Bundesamt
für Wirtschaft und
Ausfuhrkontrolle

Guidelines for energy audits

according to the statutory provisions of Sections 8ff. Energy Services Act

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List of abbreviations

BAFA	Federal Office of Economics and Export Control
DIN	Deutsches Institut für Normung (German Institute for Standardisation)
EDL-G	Energy Services Act (*Gesetz über Energiedienstleistungen und andere Energieeffizienzmaßnahmen*)
EN	European Standards
EnEV	Energy Saving Ordinance (*Verordnung über energiesparenden Wärmeschutz und energiesparende Anlagentechnik bei Gebäuden (Energieeinsparverordnung - EnEV)*)
EMAS	Eco-Management and Audit Scheme
i.c.w.	In conjunction with
ISO	International Organization for Standardization
No.	Number
OJ	Official Journal
SME	Micro, small and medium-sized enterprises within the meaning of the Commission Recommendation of 6 May 2003

Revision history

1. Revisions to the guidelines (as at: 08.07.2015)

- Revision of chapter "2.1 Definition of a company"

2. Revisions to the guidelines (as at: 04.10.2016)

- Revision of chapter "2.1 Definition of a company"
- Revision of chapter "2.2 Definition of a non-SMU"
- Revision of chapter "2.3 Reference date for determining non-SME status"
- Revision of chapter "5.1 Sample checks by BAFA"
- Revision of chapter "5.2 Evidence of the performance of an energy audit"
- Revision of chapter "5.3 Verification in the case of an exemption under Section 8 (3) EDL-G"
- Revision of chapter "5.4 Verification in the case of implementation of an energy management system or EMAS in the introductory phase"

3. Revisions to the guidelines (as at: 13.02.2019)

- Revision of chapter "5.3 Verification in the case of an exemption "Revision of chapter "1.1 Background"
- Revision of chapter "1.2 Key provisions"
- Revision of chapter "2.3 Reference date for determining non-SME status"
- Revision of chapter "3.1 Determination of the total energy consumption"
- Revision of chapter "3.2 Performance of the energy audit"
- Revision of chapter "5.1 Sample checks by BAFA"
- Revision of chapter "5.2 Evidence of the performance"
- Chapter "5.4 Verification in the case of implementation.." deleted
- Revision of chapter 6 "Provisions on fines"

4. Revisions to the guidelines following the amendment (as at: 26.11.2019)

- Overall adaptation and revision of the guidelines in line with the amendment to the EDL-G to 26.11.2019

5. Division name changed from 526 to 513 (as of 01 July 2020)

6. Division name changed from 513 to 514 (as of 30 November 2020)

7. Translation into english (as of 16 November 2021)

1. General

1.1 Background

The European Union and Germany have agreed on important energy efficiency measures in order to achieve the European energy and climate protection targets. For the European Union, the basis for achieving these targets was enshrined in the Energy Efficiency Directive 2012/27/EU of 25 October 2012. According to this Directive, Member States are required to ensure that all enterprises that are *not small and medium-sized enterprises (non-SMEs)* conduct an energy audit.

The European Energy Efficiency Directive was transposed into national law by amending the Energy Services Act (EDL-G)[1]. The changes to the EDL-G came into effect on 22 May 2015. Four years later, the law was subjected to a critical appraisal. As a result of this appraisal, adjustments were made to the audit procedure itself and also to the administration of the audit procedure. The amended regulations of the EDL-G[2] have been in force since 26 November 2019.

These guidelines are aimed at simplifying the application of the law for enterprises and persons carrying out the energy audits. Please also see the guide to creating energy audit reports published on the BAFA website, which explores the topic in greater detail. This guide is intended to provide information to enterprises and help energy auditors with questions regarding the creation of reports and design. Neither these guidelines nor the guide to creating reports relieve enterprises of their own responsibility to judge whether the legislation applies to them. These information sources do not aim to provide a final or binding clarification of all questions arising in connection with application of the law.

1.2 Key points Section 7, Sections 8–8d EDL-G

Sections 8-8d of the EDL-G transpose the European Union requirements into national law. According to these requirements, all enterprises that are **not** small and medium-sized enterprises within the meaning of Commission Recommendation 2003/361/EC of 6 May concerning the definition of micro, small and medium-sized enterprises (OJ L 124 of 20 May 2003, p. 36) are obliged to carry out an energy audit and, calculated from the date of completion of the first energy audit, must complete another energy audit at least once every four years.

Section 8C EDL-G now specifies that enterprises with an audit requirement must **proactively** furnish data on the energy audit, in electronic form, as proof that the energy audit has been completed. The Federal Office of Economics and Export Control (BAFA) is responsible for carrying out sampling processes to evaluate energy audits. If requested to provide evidence, enterprises with SME status must provide a self-declaration that they are not subject to the obligation to perform an energy audit.

Anyone required to carry out an energy audit who does not conduct an energy audit, or does not conduct an energy audit properly, fully or in good time or does not fully comply with their reporting obligation may be required to pay a fine of up to €50,000. Enterprises that falsely claim to be SMEs may also be liable to a fine.

Under Section 7 (3) EDL-G, BAFA also maintains a public list (energy auditor list) with details of persons who are professionally qualified to carry out energy audits in accordance with Section 8 EDL-G in the relevant enterprises. To qualify for inclusion in the energy auditors list, the person conducting the energy audit must be recognised by BAFA. In future, any person conducting an energy audit must be registered with BAFA before carrying out the audit for the first time. The regulations concerning the requirements and qualifications of persons conducting energy audits are laid out in separate guidelines.

[1] Energy Services Act of 4 November 2010 (Federal Law Gazette I p. 1483), which was amended by Article 1 of the Act of 15 April 2015 (Federal Law Gazette I p. 578). 2 Reference in the Federal Gazette needs to be added!

2. Entities required to perform an energy audit according to Section 8 (1) i.c.w. Section 1 No. 4 EDL-G

All enterprises that are **not** microenterprises, small or medium-sized enterprises as defined in the Commission Recommendation are required to conduct an energy audit[2]. The definition of an obligated enterprise is thus derived from **reversing the SME definition**. Obligated enterprises are **non-SMEs, irrespective of the industry or the field of activity**.

The term "enterprise" is to be understood broadly and includes:

- Any legally independent entity, regardless of its legal form, which keeps books and accounts for commercial and/or tax law reasons and is economically active
- Public sector enterprises, as long as they are not mainly exercising public governance functions

None of the institutions subject to the energy audit obligation are:

- Public municipal undertakings
- Institutions mainly exercising public governance

2.1 Definition of an enterprise

The definition of an enterprise is based on the European Commission's Recommendation of 6 May 2003. An enterprise is considered to be any entity engaged in economic activity, regardless of its legal form. This includes, in particular, those entities that carry out a craft activity or other activities as one-person or family firms, as well as partnerships or associations that regularly pursue economic activity. The European definition of an enterprise is thus based on a functional perspective, which has an organisational component (action by an entity) and an activity-related component (economic activity).

The economic activity is therefore the determining factor. Economic activity means an activity that focuses on the exchange of services or goods on the market, i.e. participation in the business exchange of services by offering goods and services on a market. Another requirement is that participation in economic activity is not only occasional or temporary. A profit-making motive is however not necessary for the economic activity to exist. Even enterprises that serve non-profit or charitable purposes can therefore be economically active in principle and required to carry out an energy audit.

The obligated enterprise is the smallest legally independent entity that keeps books and records for tax and/or trading purposes, including the entity's branches or field offices and plants. This is based on the Commission Recommendation of 6 May 2003, which proceeds from an initial assumption of autonomous enterprises and then takes into account the relationships of independent enterprises with other enterprises. The basis for evaluation is therefore the legally independent entity.

Public administration institutions can also be considered enterprises if they are used to exchange goods or services on the market. Only a certain organisational independence is required. Owner-operated municipal undertakings are therefore also considered to be enterprises within the meaning of the Commission Recommendation, provided that they pursue an economic activity. Public municipal undertakings should not be considered as enterprises within the meaning of the Commission Recommendation since they are insufficiently independent from the municipal administration.

In the case of municipal undertakings, the obligated enterprise is any organisational independent entity; it does not need to have a separate legal personality. Due to the broad definition of the term "economic activity", there are only a few areas of business activity that are excluded from the scope due to their public governance characteristics.

[2] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:DE:PDF

Especially in relation to public institutions and entities involving public ownership, it may be difficult to define what is and what is not an enterprise. An evaluation of whether an institution or entity forms part of public governance does not depend on the (private or public-legal) legal nature of the institution or entity, but on its perceived tasks or activities, according to the functional understanding of the enterprise. The extent to which an economic activity is exercised is decisive.

Economic activity does not exist in any case where the activity is an exercise of public governance or if authorities are acting in their capacity as public authorities. This is the case where the activity in question is a task that forms part of the essential functions of the State or is connected with those functions by its nature, its aim and the rules to which it is subject. Provided that no market mechanisms are introduced in the relevant areas, activities that are an inextricable part of an authority's prerogatives and exercised by the State are generally not considered to be economic activities. Certain social security activities can also be considered to be non-economic.

Accordingly, for public institutions and entities that are publicly owned: If the task or activity concerned cannot equally be carried out under current law by private third parties, it is a public governance function and therefore not an economic activity.

