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A SNAPSHOT OF THE GERMAN COALITION AGREEMENT – IMPACT ON ENERGY AND INFRASTRUCTURE IN GERMANY

On 25 November 2021, the coalition of Social-Democrats (SPD), Greens (Bündnis 90/Die Grünen) and Liberals (FDP) presented its Draft Coalition Agreement to the public. The new coalition will especially focus on climate protection as well as on the modernisation and digitalisation of the country. To achieve these goals the current regulatory frameworks shall be adapted, and investments shall be made in digitalisation, education and research.

In this briefing, we summarize and assess the key aspects of such changes to the regulatory frameworks regarding energy and infrastructure.

Key issues

- New German government's draft Coalition Agreement sets a clear focus on climate protection and digitalization
- The coalition aims to strengthen and promote Germany as a globally leading economy by massively increasing investments in the fields of electromobility, renewables and hydrogen as well as by simplifying permitting procedures
- Intended revision of the EU-ETS as well as the national ETS to reach the EU's greenhouse gas emission targets by 2030
- Amongst others, the Building sector targeted to achieve climate protection goals by supporting technical measures for the optimization of energy demand as well as decentralized generation of renewable electricity with funding programs

STRENGTHENING AND PROMOTING GERMANY AS A BUSINESS LOCATION

To increase the competitiveness of Germany as a business location, innovations and entrepreneurship shall be promoted. In accordance with the Draft Coalition Agreement, climate-neutral prosperity shall be created through new business models and technologies, in which the framework conditions – such as the expansion of renewable energies or the creation of fast and unbureaucratic approval procedures – are to be ensured for industry and, in particular, for Small and Medium Entrepreneurs ("**SME**"). More private capital shall be activated for such transformation projects and an "alliance for transformation" is to be founded with representatives from businesses, trade unions and associations. In order to support companies in their investments on the path to climate neutrality, a transformation fund shall be set up at the German National Development Bank, KfW, where so-called lighthouse projects shall be funded and further incentives for climate-neutral products shall be created. According to the Draft Coalition Agreement, there are opportunities to invest in new forward-looking and climate-neutral technologies.

ELECTROMOBILITY

The new government intends to push for Germany to become the leading market for electromobility and a centre of innovation for autonomous driving.

To reach this goal, the new government sets out the goal of 15 million fully electric vehicles to be registered by 2030. Additionally, the coalition wants to support the introduction of the EURO 7 standard, which is the latest version of vehicle emission standards for exhaust emissions of new vehicles sold in the European Union and EEA member states and the UK planned to be passed in 2022.

To create the necessary infrastructure, the expansion of charging stations shall be massively accelerated. The aim is to create one million publicly accessible charging points by 2030, with a focus on fast-charging infrastructure. Therefore, the expansion process must be accelerated, more efficient and less bureaucratic. The new government relies on private investors to expand the charging infrastructure. Obstacles in the permitting process, in network infrastructure and network connection conditions shall be reduced and the municipalities shall be supported in the planning process, to make investments more attractive.

The automotive sector, a key industry in Germany, shall be further strengthened, in particular by supporting SMEs in automotive regions through targeted cluster funding, thus simplifying the transition to electromobility.

In addition, the new government is committed to the continuation and further development of the European Battery Projects and plans to incentivize the construction of further cell production sites, including recycling, in Germany.

COAL AND LIGNITE PHASE-OUT

In 2020, the German federal government decided to phase-out coal and lignite on a step-by-step basis by 2038 the latest. However, the Draft Coalition Agreement states that to meet the climate protection targets, it is necessary to end the use of coal and lignite as fast as possible and that therefore, the phase-out should ideally already be completed by 2030 although that may mean extra compensation to the operators of power plants and lignite mines.

RENEWABLES

To reach its ambitious climate goals, the coalition puts particular emphasis on the expansion of renewables aiming at a share of 80% renewable electricity which – at an electricity demand of 750 TWh – would correspond to 600 TWh of renewable electricity by 2030 (currently the targeted share of renewable electricity is 65% by 2030). The new Government intends to accelerate the expansion of renewable energies by giving them priority in planning and approval "until climate neutrality is achieved". Uniform protection standards are to be introduced for species protection.

