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Rights of Way –
The Foundation of the Utility Services
Our expertise. Hits the mark.
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GLOBAL ADVISORS

Rights of Way – The Foundation of the Utility Services

Rights of way are far more than an administrative formality: they determine whether, and on what terms, utility companies may continue to operate networks for electricity, gas, hydrogen, heat and water. They are therefore fundamental to the entire network-based utility sector.

A thorough understanding of the regulatory framework, coupled with early legal support throughout the award process, can improve the prospects of retaining existing rights of way or securing new ones. A range of factors makes rights of way a **key strategic issue** today:

- National and local climate targets have a significant impact on energy supply. Achieving the goal of **greenhouse gas neutrality** will require, in many cases, far-reaching changes to network infrastructure.
- At the same time , awarding rights of way is a **strategic means** for towns and municipalities to shape local energy supply and secure revenue.
- The **digitalisation** of networks and changes to **infrastructure** (municipal heating planning, hydrogen, etc.) present major challenges for all stakeholders.
- **Participation and cooperation models** add to the complexity and require comprehensive, integrated advice.

Our experts at Luther provide strategic and legal advice to network operators, electricity, gas, district heating and water suppliers, as well as local authorities, on procedures for tendering rights of way, as well as on the enforcement of their rights both in and out of court. Furthermore, we provide support following the selection process for **the transfer of tangible fixed assets**, should this prove unavoidable, as well as in the drafting and structuring of complex **participation and cooperation models**.





When the going gets tough …

Energy & Infrastructure Industry Group. The Luther Energy & Infrastructure team comprises around 50 experienced experts and offers energy suppliers, project developers, industrial companies, financial investors, as well as governments and the public sector, a comprehensive full-service legal and tax advisory service. The experts in our Energy & Infrastructure Industry Group provide you with advice of the highest standard across the entire value chain, whether for projects in the field of conventional or renewable energy, infrastructure such as energy supply networks or storage facilities, transactions or other innovation projects, energy trading, energy supply or contracting projects. Thanks to our many years of experience in the energy sector, our advisers possess first-class industry knowledge and expertise in both technical and economic matters. For complex projects, specialists in project management are brought in to support the client. The Luther Energy & Infrastructure team is also recognised for its particular expertise in disputes, right up to the highest courts, and in arbitration proceedings. Internationally, we work closely with leading law firms which, like us, specialise in providing comprehensive advice in the energy sector.

Expertise



Excellent legal expertise is our hallmark. Many years of experience and strong relationships with governments and regulatory bodies help us to provide accurate assessments.

Interdisciplinary



Our team of advisers is closely networked within the market with technical and economic consultants. When matters become highly complex and challenging, we know who we can rely on.

Innovative



Innovation is a key focus for us every day. Legal developments are constantly evolving. We seek out challenges where the solution has yet to be found.

Forward-looking



We are already thinking ahead to tomorrow. As the European and national legal frameworks evolve, we offer our support through our expertise and long-standing experience in legislative processes.