Examples of public governance functions/non-economic activities or tasks:

- Tasks in the areas of threat prevention, policing and justice
- Tasks in the areas of public water supply, wastewater or waste disposal, insofar as these tasks cannot be delegated to private third parties under the relevant federal or state law. It does not matter whether or not the task was actually delegated.
- Tasks carried out by state-financed educational institutions, in particular schools and pre-primary facilities,
- Tasks in the area of the administration of legal systems for social security under public control (e.g. statutory health insurance)

The "Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest" can be used to help distinguish between public governance functions and economic activities. Point number 2.1 “Concepts of undertaking and economic activity" in the communication is especially pertinent.

If economic activities are carried out in conjunction with public governance functions or non-economic activities in an institution, the EDL-G is used as a basis to identify which activities predominate. If the activities in a particular institution are both of a public governance and economic nature **and** they are closely intertwined such that they cannot be separated, the institution has predominantly public service tasks if the exercise of public power is predominant. The core area of the task is considered in assessing the activity. The economic branch of activity must only be a subordinate branch of activity within the institution entrusted with public governance tasks. This type of close integration must be assumed in particular if the areas comprising economic activities and the areas comprising public governance functions do not have their own separate premises or their own human resources and materials. If such close integration exists, an examination as to which activity predominates must be carried out. The criteria from the SME - recommendation can be used (number of employees, annual sales and annual balance sheet total) to draw a line between the activities. BAFA assumes a predominant portion of over 50%. If public governance functions form the predominant portion, an energy audit does not need to be carried out.

If, on the other hand, an institution engages mainly in economic activities, the obligation to carry out an energy audit essentially applies only to these economic activities in particular and not to the public governance tasks of the institution. Furthermore, institutions that engage mainly in economic activities can only be subjected to an energy audit if the relevant areas are, in organisational terms, clearly demarcated from the public governance tasks and if the energy consumption of the areas of economic activity can be measured and allocated.

If the economic and public governance functions are organised independently of each other within a particular institution, the obligation to conduct an energy audit shall apply to the economic activities.

2.2 Definition of a non-SME

In the following guidelines, a **non-SME** is interpreted on the basis of the European Commission's Recommendation on the definition of microenterprises as well as small and medium-sized enterprises.[3] The definition is only needed to determine the status of an enterprise.

To classify an enterprise as a **non-SME**, the number of employees and financial ceilings must be taken into account. A distinction must be made between autonomous enterprises, partner enterprises as well as linked enterprises and enterprises with public ownership. If the enterprise is not autonomous, but a partner enterprise or part of other enterprise or itself holds shares, this shall be considered in the assessment of SME or non-SME status. Each enterprise must therefore be examined on a case-by-case basis. It is the responsibility of the enterprise itself to assess whether it is a **non-SME** and therefore obliged to carry out an energy audit.

A **non-SME** is defined

- as an enterprise that employs 250 persons **or**
- that employs **fewer** than 250 persons but has an annual turnover in excess of €50 million [4] and an annual balance sheet total in excess of €43 million.

Enterprises either acquire or lose their SME status only if they either fall below or exceed the mentioned thresholds in **two consecutive accounting periods**. In the case of enterprises that have never had the same status for two consecutive years and in the case of start-ups, the **status of the enterprise in the year in which it was founded** determines whether or not it is considered to be an SME or non-SME.

An enterprise is considered to be a non-SME if 25% or more of its capital or its voting rights are directly or indirectly controlled by one or more public bodies or public corporations either individually or jointly. The limitation that an enterprise is only a non-SME if it exceeds the thresholds (staff headcount and financial ceilings) in two consecutive accounting periods does not apply to enterprises with over 25% public ownership.

▪ Staff headcount and financial ceilings

A headcount of 250 or more persons is a determining criterion in categorising an enterprise as a non-SME. If this threshold is exceeded, an enterprise cannot have SME status, even if its annual turnover or annual balance sheet total are below the specified ceilings.

The data for the headcount and financial ceilings as well as for the reference period are regulated in Title I Article 4 of the Commission Recommendation of 6 May 2003. According to this recommendation, the relevant data for calculating the number of employees and the financial ceilings are those relating to the latest closure of the accounts and are calculated on an annual basis.

The number of employees corresponds to the number of employees who worked full-time during the year under consideration. These include, in particular:

- Persons receiving a wage or salary

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[3] See also, for example, the European Commission's "User Guide to the SME Definition" from 2015 (available as a
pdf document at: User Guide to the SME Definition - European Commission)

[4] In the case of enterprises whose profit and loss statements do not include sales turnover, e.g. banks, the turnover variable is taken to be the operating result without depreciation and administrative expenses, but including net interest income, commission income, trade income, and other operating income.

- Individuals working for the enterprise who are subordinated to it and deemed to be employees under national law (e.g. also those employees in temporary employment - these must be included both in the user enterprise and the agency enterprise)
- Owner-managers
- Partners who engage in a regular activity in the enterprise and receive financial benefits from the enterprise.

Part-time employees and seasonal workers are taken into account on a pro rata basis. Persons on maternity or educational leave as well as trainees or persons engaged in vocational training with a vocational training contract are not included as staff. Employees abroad must be taken into account in the headcount calculation.

To determine the average headcount for the relevant period under review, the following calculation should be carried out:

1. Determine the number of full-time equivalents for each month in the accounting period
2. Add the corresponding full-time equivalents for the months
3. Divide the total of full-time equivalents by the number of months in the accounting period

Annual turnover is determined by calculating the income derived from sales and the provision of services achieved by the enterprise during the year in question, taking into account any sales deductions. VAT and other indirect taxes are not included in turnover. The annual balance sheet total refers to the main assets of the enterprise[5].

▪ Example of headcount calculation

The reference date for determining the status of an enterprise is always 31 December in a particular year.

Example: The accounting period for enterprise A runs from 1 April 2017 to 31 March 2018. The latest financial statement is dated for the accounting period to 31 March 2018. On 31.12.2018 the enterprise must proceed as follows:

On 1 April 2017 enterprise A had 5 owner-managers and 235 employees. Another 20 employees were added on 10 July 2017. There were no other changes. Therefore for 3 months of the accounting period (April, May and June), enterprise A has a total of 240 employees and for 9 months of the year (July 2017 to March 2018) a total of 260 employees.

The calculation for the full year therefore looks like this: [(240 □ 3) + (260 □ 9)] / 12 = 255

Enterprise A is above the threshold of 250 employees on the reference date. However, since the enterprise only recruited staff during the year, thus exceeding the threshold of 250 employees, the number of employees from the previous accounting period must also be calculated: the definition only applies if enterprises exceed the thresholds for two years in a row.

▪ Example of enterprises that are close to the threshold for non-SME status

Enterprises either acquire or lose their SME status only if they either fall below or exceed the mentioned thresholds in two consecutive accounting periods.

Therefore, for enterprises that are close to the threshold of the status of a **non-SME** or that have recently grown or shrunk in size, calculations may be required across multiple periods to determine if the enterprise has the status of a non-SME.

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[5]For more details on defining the main assets, see Article 12 (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 enterprises, OJ L 222 of 14.8.1978, p. 11-31.

In the case, for example, of an enterprise that has exceeded the thresholds for the last five years, and has only fallen below the thresholds in the last accounting period before or on the reference date used to determine its status, the enterprise shall still be categorised as a **non-SME** and therefore must conduct an energy audit. On the other hand, an enterprise that has, for example, fallen below the thresholds for the last five years (and therefore had the status of an SME) shall continue to be categorised as an SME even if it exceeds these values in the last accounting period before or on the reference date for determining the status.

In the case of an enterprise that has exceeded and then fallen below the thresholds on an annual basis, the calculations to determine the status must go back to a period in which the enterprise had the same status for two years in a row. In the case of enterprises that have never had the same status for two consecutive years, the status of the enterprise in the year in which it was founded determines whether or not it is considered to be an SME or **non-SME**.

▪ Autonomous enterprises

An enterprise is considered to be autonomous if it

- is fully independent or
- holds less than 25% of the capital or voting rights (taking into account the higher proportion in either case) of another enterprise, and/or any external parties have less than 25% of the capital or voting rights (taking into account the higher share in each case) of the enterprise in question.

An enterprise shall not be categorised as autonomous if it has multiple investors with stakes of less than 25% each, provided that these investors are linked to each other (see below). Exceptionally, an enterprise may still be considered autonomous even if has stakes of over 25% but under 50% held by the following investors:

- public investment corporations, venture capital companies and “business angels"
- universities and non-profit-making research centres
- institutional investors including regional development funds or
- autonomous municipal administrations with an annual budget of less than €10 million and fewer than 5,000 inhabitants.

▪ Partner enterprises and linked enterprises

A legally independent enterprise that has a partner or linked relationship with other enterprises is not an autonomous enterprise according to the Commission’s Recommendation.

An enterprise may only be considered separately if it is autonomous. It is important to note that it makes no difference to an enterprise’s categorisation as a linked or partner enterprise whether its connections with other enterprises headquartered in Germany are inside or outside the European Union. For example, in the case of multinational corporations, enterprises in third countries outside the European Union must also be taken into account. It should be pointed out here, for the sake of clarification, that these provisions apply only to the determination of a non-SME status; as regards conducting an energy audit under German law, only locations in Germany must be recorded (see section 3.1).

Partner enterprises are enterprises that enter into extensive financial partnerships with other enterprises without one enterprise either indirectly or directly exercising actual control over the other. Partner enterprises are enterprises that are not autonomous, but also not linked to each other. An enterprise is a partner enterprise of another enterprise if:

- it holds a stake of between 25% and 50% of the other enterprise
- another enterprise holds a stake of between 25% and 50% of the enterprise
- the enterprise does not draw up consolidated accounts involving the other enterprise through consolidation, and is not included through consolidation in the accounts of this enterprise or another enterprise linked with it.

