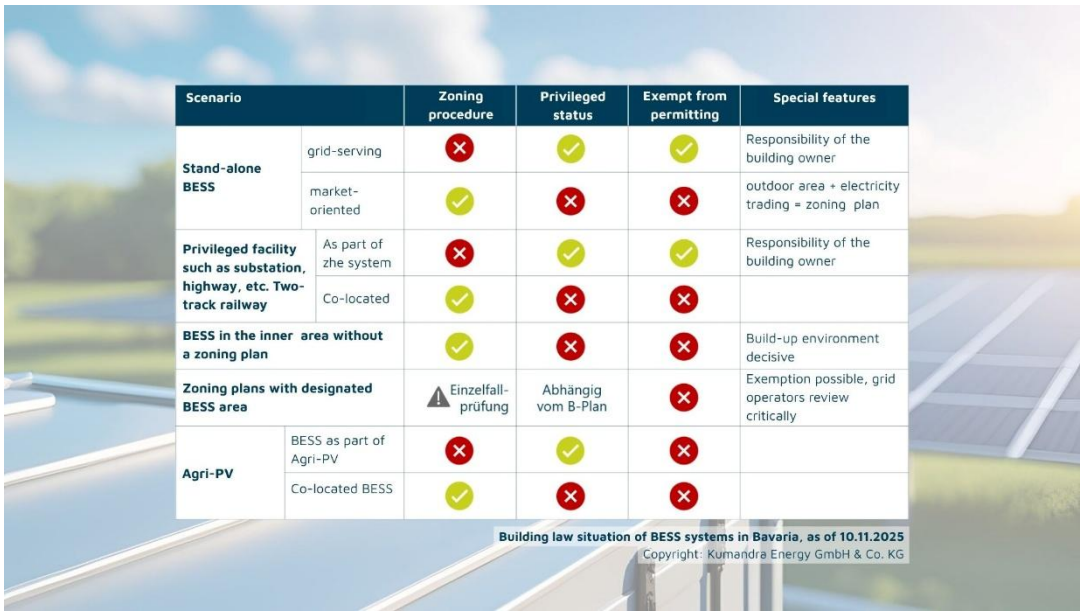
10.11.2025, 07:00



BATTERY STORAGE UNDER SCRUTINY

BUILDING CODE BARRIERS TO THE ENERGY TRANSITION

Battery storage is considered a key technology for the future of energy: it stabilizes the grid, enables flexible use of solar PV, and decouples generation from consumption. But while the technology is mature, a new obstacle has emerged—not in grid integration, but in building law. Developers today don't just face questions around grid compatibility or sizing. A more fundamental issue is often unclear: can the battery system be built at all, or will it require a lengthy and uncertain permitting process? This is especially critical because German planning law varies depending on the use case, location, and federal state, and includes significant discretion and room for interpretation.

A central question in determining a project's legal treatment is the purpose of the battery storage system:

- **Grid-supportive systems** (e.g. frequency control, grid stability) can, in many cases, qualify as "privileged developments" under § 35 BauGB (German Federal Building Code for non-urban areas).
- **Market-oriented systems** (used for commercial purposes like trading, arbitrage, or peak shaving) do not benefit from this status. These are treated as independent structures and usually require a **Bebauungsplan** (binding land-use zoning plan) and a full permitting process.

Though this distinction may seem abstract, it has real consequences for how long a project takes—and whether it can proceed at all.

The complexity of the legal situation is well illustrated in Bavaria. Here, under certain conditions, the Bayerische Bauordnung (Bavarian Building Code) allows storage systems to bypass formal approval processes (verfahrensfrei), but only if they are:

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- grid-supportive
- bound to a specific location (ortsgebunden)
- and serve the public energy supply.

For market-driven systems, the picture is clear: **privilege = no exemption**.

What makes things more complicated: in many PV-plus-storage projects, the battery is assessed independently, especially when it is co-located (i.e. built next to, but not physically integrated with, a PV system). In these cases, there is no automatic legal right to a combined permitting path.

- Grid-supportive in non-urban area (e.g. frequency control): Usually privileged under § 35 BauGB – especially if public-serving and site-bound
- Market-oriented in non-urban area (e.g. arbitrage): Not privileged – requires a Bebauungsplan and full permitting
- Co-located storage (with PV, separate grid connection): Typically treated as independent structure – no automatic joint privilege
- Storage in urban/industrial zones: Often approvable, but depends on local land use planning and existing Bebauungsplan
- Storage in agri-PV or highway-PV projects: Only privileged if functionally subordinate and structurally integrated

For many developers, building law is becoming a critical bottleneck. Uncertainty about permitting paths, the lack of consistent rules across federal states, and differing interpretations by municipalities are leading to delays—and in some cases, project cancellations.

Developers Should Clarify These Legal Points Early:

- Is the location classified as Innenbereich (urban zone) or Außenbereich (non-urban zone)?
- Does the project qualify as privileged under § 35 BauGB?
- Is there a Bebauungsplan (land-use plan), or must one be created?
- Is the battery system part of a PV plant (technically and legally), or an independent structure?

Only with precise legal strategy and a solid technical concept can battery storage help drive the energy transition—instead of getting stuck in red tape at the planning office.

Note: *This article reflects our practical experience and is not a substitute for legal advice.*

Feel free to contact us if you're planning a project—we'll support you with hands-on expertise.

Read this article in German

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