Award-winning

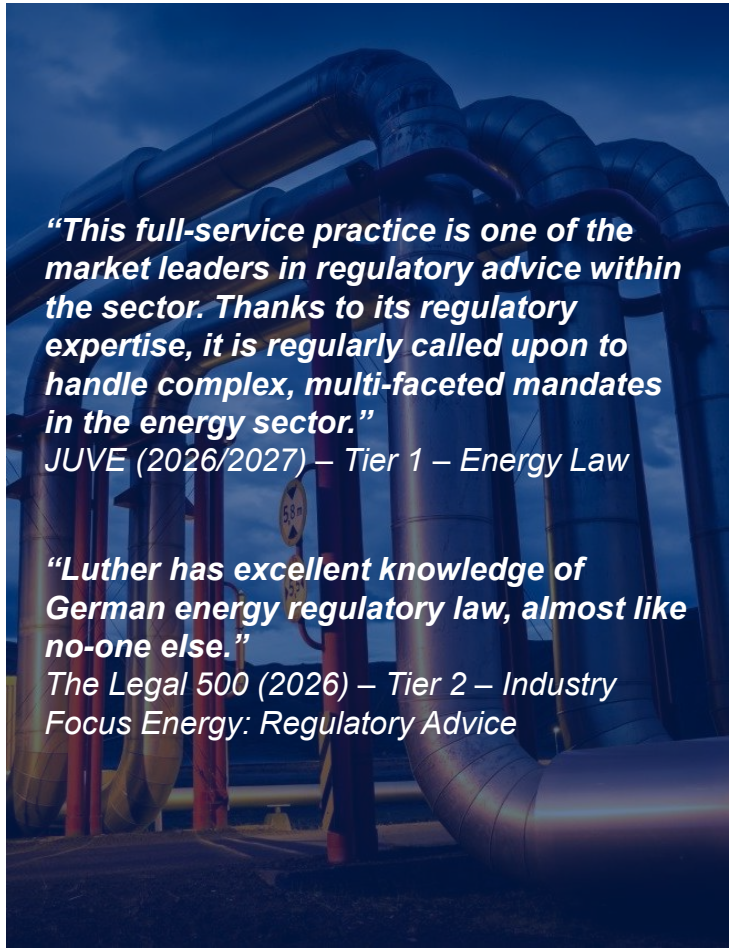


For many years, we have been recognised by JUVE and The Legal 500 as leaders in projects and regulation within the energy sector, thanks to our team's wealth of outstanding legal professionals.

Outstanding expertise in rights of way

- Energy law
- Public procurement law
- Competition law
- Litigation and arbitration
- Law of public highways and rights of way
- Subsidies and state aid law
- Municipal law
- Construction and property law
- Corporate/M&A
- Environmental and planning law
- Financing
- Tax law

Selected references
Heating concession/wayleave agreements



State of Berlin
Successful advice on the acquisition of Vattenfall Wärme Berlin, including the acquisition of what was then Europe's largest district heating network, comprising several interconnected sub-networks

Municipal utility in a major German city
Comprehensive legal and strategic advice on the decarbonisation and restructuring of heat supply across several sub-networks, including wayleave agreements for new and existing local and district heating networks

E.ON Energy Solutions GmbH
Advice in the tender process for the award of a district heating wayleave agreement in a major city in southern Germany

State capital
Advice on the award of electricity and gas rights-of-way agreements, as well as a district heating wayleave agreement and a water concession agreement

Avacon Natur
Competition law and contractual advice on the acquisition of a city's district heating network in Lower Saxony, including determining the value of the tangible fixed assets

Town in Lower Saxony
Advice on the preparation and implementation of a selection procedure for the award of electricity and gas rights of way licences, as well as the award of the water concession

Selected references
Rights of way – electricity and gas

Bayernwerk Netz GmbH
Comprehensive advice in a tender process for electricity rights of way in a Bavarian municipality, including lodging formal objections and seeking interim judicial relief in respect of the alleged procurement errors at both first and second instance

Avacon AG
Comprehensive advice in a concession and participation competition conducted by two municipalities in Lower Saxony for electricity and gas services; including seeking interim judicial relief in relation to various procedural and substantive procurement errors and the selection decision, and successfully defending the first-instance decision on appeal

Bayernwerk Netz GmbH
Comprehensive advice to the incumbent network operator in an electricity concession award process conducted by a Bavarian municipality; including submitting over 200 formal objections concerning the evaluation of bids and successfully representing the client in court against the contracting authority and the competing bidder

Energy supplier in eastern Germany
Energy and competition law advice on structuring the concession relationship following the award of gas rights of way, particularly in relation to the network owner and lessor

Avacon Netz GmbH
Procurement law advice to the successful bidder in review proceedings concerning the award of electricity and gas rights of way by a city in Lower Saxony



Selected references
Rights of way – electricity and gas



Regional energy supply company
Energy law advice on strategic positioning and preparing a bid in a municipality’s electricity concession award process

Regional utility in Bavaria
Advice on a selection procedure for awarding rights of way for electricity supply

Stadtwerk Haßfurt GmbH
Advice on applying for rights of way for electricity and gas supply

Network operator
Advice on applying for rights of way for electricity and gas supply in a city in Lower Saxony

Major city in North Rhine-Westphalia
Advice on the re-award of rights of way for electricity supply through a competitive bidding process

Municipal energy supply company in Hesse
Advice on restructuring and tax-optimising municipal electricity and gas supply under a participation and lease model

Waste management company
Advice on participating in a tender for electricity rights of way, including the preparation of a network operation concept, either as a sole bidder or under a participation model

Selected references
Rights of way – electricity and gas

Energie- und Wasserversorgung Altenburg GmbH
Advice on bidding for three gas concessions and two electricity concessions, and on various structuring options (operator, lease and participation models), including successfully obtaining an interim injunction