In economic terms, linked enterprises are enterprises that belong to a group of enterprises, either through indirect or direct control of the majority of their capital or their voting rights (including by agreement or in some cases by natural persons such as shareholders) or through the ability to exercise a dominant influence on another enterprise. Linked enterprises are enterprises that have one of the following relationships with each other:

- An enterprise holds the majority of the voting rights of members or shareholders of another enterprise;
- An enterprise is entitled to appoint or remove the majority of the members of the administrative, management or supervisory board of another enterprise;
- An enterprise is entitled to exercise a dominant influence on another enterprise in accordance with a contract concluded with this other enterprise or due to a provision in its articles of association;
- An enterprise that is a shareholder or member of another enterprise and exercises sole control, by agreement with other shareholders or members of the other enterprise, over the majority of voting rights of that enterprise's shareholders or members.

Enterprises that draw up consolidated accounts or are included in the consolidated accounts of another enterprise are usually considered to be linked enterprises.

Enterprises that have one of these relationships with each other, either through a natural person or natural persons acting jointly, are equally considered to be linked enterprises, provided that these enterprises are either fully or partially active on the same or adjacent markets. An adjacent market is considered to be the market for a product or service which is immediately upstream or downstream of the market in question.

▪ Calculating the data for partner and linked enterprises

The SME status of a partner enterprise must be clarified by proportionally adding the staff headcount and financial data of the other enterprise to its own data. This proportion reflects the percentage of shares or voting rights held, taking into account the higher percentage. If, for example, an enterprise has a 30% share in another enterprise, 30% of the number of employees, sales and balance sheet total of the other enterprise are added to the enterprise's data. In the case of several partner enterprises, the same calculation is made for each of the partner enterprises situated directly upward or downstream of the enterprise.

For linked enterprises, 100% of the headcount and financial data of the other enterprise are to be added to their own data in order to clarify the SME status, unless these details are already included in the consolidated annual accounts.

▪ Ownership by public bodies

An enterprise is also considered to be a **non-SME** if 25% or more of its capital or its voting rights are directly or indirectly controlled by one or more public bodies or public corporations either individually or jointly. As mentioned above, an enterprise does not lose its SME status despite a stake of more than 25% but under 50% being owned, for example, if the stake is held by an autonomous municipal administration with an annual budget of less than €10 million and fewer than 5,000 inhabitants.

▪ Autonomous enterprises vs. smallest legally independent entity

These terms must not be confused with each other: In this context, an evaluation as an autonomous enterprise is used to categorise the enterprise as an SME or non-SME. The question of the smallest legally independent entity is relevant to determining which entity is obliged to carry out the energy audit. Both issues must be considered independently of each other.

2.3 Reference date for determining non-SME status according to EDL-G

For the first compliance period, the reference date 31 December 2014 was set to determine the thresholds and the status of an enterprise. The data to be used for determining the status of an enterprise was therefore based on the accounting period ending on 31 December 2014 or accounting periods ending in 2014.

The reference date for the repeat audits is 31 December of the year after an interval of three years following the year of completion of the previous energy audit. If, for example, the energy audit was completed on 15 August 2017, the next reference date for determining SME or **non-SME** status is 31 December 2020.

If the status of the enterprise changes between the reference date and the completion date, e.g. the headcount is significantly reduced or increased, this has no impact on the obligation determined by the reference date pursuant to Section 8 EDL-G. A change in headcount is only relevant if it falls below the threshold criteria for the status of **non-SME** in two consecutive years and therefore the requirement to carry out a repeat energy audit shall not apply.

Enterprises that achieve **non-SME** status for the first time after 5 December 2015 (first completion date) are also obliged to carry out energy audits. If an enterprise obtains **non-SME** status e.g. as a result of a business transformation (see below) or because the threshold values have been reached in two consecutive financial years, the enterprise is obliged to carry out an energy audit. The enterprise must carry out the energy audit within **20 months** from the first day of the accounting period from which it was first classified as a non-SME. This ensures that the energy audit is based on representative data and that the enterprise has enough time to carry out the energy audit.

▪ Newly founded enterprises

In the case of a newly founded enterprise that is not yet able to present a financial statement for a full accounting period on the reference date, the threshold values are estimated in good faith on the relevant reference date.

Newly founded enterprises are defined only as those enterprises that have started operation for the first time with the creation of essentially new business assets and that have not been created through business transformation. Newly created business assets exist if other fixed or current assets in addition to the equity and share capital have been acquired, rented or leased. The term “business transformation” covers all changes to existing structures, whether through acquisition, spin-offs or the transfer of parts of the enterprise to third parties and similar cases. Therefore the following constellations are not considered to be newly founded enterprises, for example:

- mergers, divisions (split-ups, split-offs or spin-offs) or a change of form
- creation of a new enterprise by way of individual or universal succession, takeover of an enterprise undergoing insolvency proceedings as part of an asset deal by an investor.

For newly founded enterprises that already meet the criteria for a non-SME, transition periods are provided for carrying out an energy audit. A period of 20 months from the start of operations is granted to enterprises before the first energy audit in order to allow them to use a representative period for assessing their energy-related performance when carrying out the energy audit.

▪ Transformation/purchase

A “transformation” refers to any transformation of an enterprise under the Transformation Act (*UmwG*), that is, any merging, division, transfer of business assets and change of form. In the case of universal succession under transformation law, the following aspects must be observed with regard to the audit obligation according to the EDL-G:

The obligation to carry out energy audits is derived in principle from the EDL-G (not from an administrative act) and must therefore be **reassessed** after each transformation for all legal entities affected by the

transformation. After each transformation, any enterprise that continues to exist as well as newly founded or existing legal entities must carefully and independently check their obligations under the EDL-G.

The enterprise affected by a transformation must also pay close attention to the **timeframes** for carrying out or repeating the energy audit. It is possible that the timeframe for the repeat audit will remain unchanged or that the timeframe for carrying out the first energy audit will start again, that is, that the transformed enterprise will have to carry out the energy audit within 20 months (see section 2.3, sub-item “Newly founded enterprises"). In the event of conflicting timeframes, i.e., if a legal entity that is already obliged to perform an energy audit is added to a legal entity that has the same obligation before the transformation (e.g. through a split-up or spin-off), the enterprise must apply the shorter timeframe in each case to the repeat audit ("every four years").

Examples:

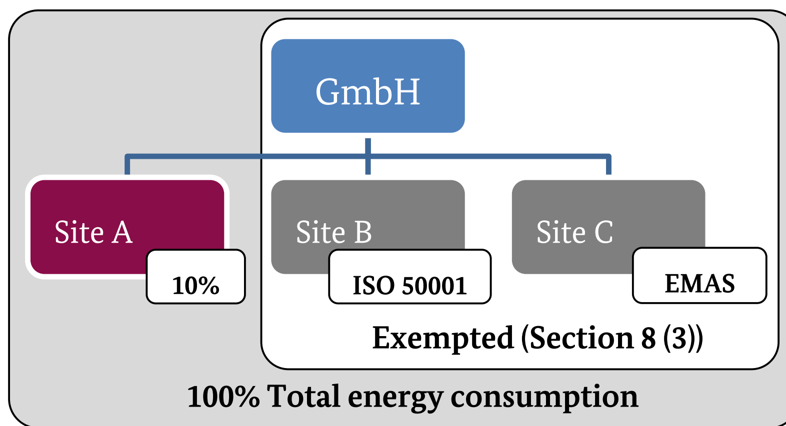
- Acquisition of an SME by a non-SME: If the acquired enterprise remains a legally independent enterprise, it acquires the status of a non-SME and has to carry out the energy audit within 20 months.
- Merger or acquisition of an SME by an SME with the thresholds being simultaneously exceeded: If the acquired enterprise loses its independence or goes bust, it acquires the status of a non-SME and must carry out the energy audit within 20 months.

2.4 Exemption from the obligation to perform an energy audit

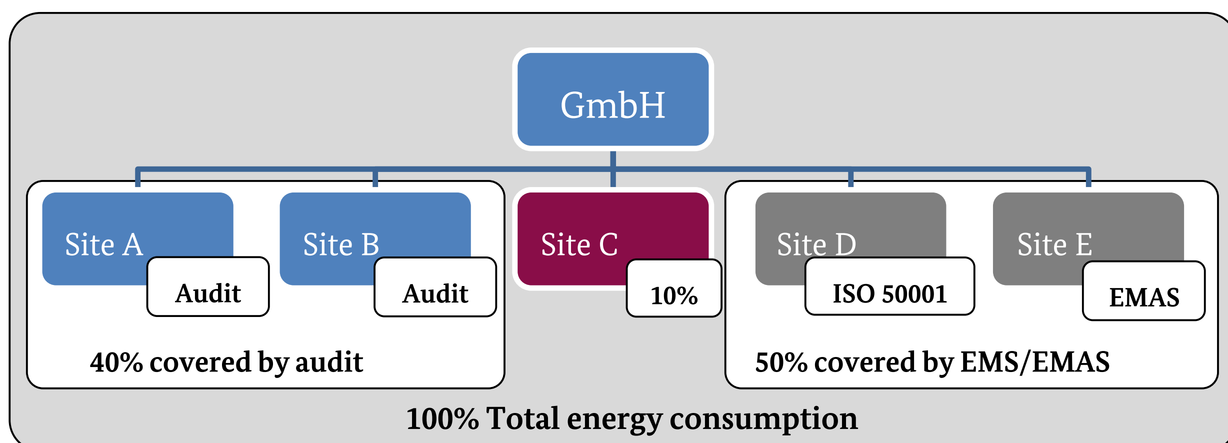
Enterprises are exempt from the obligation under Section 8 paragraphs 1 and 2 EDL-G if, at the relevant juncture, they have either set up or are in the process of setting up

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

If the enterprise is not yet able to present a completed certification at the relevant point in time, proof of starting to set up a system must be provided (see 7.2.2 Introducing an energy and/or environmental management system). Note that the certificates according to the DIN EN ISO 50001 December 2011 version lose their validity on 20 August 2021. At this point in time at the latest, the certificates should be issued in accordance with the DIN EN ISO 50001, November 2018 version.
An enterprise with multiple sites is permitted to operate different systems (i.e. several certificates according to DIN EN ISO 50001 or EMAS or certificates according to DIN EN ISO 50001 and EMAS). An enterprise with several sites is only exempted if it covers at least 90% of total energy consumption through an energy and/or environmental management system.



