineer or a master's certificate or continuing training qualification in a relevant subject and
2. at least three years' main occupation experience, which involves the acquisition of practice-based energy consultancy

The energy audit is to be performed in an independent manner. This follows from DIN EN 16247-1, which contains a requirement for objectivity and transparency. Moreover, § 8b para. 2 EDL-G also lists requirements for independence in the performance of an energy audit. Accordingly, the person performing the energy audit must:

1. advise the company in a manner impartial towards manufacturers, suppliers or distributors and must
2. not request or receive any commission payments or other financial benefits from a company which manufactures or distributes products or builds or rents plants which are used as energy saving investments in the audited company.

The prohibition on receiving commission payments is intended to prevent conflicts of interest for the consultant should he also be responsible for the distribution of products, which are needed for the performance of energy savings investments. However, companies which have an internal organisational separation of consultancy services from the distribution of savings products, should not be prevented from offering energy audits under the Law.

The energy audit can be performed by outsiders to the company or by persons from within the company, as long as the requirements under § 8b EDL-G are met.

If the energy audit is performed by persons from within the company, then these persons must not be directly involved in an activity that is subject to the energy audit. Based on the spirit of the provision, this does not exclude the company's energy officer or energy manager from being the person performing the energy audit, since in this case – contrary to a participation in an operative activity – no conflict of interest is expected.

The relevant accreditation certificate will suffice as evidence of the energy auditor's qualification, so long as the energy auditor is employed by an accredited conformity assessment body for the certification of energy management systems under DIN EN ISO 50001 and meets the competency requirements for the relevant accreditation rules for being appointed as an auditor. If the energy audit was performed by an environmental expert or an environmental audit organisation in accordance with §§ 9, 10 and 18 of the Environmental Audit Law, the accreditation certificate for the relevant sector for the person performing the energy audit will suffice as evidence of qualification.

Further provisions regarding the requirements for energy auditors and information regarding the registration process are outlined in a different leaflet ("Guidelines for the Registration of Energy Auditors").

According to DIN EN 16247-1, it is permissible for an energy auditor to include subcontractors. In such a case, it must be ensured that those persons whom the responsible energy auditor includes also meet the requirements of DIN EN 16247-1 regarding competence, confidentiality and objectivity. It must be noted that the energy auditor bears the responsibility for the proper performance of the energy audit.

Energy auditors can provide the necessary qualifications to BAFA in advance and, if they so wish, be included in a public directory of energy auditors.

It is, however, also possible, to only provide the relevant documentation for expertise during the sample checks by BAFA.

Companies searching for suitable external energy auditors can use BAFA's published directory. It should be noted that the selection of a suitable energy auditor should be made with care. The energy auditor should, where possible, have experience in consulting and knowledge of the technologies and processes of the relevant sector of the company. The company is responsible for selecting a suitable person.

5. Sample checks and verification management on the performance of energy audits

5.1 Sample checks by BAFA

According to § 8c para. 1 EDL-G, the responsibility for verifying the performance of an energy audit lies with BAFA. This verification is intended to ensure the application of the sanctions and measures of Article 13 of Directive 2012/27/EU.

The companies will be requested to provide evidence of the performance of energy audit through sample checks, within a reasonable time period. The size of the sample will represent about 20 percent of companies required to perform energy audits within the four year period.

The company is **not required to proactively notify BAFA of its performance of an energy audit**. As part of its sample checks procedure, BAFA will approach a company required to perform an energy audit and will request it, within a reasonable time period, to provide evidence on whether:

1. it has fulfilled its obligation under § 8 para. 1 EDL-G or
2. is exempt from the obligation under § 8 para. 3 EDL-G.

As part of its sample checks procedure, BAFA can request a company to submit the documentation compiled during an energy audit, especially the energy audit report, in order to conduct a content-based verification of the energy audit. In such cases, BAFA will inform the company in writing about which documents, such as for example the energy audit report or sections thereof, should be submitted.