Municipal utility in Bavaria
Advice on a participation model for securing rights of way for the joint supply of electricity and gas

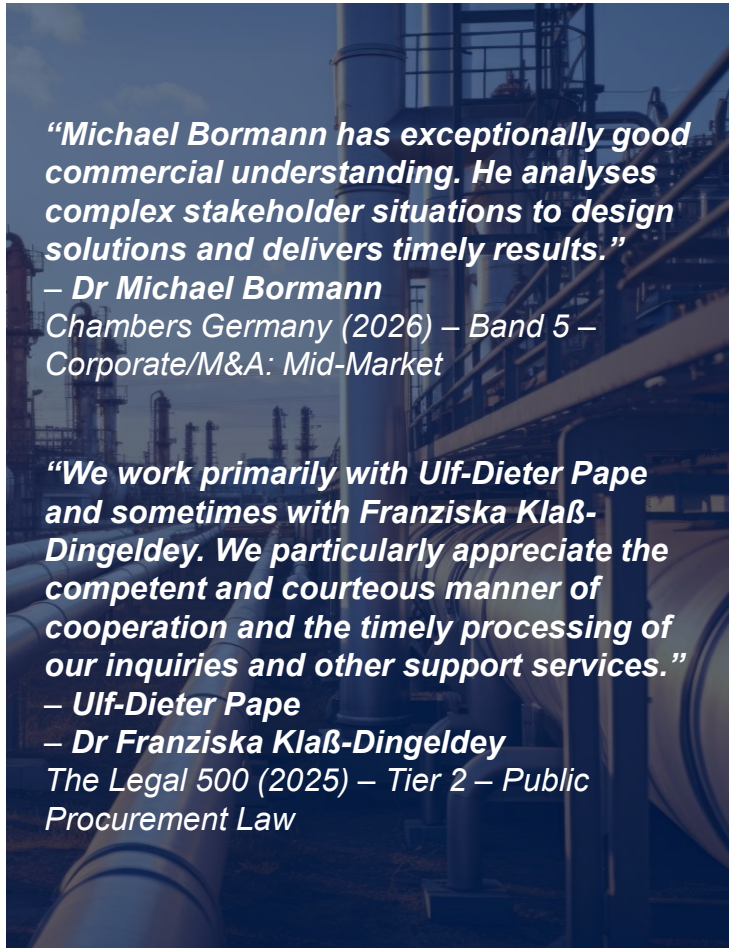
Avacon AG
Advice on the tendering of rights of way for electricity and gas supply in a city in Lower Saxony; successfully obtaining an interim injunction to challenge an unlawful award decision

City in Lower Saxony
Comprehensive procurement law advice on conducting an award procedure for gas supply rights of way, including the future treatment of any hydrogen distribution within the city

Regional network operator
Advice in connection with a concession award procedure conducted by a city in Lower Saxony, including interim judicial relief; successful defence against demands for the transfer of the network, followed by the conclusion of a settlement agreement



Selected references
Rights of way – electricity and gas



"Michael Bormann has exceptionally good commercial understanding. He analyses complex stakeholder situations to design solutions and delivers timely results."
– Dr Michael Bormann
Chambers Germany (2026) – Band 5 – Corporate/M&A: Mid-Market

"We work primarily with Ulf-Dieter Pape and sometimes with Franziska Klaß-Dingeldey. We particularly appreciate the competent and courteous manner of cooperation and the timely processing of our inquiries and other support services."
– Ulf-Dieter Pape
– Dr Franziska Klaß-Dingeldey
The Legal 500 (2025) – Tier 2 – Public Procurement Law

Gasversorgung im Landkreis Gifhorn GmbH
Advice to the incumbent network operator in a concession award procedure conducted by a collective municipality in Lower Saxony and the four municipalities within it

Public utility companies in northern Germany
Advice on energy law and regulatory matters relating to the integration of a newly acquired network into the existing network area and the resulting implications for revenue caps

Regional network operator
Advice to the incumbent concessionaire in a gas concession procedure involving two municipalities in Lower Saxony

Municipal utility in northern Germany
Advice on a successful application for gas supply rights of way in a town in Lower Saxony, and on the acquisition and financing of a gas distribution network

City in western Germany
Comprehensive public procurement law advice on conducting a gas concession award procedure and on addressing the possible future replacement of natural gas with hydrogen

City of Oranienburg
Advice on the re-award of rights of way for electricity, gas and water supply