It is also permissible for an obligated enterprise having several sites to operate mixed systems comprising energy management systems and/or environmental management systems and energy audits according to DIN EN 16247-1 (i.e. several certificates according to DIN EN ISO 50001 and energy audits according to DIN EN 16247-1 or several certificates according to EMAS and energy audits according to DIN EN 16247-1 or certificates according to both DIN EN ISO 50001 and EMAS and energy audits according to DIN EN 16247-1). In addition, individual sites that account for less than 10% of the energy consumption to be audited can be disregarded.



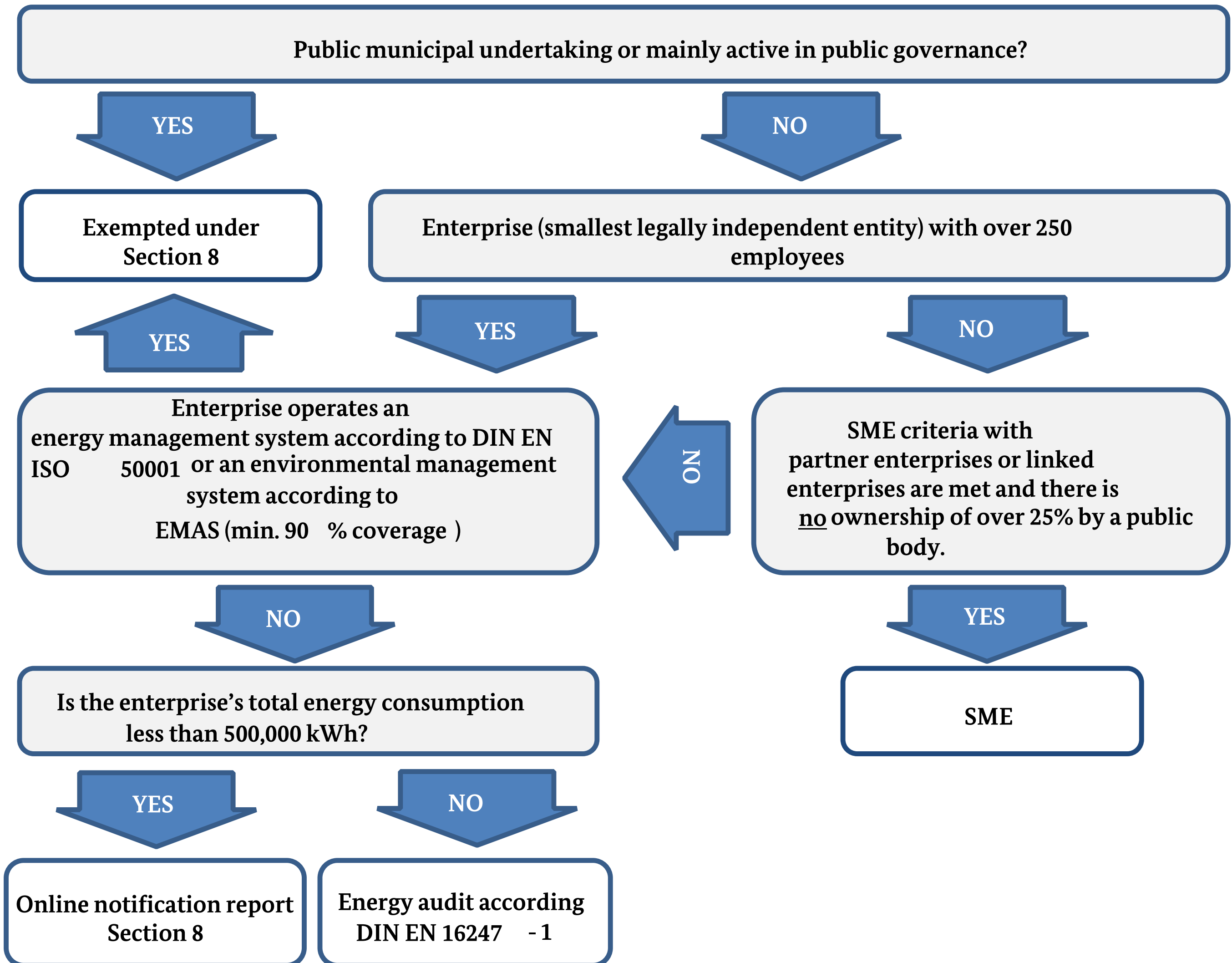
Obligations can be met by switching from a certified energy or environmental management system to an energy audit according to DIN 16247-1.
The exemption does not apply if the energy or environmental management system is not continued. The obligated enterprise is required to carry out an energy audit. The time when the last verification audit expires (for ISO 50001) or the last extension notice (for EMAS) is used as the basis for calculating the four-year period. The four-year period for carrying out the energy audit begins when these review documents expire (example: the verification audit took place on 23 August 2019 and is valid until 23 August 2020. The four-year period begins on 23 August 2020 and ends on 23 August 2024).

Enterprises that have met their obligation by means of a certified energy or environmental management system at the time of the first compliance period will likewise find themselves in the current compliance period within the framework of a repeat audit. These enterprises can thus take part in the auditing process as part of a group.

Enterprises that are planning to switch from an energy audit to an energy or environmental management system must make sure that the management system has been implemented at least by the date of the repeat audit. While Section 8C (7) EDL-G allows a two-year period to enterprises that have already set up an energy management system or an environmental management system before they have to submit the certification documents for ISO 50001 or registration notice according to EMAS, this depends on measures already implemented (see under 7.2).

2.5 Test scheme to determine the energy audit requirement

The following test scheme summarises the regulations described in point 2 and is intended to help determine whether an enterprise is obliged to perform an energy audit. Note that this scheme outlines the criteria in only one possible test sequence. It does not replace a detailed examination of the individual criteria listed under point 2.



3. Meeting the obligation to perform an energy audit

3.1 Determining total energy consumption

The following points are only briefly outlined in these guidelines. For more information on this topic, see the "Guidelines for determining total energy consumption" (available in German only) and the "Guide to creating an energy audit report according to the requirements of DIN EN 16247-1 and BAFA specifications" (available in German only; hereinafter referred to as “Guide”), which is also on the BAFA homepage under “Publications”.

Every energy audit is based on determining the total energy consumption of the obligated enterprise. The energy audit is assumed to be representative, in any case, if at least **90 percent** of each obligated enterprise’s total energy consumption measured is covered by the audit. Therefore the basis of **total energy consumption**

(**100 percent**) must first be defined in order to allow a focus on the main energy users when conducting the energy audit.

Under Section 2 no. 3 of the EDL-G, energy is understood to mean all commercially available forms of energy products such as fuels, heat, energy from renewable sources and electricity. Aviation fuels and fuel oils for shipping are excluded.
The **obligated enterprise** is always the **smallest legally independent entity** that keeps books and records for tax and/or trading purposes, including the entity's branches or field offices and plants or production sites. Legally independent subsidiaries are therefore considered to be separate enterprises. Note that in the case of partner or linked enterprises, it is the responsibility of the smallest legally independent enterprise to provide evidence of the energy audit, even if it was carried out using a multi-site procedure

▪ Particular conditions that apply to buildings

In the case of buildings, the energy audit must always take account of the energy consumption of the enterprise that uses the building (or individual rooms within a building complex) for business purposes and thus uses and consumes final energy. This is usually, notwithstanding owner structures, the **user or tenant** who direct influences energy consumption.

Enterprises with an audit requirement that rent or lease buildings and thus have no direct influence on their energy consumption do not have to include these buildings in their energy audit. Historical buildings that do not require the issuing of energy performance certificates when they are sold or rented (Section 16 (5) ENEV) can be excluded.

Buildings that are not occupied by any working employees must be included in total energy consumption.

The energy consumption of employees working from home can be excluded.

▪ Particular conditions that apply to temporary sites

Energy audits carried out on permanent sites have the required proportionality and representativeness. Sites that are temporarily set up or used to carry out specific work or services for a limited period and that will not become permanent (e.g. construction sites or temporary lease sites) are not subject to the energy audit obligation. A period of a maximum of 6 months should be considered as temporary, but exceptions may apply in individual cases.
The energy consumption of these temporary locations is not to be included in total energy consumption.

On the other hand, long-term construction sites, for example, which exist for more than three years are subject to an energy audit. These can no longer be assumed to be temporary sites.

▪ Particular conditions that apply to transportation

Transportation (e.g., road, rail and possibly shipping) is another area that must be taken into account in an energy audit. However, only the vehicle energy consumption that serves the business purpose of the enterprise and that is funded by the enterprise is to be considered.

The following types of consumption can be excluded from the calculation of total energy consumption:

- energy consumption of company cars by employees who also use them privately▪ leased vehicles,
- energy consumption for the transport of goods and persons that is conducted by third parties (this fuel is to be taken into account in the total energy consumption of the third party in question (if non-SME)).