The coalition agreement foresees specific expansion targets for **photovoltaics** which shall reach a capacity of 200 GW in 2030, among other things with a solar obligation for new commercial buildings. The coalition agreement does not specify any targets for **onshore wind energy**, but nevertheless stipulates that 2% of each Federal State's surface area shall be reserved as land for onshore wind power. In addition, obstacles to repowering as well as existing distance requirements are to be addressed. For **offshore wind power**, the capacity targets are raised significantly to 30 GW in 2030 and 70 GW by 2045.

The EEG levy which is added on top of the electricity price shall be abolished in 2023 and the expansion of renewables shall instead be financed with the revenues, *inter alia* from national emissions trading.

HYDROGEN

Another key goal of the coalition is the facilitation of (green) hydrogen as an energy source, especially where electrification is not feasible. Therefore, the coalition has decided to build on the previous government's National Hydrogen Strategy and to accelerate the ramp-up of a hydrogen economy in Germany and Europe. In this regard, the coalition agreement essentially comprises the following:

Technology neutrality with a focus on green hydrogen:

To allow an efficient and fast market ramp-up, the coalition has decided to take a technology neutral approach to the regulation and production of hydrogen while nevertheless favouring the production of green hydrogen. However, since green hydrogen will unlikely be available in the required amounts the coalition plan does not exclude blue hydrogen from playing a role (at least in an initial ramp-up phase).

Electrolysis capacity:

The coalition has doubled the previous targets for building up an electrolysis capacity from 5 GW (as foreseen in the National Hydrogen Strategy) to even more ambitious 10 GW to be installed by 2030 as the initial hydrogen demand forecasts have increased.

Increase of demand:

As a demand-side measure, the utilization of green hydrogen shall be promoted by way of quotas in public procurement in order to facilitate a market ramp-up for (green) hydrogen. This method has proven efficient in the public transportation sector, e.g., with regard to the decarbonization of bus fleets.

Acceleration and promotion for the development of an H2 transportation network:

The coalition also aims to advocate the swift implementation of Important Project of Common European Interest ("**IPCEI**") hydrogen projects and financially support investments in the development of a hydrogen transportation network infrastructure. In this context, it is noteworthy to highlight that grant decisions for H2 grid related IPCEI projects are expected to be issued by the end of Q1 2022. This may likely allow hydrogen network operators awaiting a funding decision under the IPCEI scheme to decide whether they wish to opt-in for the recently introduced (voluntary) Hydrogen Midstream Regulation in Germany.

Heating:

Although the coalition agreement is setting a goal of reaching 50% climate neutrality in the heating sector by 2030 with a "very high" share of renewables it remains silent on how this goal shall be reached whereas the coalition agreement lacks an explicit statement whether hydrogen will play a role in decarbonizing the heating sector.

The coalition has announced to update Germany's National Hydrogen Strategy in 2022. It can be reasonably expected that such update will take into account the EU's long-awaited proposal for the revised gas market regulation expected by mid/end of December this year which will clearly have an impact on how a future regulation of the H2 midstream will look like.

THE ROLE NATURAL OF GAS

The coalition is aware that energy security must be ensured and maintained, especially when coal and lignite plants are being phased-out while the expansion of renewable is not keeping-up. The coalition agreement states that the coal exit not only requires a massive expansion of renewable energies but also "the construction of modern gas-fired power plants". In this vein, the coalition plans that lignite plants shall be replaced by gas power stations running on natural gas for a transition phase but being "hydrogen-ready", i.e., technically ready to be switched to a pure hydrogen operation. As a consequence, Germany will have to increase its fossil gas power capacity.

CARBON MARKETS

In light of the recently held COP26 in Glasgow, the coalition supports a global carbon market which was introduced and agreed on as part of the 'Paris Agreement Article 6 Rulebook'. Agreement on the key elements of such a Rulebook will enable private capital to be directed towards global carbon mitigation efforts – even though the new rules for a global carbon market still need to be further revised.

Another important aspect of the new coalition's plans is to revise the EU's Emissions Trading System ("**EU-ETS**") and the national emissions trading system ("**nETS**"). In its 'Fit for 55' package, the European Commission has set itself the ambitious goal to make the EU's climate, energy, land use, transport and taxation policies fit for reducing net greenhouse gas emissions by at least 55% by 2030 (compared to 1990 levels). An important part relates to carbon trading. The European Commission proposed to revise and expand the EU-ETS comprehensively, e.g., by expanding it to emissions from maritime transport.