Selected references
Rights of way – electricity and gas

WEMAG Netz GmbH
Advice on defending electricity and gas concessions in two cities in Mecklenburg-Western Pomerania. This included successfully challenging procurement errors and the selection decision at first instance, and successfully defending the first-instance judgment on appeal

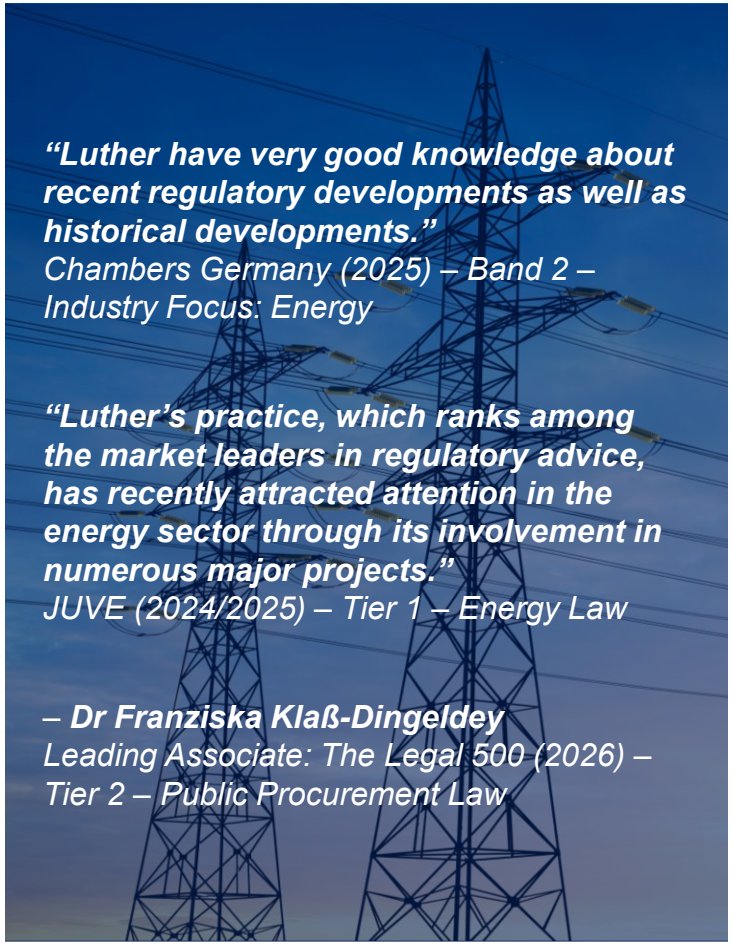
Regional energy supplier
Representation in arbitration proceedings concerning the amount of the revenue cap transferred following the re-award of rights of way in a supply area

Chemnitzer Wirtschaftsförderungs- und Entwicklungsgesellschaft mbH
Energy law advice on conducting a concession award procedure for electricity and gas by way of a negotiated procedure following a prior public call for competition

Waste management company
Advice on bidding for a city's gas concession in Thuringia as part of a concession award procedure

Foreign energy supplier
Advice in an award procedure for rights of way for electricity distribution in a northern German state capital

Foreign energy supplier
Advice in an award procedure for rights of way for electricity distribution in Stuttgart



Selected references
Water concession agreement



Energy supply companies
Advice on the re-award of a city’s water concession, including competition law advice on notifying water concession agreements to the state competition authority

Regional utility companies in Lower Saxony
Advice on the award of water concessions

Major city in Lower Saxony
Advice on the award of electricity and gas rights of way and water concessions

Major city in Brandenburg
Advice on the award of the water concession

Major city in eastern Germany
Advice on public procurement law relating to the water concession contract and the VAT liability on charges for wastewater disposal

City of Zeitz
Advice in connection with the tender for the re-award of the drinking water concession agreement

Wasserversorgungsgesellschaft mbH Sankt Augustin
Advice on the reorganisation of water supply and the conclusion of a water concession agreement

Contact

If you have any questions, please contact your point of contact at Luther or one of the experts listed here:



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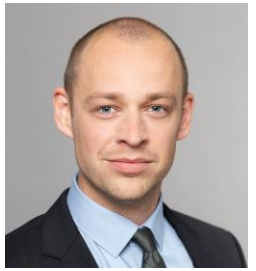

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Further information can be found at
www.luther-lawfirm.com
www.luther-services.com

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