Cross-border transportation must be taken into account if it starts or ends in Germany.

▪ Excluded energy consumption

The following instances of energy consumption are excluded from total energy consumption:

- energy that is not used by the enterprise, but only supplied to third parties
- aviation fuels and fuel oils for shipping
- energy consumption outside the Federal Republic of Germany
- energy consumption of cross-border transport that neither starts nor ends in Germany (unless the enterprise wants to include this energy consumption)

▪ Reference period

A reference period of **12 consecutive months** must be used as a basis when calculating the total energy consumption of all relevant energy sources. This period must include the reference date for determining the non-SME status.

▪ Verifiable data

The data used to determine the total energy consumption must be traceable and verifiable. Invoices from public utility companies or other accounting documents for purchased energy sources are to be used. If verifiable data on energy consumption is partially not available, plausible estimates/comprehensible projections must be made on the basis of other data (e.g. energy parameters).

3.2 De minimis threshold

Energy audits should be proportionate and representative such that the data obtained provides a reliable picture of the overall energy efficiency. However, they should also be cost-effective for the enterprise. In order to meet this criterion, Section 8 (4) EDL-G was introduced, which provides for total energy consumption to be taken into account.

If the total annual energy consumption of an obligated enterprise (smallest legally independent entity) is 500,000 kilowatt hours (kWh) or less, it is sufficient to inform BAFA electronically in the form of an implementation report of selected basic data on the enterprise, total energy consumption and energy costs.

For more information about, for example, calculating total energy consumption, see the detailed guidelines on determining total energy consumption.

3.3 Performing the energy audit

The Guide on preparing energy audit reports describes in detail how to perform an energy audit correctly, as well as how to write an energy audit report that complies with standards in terms of structure and content. As an enterprise and as an energy auditor, please refer to the content shown there. These guidelines only outline general information on fulfilling the statutory energy audit obligation according to EDL-G Sections 8 ff.

Obligated enterprises must carry out an energy audit every four years.

According to Section 8 (1) EDL-G, the obligation to carry out a repeat audit is deemed to have been fulfilled if, calculated from the time when the first energy audit or previous energy audit was completed, another energy audit is carried out and completed every four years in accordance with Section 8a EDL-G . **Example:** The first energy audit was completed on 31 August 2014. The timeframes for carrying out and completing further energy audits then end on 31 August 2018 and 31 August 2022 ff. The data used in the energy audit may not refer to a period that was already used as a basis in previous energy audits.

▪ Requirements of DIN EN 16247-1

According to Section 8a (1) No. 1 EDL-G, the energy audit must comply with the requirements of DIN EN 16247-1. For detailed information, see chapter I of the Guide.

The aim is to analyse the total energy consumption, break it down across the energy consumption structure and identify potential energy efficiencies by analysing the current status. In a next step, the various measures are assigned a monetary value using technical savings calculations and economic efficiency calculations. Enterprises can thus see at a glance which investments make most sense from an energy and economic perspective. A detailed documentation process is required so that all collated and calculated data can be tracked and used for historical analysis.

The list below gives a brief introduction to what is required in an energy audit. It should serve only as orientation; the applicable regulations are specified in DIN EN 16247-1, which is described in detail in the Guide.

1. Initial contact
2. Kick-off meeting
3. Data collection: fieldwork
4. Analysis
5. Report
6. Final meeting

a) Inspection of buildings
In the case of **rented** sites or premises, consideration can also be given, as part of the evaluation of the proportionality and representativeness of the energy audit, to opportunities for owners and operators to implement measures derived from the energy audit. For example, renovation measures that can only be carried out by the lessor and owner of the building can be disregarded by an enterprise renting the building.

If a building/site is partly or fully renovated while the energy audit is being carried out, this must be documented in the energy audit report.
A data basis developed in connection with the renovation, e.g. an existing renovation concept, can be used as part of the energy audit. The areas undergoing renovation at the time of energy audit must be described and assigned to the energy consumption determined during the period under review. The analysis of energy users can refer to the relevant renovation concept.

The energy audit is also considered to be representative if there has been no investigation of the building envelope or plants and facilities for heating, cooling, ventilation and lighting technology, or the hot water supply, but a valid, **demand-related** energy certificate for the building exists, according to Section 18 EnEV, including all calculation documents and completely covers these areas.[6]. As part of the verification procedure, all **calculation documents** must always be submitted along with the actual **demand-related** energy certificate according to Section 18 EnEV.

b) Economic efficiency calculations
An evaluation of the economic efficiency of energy efficiency measures developed under the energy audit must be based at least on the capital value of the investment and internal interest. To this end, the assumptions regarding the useful life of the capital goods in years, the imputed interest rate and the energy prices used must be documented. An explanation as to the basis on which these factors were determined must also be provided. For a detailed description of this point, see chapter V of the Guide.

3.3.1 Enterprises with several similar sites

In the case of enterprises with numerous comparable locations, the energy audit is considered to be proportionate and representative if the required investigations are carried out only at a representative number of sites. Multi-site procedures, in which clusters of sites are formed, can be applied for this purpose. **It is important in this case, that even when the multi-site procedure is used, the total energy consumption of**

[6]Taking account of the existence of an energy certificate complies with the grounds of the Draft Law transposing the Directive of the European Parliament and of the Council on energy end-use efficiency and energy services (Bundestag printed paper 17/1719).

the enterprise in question must be determined. Only then can the sites be clustered using comparison criteria. The multi-site procedure simply reduces the number of fieldwork visits.
The purpose of the multi-site procedure is to identify several similar locations using appropriate and defined comparison criteria, thus reducing the number of fieldwork visits (root function). Accordingly, it must be possible to transfer the energy audit reports for the sites subjected to a complete analysis to the remaining sites in the cluster. This transferability only exists if all sites are similar and comparable in terms of energy and structure (e.g., field offices).
Where there is a complex and differentiated technical infrastructure, e.g. in the hospital sector or in production facilities, the multi-site procedure is permitted only in exceptional cases.

The energy audit can be considered to be proportionate and representative when energy audits are performed according to DIN EN 16247-1 at a number of sites from each cluster, which corresponds to the square root of the total number of sites in the respective cluster, rounded to the higher integer. This means that suitable clusters must first be determined at comparable sites from the total number of enterprise sites.

For more information, see the Guide, chapter VI.

- **Multi-site procedure in partner and linked enterprises**

The multi-site procedure can be extended to partner enterprises and/or linked enterprises, as long as they meet the requirements for similar sites and the other regulations described above. The multi-site procedure can therefore only be extended to comparable sites of the respective participating enterprises. All other plants, sites, processes, facilities and transportation belonging to these enterprises must, if available, undergo an independent energy audit carried out by the particular obligated enterprise in each case.

If the possibility of extending the multi-site procedure to partner and/or linked enterprises is used, the management or executive board of the highest parent enterprise in the group must nominate a responsible body (enterprise or person/s) responsible for performing the energy audit. The appointment of the responsible body must be recorded in writing and must be signed by the management or executive board of the highest parent enterprise.

In addition, all enterprises taking part in the multi-site procedure must receive a written confirmation about their participation. This confirmation must be signed by the management of the participating enterprise and the responsible body and retained on file. These documents may be requested as part of a sampling process.

The results of the energy audit, in particular in the form of the energy audit report(s), should be distributed to all participating enterprises. Enterprises must be informed individually about the energy efficiency measures that apply to them specifically.

For more information, see the Guide, chapter VI.

3.3.2 Inspection of enterprise transportation

In the case of enterprises with a variety of comparable vehicles, the energy audit is considered to be proportionate and representative if the energy auditor’s fieldwork when inspecting the vehicles is limited to certain, representative vehicles. The number and selection of vehicles must be determined by the energy auditor in cooperation with the enterprise and must be carried out in such a way that a reliable assessment of the overall energy-related status of the fleet is possible. The key data is always: vehicle type, engine size, year of manufacture, features, kilometres driven and the resulting energy consumption.

For more information, see the Guide, chapter IV.

3.3.3 Inspection of certain comparable delivery points

For enterprises that have a variety of comparable delivery points (e.g. wind turbine parks, bus stops,

transfer points, regulating or filling stations, etc.) without active employees, the energy audit is considered to be proportionate and representative if the energy auditor's fieldwork in auditing these delivery points is limited to certain, representative delivery points. The number and selection of delivery points must be determined by the energy auditor in cooperation with the enterprise and must be carried out in such a way that a reliable assessment of the overall energy-related status of these delivery points is possible.

3.3.4 Performing energy audits on linked enterprises at the same site

For enterprises that are considered to be partner or linked enterprises within the meaning of the Commission Recommendation and that operate at the same site, an energy audit of the entire site may be considered to meet the obligation of the enterprises based at and included in this site, if they do not have any further sites in Germany. Sites are defined in this context as buildings or groups of buildings that are spatially connected to each other.

The results of the energy audit must be distributed to all participating enterprises. This means that the energy audit report must list all participating enterprises. A separate report or a reference in the main report must be created for each participating enterprise.

Alternatively, the individual enterprises can carry out their own independent energy audits.

Note that this option only applies to enterprises that are obliged to carry out an energy audit, not to enterprises that are exempted from the obligation because they have an existing energy management system according to DIN EN ISO 50001 or an environmental management system according to EMAS.

For more information, see the Guide, chapter VI.

3.3.5 Performing energy audits within energy efficiency networks

On 3 December 2014, the Federal Government and 18 German business associations signed an agreement to promote the expansion of energy efficiency networks by 31 December 2020 ("Initiative Energy Efficiency Networks, IIEE").