Against this background, the coalition supports a minimum price for emission allowances under the EU-ETS which is currently approximately at 60 EUR per tonne to incentivise ambitious reductions in emissions. In case the EU will not agree on a minimum price for emission allowances under the EU-ETS, the coalition aims to implement national measures (such as a national minimum price) in order to make sure that the CO2 price is not decreasing under 60 EUR per tonne in the long term. The coalition also supports the European Commission's proposal to create a new separate (upstream) emissions trading system for emissions from fuels used in road transport and building. Germany already introduced a similar and separate (upstream) nETS under the German Fuel Emissions Trading Act. Therefore, the coalition parties propose to review the compatibility of the German nETS with a possible new and separate EU-ETS and propose to adjust the nETS as necessary in order to enable a smooth transition between both systems.

The coalition also supports the European Commission's proposal for a Carbon Border Adjustment Mechanism ("**CBAM**"). The CBAM is a climate measure that aims to equalise the price of carbon between domestic products and imports to ensure that the EU's climate objectives are not undermined by production relocating to countries with less ambitious climate policies (carbon leakage). However, given that the CBAM has been discussed controversially by non-EU states as they fear to be disadvantaged by it, the collation parties also support the formation of an international climate club with a joint CO2 border adjustment mechanism. In such an international climate club, countries work together to tackle the effects of climate change. The aim is to ensure that countries which are involved in such an international climate club do not face any industrial disadvantages, e.g., by implementing a joint CO_2 border adjustment mechanism (instead of just a European solution as proposed with the CBAM).

URBAN DEVELOPMENT

The coalition proclaims the goal of promoting the development of cities as well as rural regions. To this end, 400,000 new dwellings are to be built annually, of which about one quarter is to be publicly subsidised housing. A construction and investment offensive is to be launched, which will provide the conditions for creating additional living space quickly and cheaply and thus give the construction and real estate industry long-term planning perspectives. In addition, modular and serial construction as well as refurbishment are to be accelerated through type approvals and new building land is to be mobilised through adjustments to the Building Code. Together with the planned digitalisation and acceleration of approval procedures, there may be further potential for developing areas here.

Another goal of the coalition agreement is to continue climate protection in the building sector. To this end, corresponding funding programmes will be further developed and restructured. In the future, technical measures for the optimisation of energy demand and the integration of systems for the decentralised generation of renewable energies will therefore become increasingly necessary, both in the construction of new buildings and in the renovation of existing buildings.

PERMITTING

The duration and efficiency of planning and approval procedures in the transport and energy sector plays a crucial role for the decarbonisation of the German society. Already in the last legislative period, the legislature was active in this area on several occasions.

The coalition addresses the issue with a variety of proposals.

First, certain proposals relate to organisational improvements: "Personnel and technical capacities" at authorities and courts shall be increased, planning and approval procedures shall to a larger extent be digitalised.

Secondly, there are proposals regarding substantive legal changes: Notably and concretely, the coalition parties intend to (re-)introduce the concept of "material preclusion", meaning that objections which were not raised during an approval procedure shall also be disregarded in any subsequent court proceedings. This would strengthen the reliability of issued permits/approvals for project coordinators as well as financing institutions and investors – but will have to pass the stress test of the European Court of Justice.

Short approval periods for issuing a permit shall be introduced for certain high priority projects. The approval periods shall be modelled after those already existing in German law, notably the Federal Immission Control Act. Even though the practical implications have been rather weak, it remains to be seen how the new "push" in this regard will be handled in practice.

Moreover, authorities shall, until climate neutrality is achieved, prioritise renewables when weighing up protected interests in approval procedures. Furthermore, legal certainty in Species Protection Law shall be increased through legislative standardisation (especially significance thresholds) while the overall level of protection shall be maintained. The lack of standardisation (also in other areas of Environmental Law) is indeed a problem in many permitting procedures. Yet again, ensuring compliance with European Law may prove to be a challenging task. The coalition parties may aim to advocate for changes on EU-level and for a clarification of the relationship between species conservation and climate protection.

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