If a company is required to provide evidence that it is a small or a medium enterprise and thus does not fall under the scope of application of § 8 para. 1 EDL-G, it must state in a self-declaration that it is a small or medium enterprise in accordance with the Commission's Recommendation. For this purpose, a relevant declaration form is available on BAFA's website (www.bafa.de > Energie > Energieaudits nach dem EDL-G).

5.2 Evidence of the performance of an energy audit

Evidence of the performance of an energy audit is to be provided by means of a confirmation by the person having performed the energy audit. The energy auditor must confirm that the requirements under § 8a EDL-G were fulfilled. If several energy auditors performed the energy audit, they must all sign the energy audit report. The energy auditors then jointly bear the responsibility for the proper performance of the energy audit.

In addition to the confirmation by the energy auditor, a confirmation must be submitted by the person in charge or the contact person nominated by the company for the successful performance of the energy audit. If the energy audit was performed by persons from within the company, the confirmation is to be signed by the company's management. In particular, management must confirm that:

- it has taken note of the recommendations from the energy audit for possible energy efficiency measures, and
- declares in good faith that the company meets the requirements of an energy audit, especially with regard to completeness of sites to be included in the audit.

Furthermore, information must be provided regarding the company, the contact person in the company, the energy auditor (including evidence of qualification if BAFA does not yet have this), the number of sites and the percentage of implemented systems as part of the total energy consumption (energy audits according to DIN EN 16247-1, energy management systems and/or EMAS).

If certified energy or environment management systems have been introduced in the individual sites, the registration/certification documents are to be submitted, and, where applicable, the report of the current verification audit regarding the validated environmental declaration.

BAFA will provide a form on its website for the purpose of simplifying verification management.

Performance of multi-site procedures

In the case of companies with several similar sites to which the multi-site procedure has been applied, information must be provided on the total number of sites of the company and on the number of sites where energy audits were performed.

Where the multi-site procedure is applied to partner or linked companies, the written nomination of the person or company in charge and the written confirmation about the company's participation in the multi-site procedure (see section 3.2.1.) has to be submitted in addition to the above provisions. Moreover, the company must submit a self-declaration about its ownership structure.

Performance of repeat group audits

For the performance of repeat group audits, the written nomination of the company or person responsible and the written confirmation about the participation of the company in the group audit (see section 3.2.3) must be submitted, in addition to the information listed above. Moreover, the company must submit a self-declaration about its ownership structure.

Companies without energy consumption

During a spot check, companies without an energy consumption must submit a confirmation by the management stating that the company has no energy consumption.

5.3 Verification in the case of an exemption under § 8 para. 3 EDL-G

Verification about the existence of the requirements for an exemption is done, depending on whether an energy management or an environment management system has been introduced,

- through a valid DIN EN ISO 50001-certificate;
- through a valid registration or extension notice from the responsible EMAS registration authority regarding the company's registration in the EMAS registry, or a confirmation by the EMAS registration authority regarding the company active registration with information about the time until which the registration is valid.

The certificate or the registration or extension notice must be valid on the relevant performance date. Because of the certification procedure system (annual verifications), this must in any case be the actual registration/certification document and where applicable additionally include the report of the current verification audit regarding a validated environmental declaration.

Verification of the existence of a valid, certified energy or environment management system on the date of performance applies over the entire commitment period.

5.4 Verification in the case of implementation of an energy management system or EMAS in the introductory phase

Companies which, in compliance with the law, implement an elaborate energy or environment management system certification instead of an energy audit, are exempted from verification management during the first verification cycle. In order to take account of the fact that an energy or environment management system requires more time than the performance of an energy audit and as a result might not be fully completed by 5 December 2015, it is sufficient for the company to have at least implemented the basic steps of introducing such a system by this date.