Support is provided to participating enterprises through a qualified energy consultation. Networking between the enterprises occurs in the form of regular moderated meetings, where enterprises exchange their experiences. With the assistance of the qualified energy consultation, each participating enterprise sets its own energy saving target and develops measures to meet this target.

In order to make optimum use of potential synergies, enterprises that are obliged to perform an energy audit can also develop one in the framework of a network process. For example, the enterprises participating in the network can jointly commission energy auditors or audit each other.

Enterprises that want to bring forward the repeat audit in the framework of an energy efficiency network can refer to the expiration of the four-year cycle of the previous energy audit, provided that the early energy audit is not scheduled more than 18 months before the regular repeat audit.

Example: The first audit took place in December 2015; the repeat audit would therefore need to be carried out by December 2019. In September 2018, the enterprise carried out an energy audit according to DIN EN 16247-1 as part of the analysis of energy-saving potential. Due to the four-year cycle still in effect, the following energy audit is due in December 2023 rather than September 2022.

3.3.6 Enterprises with zero energy consumption

Enterprises that demonstrably have no energy consumption and no energy costs (e.g. shelf or shell enterprises) are not required to perform a separate energy audit, in view of the criteria of proportionality and representativeness. If such a case exists, it must be confirmed by the management of the enterprise

concerned. At this point, it should be noted that the concept of energy consumption is not limited to electricity and gas only, but also includes all energy sources (see Item 3.1).

3.3.7 Performing repeat group audits

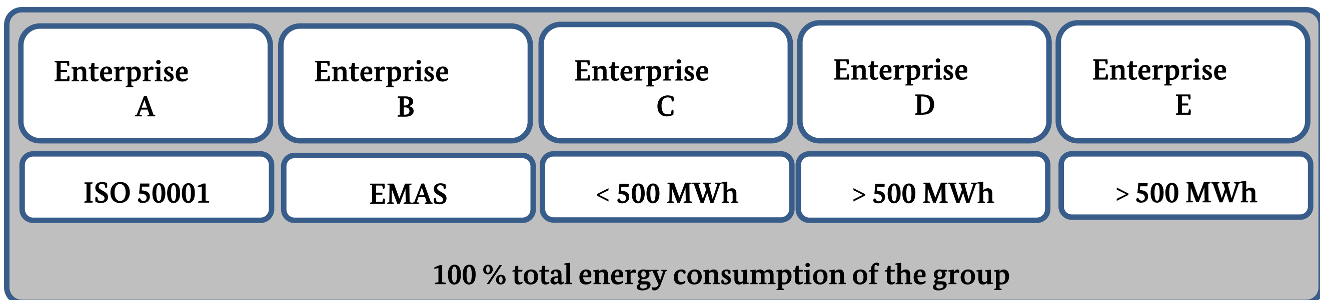
For enterprises that are considered to be linked enterprises within the meaning of the Commission's Recommendation and thus majority-owned by an enterprise, **repeat audits can be carried out in the group of enterprises**. This also applies to enterprises that are majority-owned by a local authority.

In addition, all enterprises that take part in such a group audit must receive a written confirmation of their participation in this audit. This confirmation must be signed by the management of the participating enterprise and the responsible body and retained on file. These documents may be requested as part of a sampling process.

The results of the energy audit must be distributed to all participating enterprises. This means that the energy audit report must list all participating enterprises. A separate report or a reference in the main report must be created for each participating enterprise.

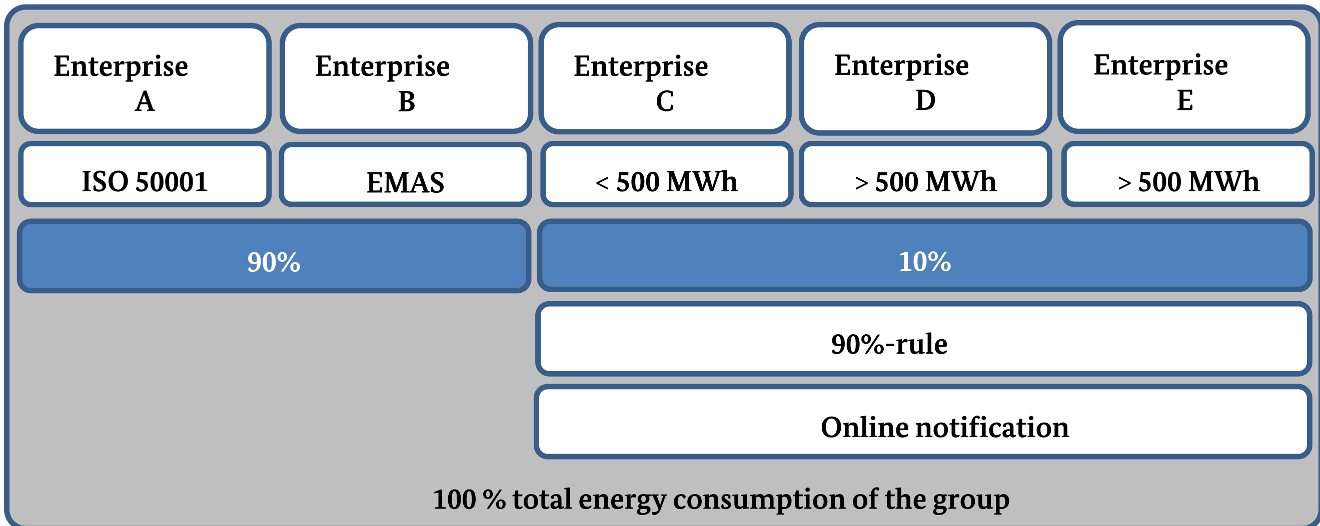
- **Procedure for determining the total energy consumption at group level**

In the case of a repeat audit conducted in a group of enterprises, the total energy consumption of the group must also take into account the energy consumption of the parts of the group in which a certified environmental (EMAS) or energy management system (ISO 50.001) is present. It should be noted that this only applies if all participating enterprises are included in the repeat audit.

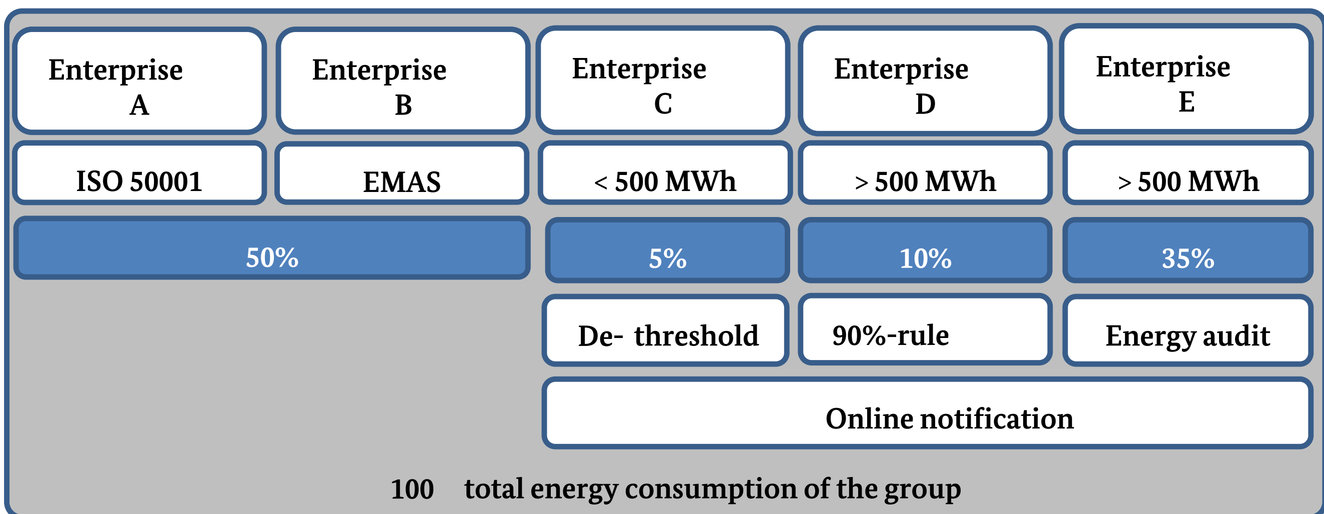


- **Application of the 90% rule in groups:**

If 90% of the total energy consumption is covered by a certified environmental (EMAS) or energy management system (ISO 50.001) within a group (enterprises A and B), those enterprises that make up a total of less than 10% of total energy consumption (enterprises C, D and E) are only obliged to submit an online notification report.
To prove the application of the 90% rule in the group, all participating enterprises must clearly document the determined total energy consumption of the group and its distribution across the enterprises as well as the enterprises' certificates for any future sampling processes. For more details on application of the rule, see chapter VI (2.1) of the Guide to creating energy audit reports.



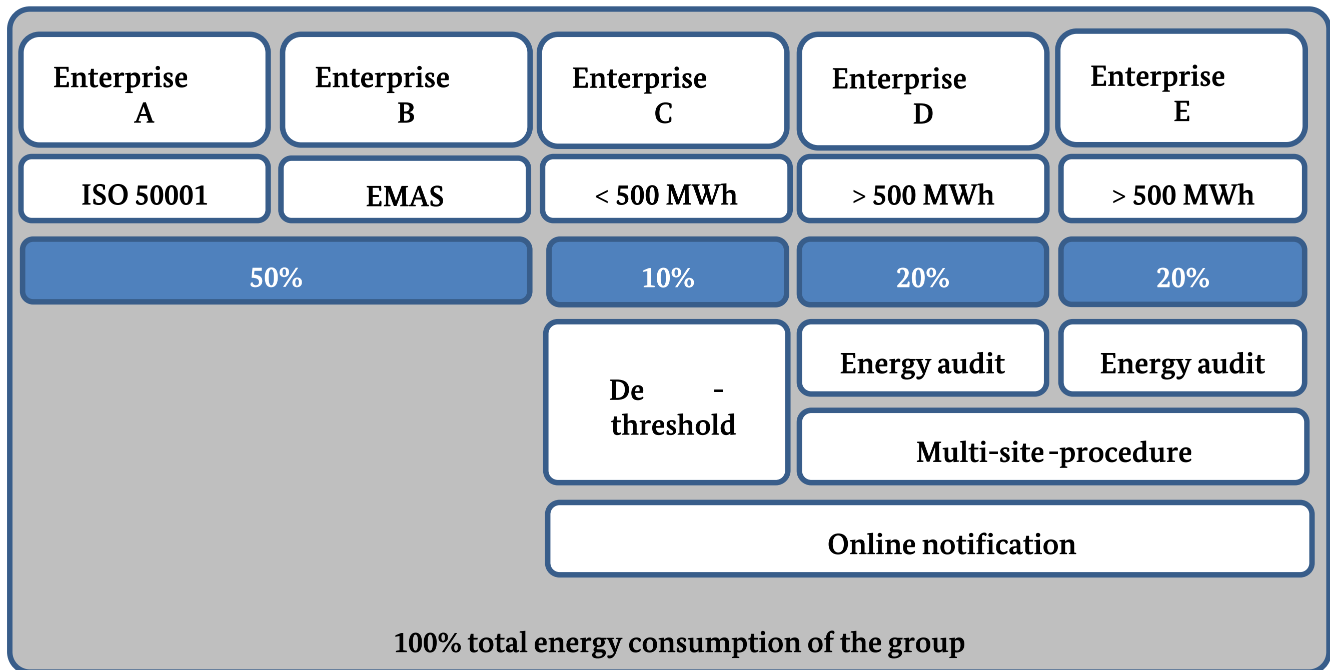
If less than 90% of the total energy consumption is covered by a certified environmental (EMAS) or energy management system (ISO 50.001), the 90% regulation applies accordingly to the enterprises in the group that are obliged to carry out an energy audit. Enterprises that can prove an energy consumption of less than 500 MWh (enterprise C) and thus fall under the "de minimis" threshold are still required to submit an online notification report. Enterprises that do not fall under the de minimis threshold and that account for less than 10% of total energy consumption in the group (enterprise D) can be exempted from a complete energy audit using the 90% rule. These enterprises are also required to submit an online notification report. All other enterprises in the group that cannot be exempted from the previous rules (enterprise e) are obliged to carry out a full energy audit in accordance with the requirements of DIN EN 16247-1.



The enterprises participating in the group audit and application of the rules mentioned here must be clearly documented for any future sampling processes and distributed to each enterprise participating in the group audit.

- **Multi-site procedure**

Furthermore, enterprises that cannot be exempted from an energy audit (enterprises d and e) because of one of the above-mentioned rules can perform an energy audit as part of a multi-site procedure within the group. For more information on performing and documenting the procedure, see the Guide, chapter VI.


Enterprise A
Enterprise B
Enterprise C
Enterprise D
Enterprise E
ISO 50001
EMAS
< 500 MWh
> 500 MWh
> 500 MWh
50%
10%
20%
20%
De - threshold
Energy audit
Energy audit
Multi-site -procedure
Online notification
100% total energy consumption of the group

4. Energy auditor

The energy audit must be carried out by a person who meets the requirements of Section 8b EDL-G. The person must have a technically relevant education or professional qualification backed by practical experience as well as the necessary technical expertise, acquired through further training, to properly perform an energy audit that complies with the latest developments. This technical expertise requires:

1. a relevant education, evidenced by
   a. completion of university or college studies in a relevant technical field or
   b. a professional qualification as a state-certified technical engineer or a master's degree or equivalent further education qualification in a relevant subject
2. at least three years in a primary occupation acquiring knowledge of business energy consultations and
3. the expertise required to provide energy audits according to DIN EN 16247-1.

If an energy audit is assigned after 26 November 2019, it may only be carried out by a person already registered by BAFA. This should be carefully checked by the enterprise before the contract is awarded. If the energy audit was completed before 26 November 2019, the auditor may still be able to prove their technical expertise by submitting appropriate documents within BAFA's sampling process.

For more details on the requirements to be met by the person implementing the energy audit and for information on the registration process, see the separate guidelines "Guidance Note on Registering Energy Auditors" (available in German only).

The energy audit must be carried out independently. This is already clearly stated in DIN EN 16247-1, which specifies objectivity and transparency as requirements. Section 8b (4) EDL-G also specifies independence as a precondition for conducting energy audits. The person carrying out the energy audit must therefore

1. advise the enterprise in a manner that is unbiased towards any particular manufacturer, supplier or retailer and must not

2. request or receive any commission or other monetary benefits from an enterprise that manufactures or sells products or installs or leases equipment used in energy-saving investments in the audited enterprise.

The prohibition on accepting commissions is intended to prevent conflicts of interest for any auditors providing advice if they are simultaneously responsible for distributing products needed to carry out energy-saving investments. However, enterprises that ensure that their consulting services are separate from the sale of energy-saving products within their own organisation should not be prevented from offering energy audits according to the law.

The energy audit can be carried out by persons outside or inside the enterprise, provided that the requirements are met according to Section 8b EDL-G.

If the energy audit is carried out by persons inside the enterprise, they must not be involved directly in the activity undergoing the audit. The meaning and purpose of this provision does not exclude the enterprise's energy officer or energy manager from carrying out the energy audit, since in this case - contrary to participation in operational activities - no conflict of interest is expected.

Provided that the person performing the energy audit is employed in an accredited conformity assessment body for the certification of energy management systems according to DIN EN ISO 50001 and meets the competency requirements to be appointed as an auditor for energy management systems under the relevant accreditation rules, the relevant accreditation certificate will suffice as evidence of qualification. If the energy audit was carried out by an environmental verifier or environmental verification organisation within the meaning of Sections 9, 10 and 18 of the Environmental Audit Act, the accreditation certificate for the relevant sector for the person who performed the audit will suffice as evidence of qualification.

According to DIN EN 16247-1, the person carrying out an energy audit is permitted to include subcontractors. In this case, it must be ensured that the subcontractors included by the energy auditor responsible for the energy audit also satisfy the requirements of DIN EN 16247-1 with regard to competence, confidentiality and objectivity. The person appointed to carry out the energy audit bears sole responsibility for its proper implementation.
Enterprises seeking appropriate external energy auditors can refer to BAFA's published list of energy auditors. Care should be taken in choosing a person suitable to carry out the audit. It makes sense for the person performing the energy audit to have consulting experience and be familiar with the technologies and processes used in the enterprise's industry. The enterprise is responsible for selecting a suitable person.

5. Notification and declaration procedure

5.1 Voluntary notification online

According to Section 8c (1) EDL-G, obligated enterprises must report to BAFA no later than two months after completing their energy audits with an online form including the key points from the energy audit report. The following data is required:

- Enterprise details
- Person who conducted the energy audit
- Total energy consumption
- Energy costs of the individual energy sources
- Use of the multi-site procedure
- Proposed energy efficiency measures and
- Costs of the energy audit.

The information can usually be found in the energy audit report. The declaration in the form of an online notification report can also be made on behalf of the enterprise by an authorised energy auditor.

The online energy audit declaration is available (in German only) on the BAFA website at *Energie-> Energieeffizienz -> Energieaudit -> Formulare -> Energieauditerklärung.* Detailed explanations on calculating the total energy consumption are provided in the guide on determining total energy consumption.

BAFA guarantees the security of the transmitted data. As a matter of course, the transmitted data is never made available to unauthorised third parties. BAFA maintains high standards of security.

5.2 Obligated enterprises

All enterprises required to carry out an energy audit are obliged to submit an online notification report. This reporting obligation affects each and every legally independent enterprise. If, for example, the energy audit was commissioned by a parent enterprise and carried out as part of a multi-site procedure, each subsidiary still has to submit an online notification report.
Enterprises that have a total energy consumption of 500,000 kWh or less per year are also obliged to report their data using the online form. However, only the data on the enterprise, energy consumption and energy costs of the individual energy sources are required.
An exception rule applies to enterprises that, in accordance with Section 8 (3) EDL-G, have either already introduced or started to set up an energy management system according to DIN EN ISO 50001 or an environmental management system according to EMAS. The reporting obligation is waived for these enterprises. They can be contacted by BAFA as part of the sampling process and asked to submit the evidence (see 7.2 below).

6. Sample checks and verification of the performance of energy audits

6.1 BAFA sampling process

According to Section 8C (2) EDL-G, the responsibility for appraising the performance of energy audits lies with BAFA. This review should include, for example the application of the sanctions and measures specified under Article 13 of Directive 2012/27/EU.

The sample checks are randomly generated and selected automatically.

As part of the sampling process, BAFA contacts the enterprise in writing. The contacted enterprise has to submit evidence within a four-week period. This evidence includes a statement that the contacted enterprise

1. has complied with its obligation under Section 8 (1) EDL-G or
2. is exempted from the obligation under Section 8 (3) EDL-G
3. is subject to the de minimis threshold under Section 8 (4) of the EDL-G.