In the case of a verification through sample checks between 5 December 2015 and 31 December 2016, the company only needs to provide evidence of the start of implementation of an energy or environment management system. This evidence is provided through the submission of a written or electronic declaration by the management with the following content:

1. the company commits to or instructs one of the authorities listed in § 55 para. 8 of the Energy Tax Law and § 10 para. 7 of the Electricity Tax Law, to introduce
 - a. an energy management system according to § 8 paragraph 3 number 1 EDL-G or
 - b. an environment management system according to § 8 paragraph 3 number 2 EDL-G, and
2. the company has begun with the implementation of the system (number 1) and implemented the following measures by 5 December 2015
 - a. for an energy management system according to § 8 paragraph 3 number 1 EDL-G, number 4.4.3 (a) DIN EN ISO 50001, December 2011 edition ;
 - b. for an environment management system according to § 8 paragraph 3 number 2 EDL-G at least the collection and analysis of used sources of energy with an inventory of energy flows and energy sources, the determination of major parameters measured in absolute quantities and as a percentage thereof, in technical and valued in monetary units and in the documentation of used energy sources with the help of a chart.

If companies which are implementing an energy or environment management system are requested to provide verification of an energy audit in the year 2016 as part of a sample check procedure, the already implemented measures according to section 2 are also to be documented, in addition to the written or electronic declaration required. The EDL-G does not require a binding, external certification of these documents. However, it should be noted here that it is advisable to establish early contact with the certification organisation, in order to ensure a timely detection of possible faults or deviations in the

introduction of the management norm and in the implementation of the above-listed measures, and thus limit the actual necessary time for the audit under DIN EN ISO 50001 or EMAS.

When applying this simplified verification management, companies are also required to have concluded their certification at the latest by the end of the year 2016. Companies, which have used this verification management as part of a sample check procedure must submit the acquired certificates at the latest by the end of March 2017.

6. Provisions on fines

If a company, contrary to its obligation to perform an energy audit, fails to perform it, performs it incorrectly, incompletely or not on time, it can be required to pay a fine of up to EUR 50,000. A company can also be subject to a fine if it falsely claims to be an SME. The Bundestag has asked the Federal Government to take into account in its application of the law the fact that the time period to complete the first energy audit has been shortened by about one year as a result of the delayed implementation of the Energy Efficiency Directive. Thus, for example in the case of a shortage of consultants, the timely performance of the audit may not be practically possible. Therefore, in determining the imposition of a fine, BAFA will assess whether the company in question could have reasonably been expected to complete the first energy audit within the set time period.

Non-performance

The obligation to perform an energy audit exists for the first time on 5 December 2015 and every 4 years counting from the date of the performance of the first audit. Failing to perform an audit by the deadline does not release a company of its obligation to perform an audit. The obligation remains throughout the entire period and ends only with the performance of the audit. In the case of non-performance on an energy audit under §§ 8 ff EDL-G, this is considered an ongoing administrative offence. If the ongoing administrative offence persists after the imposition of the fine acquires legal effect, the decision constitutes a break; the behaviour or failure to perform an audit after the decision is considered a renewed administrative offence. In the case of a persistent failure to perform, several fines can be imposed upon a company required to perform an energy audit.

Incorrect or incomplete performance

In the case of audits, which are incorrectly or incompletely performed, the obligation for the proper performance of the audit remains. The obligation remains over the entire period and ends only with the correct and complete performance of the audit. In this case too, a persistent failure to comply can lead to several fines being imposed upon the company required to perform an energy audit.

Late performance

In the case of an audit which is not performed on time, a one-time fine can be imposed upon the company.

Implementation of an energy management system or an environment management system

In the case of a verification between 5 December 2015 and 31 December 2016, evidence of the start of implementation of an energy management system or an environment management system is sufficient. If the evidence declaration contains information which is intentionally or negligently false, this can lead to a fine. If an energy audit is performed subsequently to (and without an adequate justification) to the company's commitment to implement an energy management system, this can also lead to the imposition of a fine.

Denial of non-SME status

If a company is requested to provide evidence of the performance of an energy audit, but does not fall within the scope of application of the law because of its SME status, the company has to provide a self-declaration in which it states that it is not an SME. If a company untruthfully claims to be an SME, it can be requested to pay a fine.

Non-submission of requested documents

If a company is requested to provide documentation of the performance of an energy audit or the exemption from the obligation to perform an energy audit within a reasonable deadline, and fails to provide this documentation, it can also be imposed a fine.

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