An electronic communication channel is provided for enterprises to communicate with BAFA in the sampling process. After they have been contacted by BAFA in writing, enterprises initiate their first contact by submitting the electronic form "*Nachweisführung für Unternehmen*" (verification for enterprises). This form is available online (in German only) at www.bafa.de *>Energie > Energieeffizienz > Energieaudit > Formulare > "Elektronisches Formular EDL-G – Nachweisführung für Unternehmen"*.

If evidence is requested from an enterprise that is a small or medium-sized enterprise and thus does not fall within the scope pursuant to Section 8 (1) EDL-G, this should be indicated in the electronic form under the corresponding sub-item and confirmed by specifying the enterprise's number of employees, annual turnover and annual balance sheet total.

Obligated enterprises that, in accordance with Section 8 (4) EDL-G, have a total energy consumption of 500,000 kWh or less during the reference period should also declare this in the electronic form.

The same applies to contacted enterprises that have not performed an energy audit. Again, communication takes place electronically.

In addition to the fully completed electronic form, it is compulsory to submit the form confirming the accuracy of the information in the electronic form. Company management can use this form to authorise the enterprise's contact person to have future communications with BAFA.

In order to be able to carry out a substantive appraisal of energy audits, BAFA may require enterprises to submit the documents completed as part of the energy audit, e.g. the form "Evidence of the performance of an energy audit" (see 7.1 below, available in German only) or the energy audit report. The electronic form specifically shows which documents are mandatory.

7. Evidence of the performance of an energy audit

7.1 Enterprises with an audit obligation

It is recommended that a record be created to be kept as evidence immediately after the energy audit is performed. The necessary evidence is then to hand if BAFA conducts a sampling process. This is also useful for the online notification report that is required after the energy audit.

Evidence that an energy audit has been conducted is provided by a confirmation from the person who carried out the energy audit. The person carrying out the energy audit must confirm that the requirements for energy audits have been fulfilled according to Section 8a EDL-G. If the audit has been carried out by several energy auditors, these all have to sign the energy audit report. The energy auditors then bear joint responsibility for proper implementation of the energy audit.

In addition to the confirmation provided by the person carrying out the energy audit, a confirmation from the management and, if available, from the responsible person appointed internally by the enterprise, must be submitted on the successful performance of the audit. In particular, it must be confirmed that

- the recommendations from the energy audit on possible energy efficiency measures have been noted and
- the enterprise declares in good faith that the requirements of an energy audit have been fulfilled, especially with regard to the completeness of the sites to be included in the audit.

If certified energy or environmental management systems have been introduced in individual sites, the registration/certification documents for these sites must be submitted and, if necessary, the report on the current verification audit or the validated environmental declaration. In this case too, the information is provided by sending the necessary documents via the electronic form.

To simplify the verification procedure, BAFA offers the form "Evidence of the performance of an energy audit" (available in German only), which can be used by the person implementing the energy audit and by the enterprise. Once the energy audit is complete, the auditor confirms that it has been performed. Confirmation from the management and, if applicable from the internal person in charge of the audit, is also provided on the form; when combined, the set of forms comprise the statement of compliance. The set of forms is online at www.bafa.de > Energy> Energy Efficiency> Energy Audit> Forms.

Note that the statement of compliance must be drafted for each legally independent enterprise.

▪ Performing an energy audit under the de minimis threshold

An enterprise contacted during the sampling procedure whose total energy from all energy sources is 500,000 kWh/a or less is also obliged to keep records and submit evidence to BAFA.
Due to complex nature of this area, guidelines providing a detailed description of how to calculate and provide evidence of total energy consumption are available (see at www.bafa.de > Energy> Energy Efficiency> Energy Audit> Publications.

▪ Performing multi-site procedures

In the case of enterprises with several similar sites in which the multi-site procedure has been applied, the details must be specified accordingly in the electronic form under point 5 (energy audit information). These details are confirmed by the management of the contacted enterprise, using the form confirming the accuracy of the electronic form. The energy audit report should describe the multi-site procedure in detail (participants/sites/clusters/criteria, etc.).

When multi-site procedures are performed in partner or linked enterprises, the appointment in writing of the responsible body in the enterprise and confirmation in writing of the enterprise's participation in the multi-site procedure (see point 3.3.1) can also be requested, in addition to the details mentioned above.

- **Performing repeat group audits**

When repeat audits are performed in a group of enterprises, the appointment in writing of the responsible body in the enterprise and confirmation in writing of the enterprise's participation in the group audit (see point 3.3.7) can also be requested, in addition to the details mentioned above.

- **Enterprises with zero energy consumption**

Enterprises with zero energy consumption must submit a brief justification as an additional document, as part of a sampling process (in addition to the corresponding entry in the electronic form), explaining why they have no energy consumption. This must be confirmed by the management.

7.2 Verification in the case of an exemption under Section 8 (3) EDL-G

7.2.1 Implemented energy and/or environmental management system

The existence of the prerequisites for an exemption is verified, depending on whether or not an energy or environmental management system has been set up, by means of

- a valid DIN ISO 50001 certificate issued by accredited certification bodies;
- a valid registration or extension notice from the responsible EMAS registration authority regarding registration of the enterprise in the EMAS registry or a confirmation from the EMAS registry regarding an active registration with details of the point in time to which the registration is valid.

The information must be shown in the electronic form under points 4 (information on fulfilment ...) and 7 (information on the management system). It is compulsory to send the certificate, registration or extension notice. If necessary, the report on the current verification audit or a validated environmental declaration are requested.

7.2.2 Introduction of an energy and/or environmental system

Enterprises that intend to initiate the certification of an energy or environmental management system instead of an energy audit should in future no longer be obliged to keep records and submit evidence. The relevant information must be shown accordingly in the electronic form. The management should state the following points:

1. The enterprise undertakes to, or commissions one of the bodies listed under Section 55 (8) of the Energy Tax Act and Section 10 (7) to
   a. introduce an energy management system according to Section 8 (3) no. 1 EDL-G or
   b. introduce an environmental management system according to Section 8 (3) no. 2 EDL-G, and

2. the enterprise has started introducing the system (point 1) and already implemented the following measures:
   a. for an energy management system according to Section 8 (3) point 1 EDL-G, no. 4.4.3 (a) of DIN EN ISO 50001, November 2011 edition; or no. 6.3, letter (a) of DIN EN ISO 50001, November 2018 edition;
   b. for an environmental management system according to Section 8 (3) no. 2 EDL-G, at least the collection and analysis of energy sources used with an inventory of energy flows and energy sources, the determination of important parameters in the form of absolute and percentage quantities (measured in technical units and evaluated in monetary units) and documentation of the energy sources used with the help of a table.

8. Provisions on fines

The provisions on fines concern both the obligated enterprises as well as exempted enterprises and energy auditors. The fine can amount to up to €50,000.

8.1 Enterprises with an audit obligation

An enterprise may violate its obligation to carry out an energy audit either by not performing an energy audit, not performing an energy audit properly or completely or on time or by failing to comply with its reporting obligation.

▪ Non-performance

Obligated enterprises must perform energy audits every four years. The timeframe of four years for subsequent energy audits is calculated from the completion date of the first energy audit.

Failure to conduct an energy audit by the set date does not relieve an enterprise of the statutory obligation to carry it out. The obligation remains over the entire period and ends only once an energy audit has been performed. Non-performance of an energy audit pursuant to Sections 8 ff EDL-G constitutes a continuing administrative offence. If the energy audit has still not taken place after the notice imposing a fine acquires legal effect, the decision constitutes a new starting point; the behaviour or failure to conduct an energy audit after the decision is therefore treated as a new administrative offence. In the event of persistent failure to meet the obligation, several notices imposing a fine may be issued to an obligated enterprise.

▪ Incorrect or incomplete performance

In the event that energy audits are not carried out correctly or fully in accordance with **DIN EN 16247-1**, the obligation for proper performance of an energy audit remains. As a measure to aid proper implementation of an energy audit, BAFA has issued a **guide to creating energy audit reports**. If a submitted energy audit report is not good enough, BAFA reserves the right to request that another energy audit be conducted by a person other than the person who carried out the inadequate energy audit. The obligation remains over the entire period and ends only once an energy audit has been performed fully and correctly. In this case too, if an obligated enterprise fails to meet the obligation, it may receive several notices imposing a fine.

▪ Late performance

A one-time fine can be imposed on an enterprise for failing to perform an energy audit on time.

8.2 Exempted enterprises

The only enterprises exempted from the obligation are those that have either already introduced or started to introduce an energy management system according to DIN ISO 50001 or environmental management system according to EMAS. The provision of incorrect details during the sampling procedure, either intentionally or as the result of negligence, can be punished with a fine. A fine can also be imposed if, contrary to an enterprise's own voluntary commitment to introduce an energy management system, an energy audit is subsequently performed (without adequate justification).

8.3 SMEs required to provide self-declaration

If an enterprise that does not fall within the scope of the law due to its SME capacity is requested to submit evidence of conducting an energy audit, it must state in a self-declaration that it is a small or medium-sized enterprise. A fine may be imposed on any entity falsely claiming to be an SME.

8.4 Energy auditors

An administrative offence shall be deemed to have been committed by anyone who, acting as energy auditor, either does not register with BAFA, or does not register properly, fully or in time with BAFA before

implementing their energy audit for the first time. The same applies to the now compulsory further training for energy auditors, for which evidence must be provided for the first time within three years after entry into force of the amendment of the EDL-G (up to 2022).

8.5 Failure to submit requested documents

A fine may also be imposed if an enterprise is asked to provide evidence, within a reasonable timeframe, of performing an energy audit or being exempt from the energy audit obligation and fails to comply with this request.

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