

Germany hitting the gas on hydrogen

New legislation on the accelerated expansion of hydrogen infrastructure

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This briefing gives a short overview of the latest developments in the national German hydrogen strategy. The German government has recently passed the Hydrogen Acceleration Act (*Wasserstoffbeschleunigungsgesetz*, **WasserstoffBG**), acknowledging the urgency of a decarbonisation of the German industry sector. We will address the key aspects of the draft legislation.

Regulatory Content

The German Federal Cabinet has passed the draft legislation on 29 May 2024, aligning with the updated National Hydrogen Strategy of 2023. This legislation establishes the legal framework for the rapid development of hydrogen production, storage, and import infrastructure. It is part of an envisaged legislative package for hydrogen projects. The draft aims to streamline and expedite planning, approval, and procurement processes, thereby reducing regulatory requirements. Besides the newly drafted *WasserstoffBG*, the draft legislation also includes amendments to environmental and procurement law, as well as changes to the Energy Industry Act (*EnWG*), Federal Highways Act (*FStrG*), and Spatial Planning Act (*ROG*).

The draft legislation contains the following key aspects:

- **Maximum Processing Timeframes for Water Law Approval Procedures:** definition of specific timeframes within which water law approval procedures must be completed.
- **Extensive Provisions for the Digitalization of Administrative Procedures:** comprehensive provisions for the digitalization of administrative procedures e.g., applicants shall file their planning documents in digital form; the competent authorities shall have digital access to these documents; electronic communication between applicant and authorities; electronic publication of relevant planning procedures to the public.
- **Facilitations for Early Commencement of Measures/Projects:** facilitations for the early commencement of measures and projects concerning hydrogen infrastructure e.g., start of construction.
- **Accelerated Procurement and Review Procedures:** acceleration of procurement and review procedures that deviate from some provisions set out in the Competition Act (*GWB*).

- **Shortening of Legal Paths and Accelerated Interim Procedures:** shortening of legal recourse (amending judicial competence) and accelerated summary proceedings (e.g., contradictions to decisions of the competent authority shall have no suspension effect anymore).
- **Reduction of Administrative Examination Efforts for the Modernization of Electrolyzers:** reduction of the administrative examination efforts required for the modernization of electrolyzers.
- **Facilitated Regulations for the Hydrogen Core Network:** facilitated regulations for the hydrogen core network, which are essentially already contained in the Energy Industry Act of 2023.
- **Pure Online Approval Procedures According to the Energy Industry Act:** pure online approval of applications pursuant to Section 43 EnWG.
- **Early Commencement of Measures and Facilitations in Water and Procurement Law for Hydrogen Pipelines:** early commencement of measures and facilitations in water and procurement law for hydrogen pipelines.

Public interest and environmental protection

The draft prioritizes projects of overriding public interest, benefiting electrolyzers that produce hydrogen using renewable energy. It also adopts a nuanced approach to protect drinking water and water resources, limiting the application of public interest in cases where water scarcity is a concern.

Roadmap

Following the Cabinet's decision, the Federal Council and the Bundestag will promptly review the draft law.

BLOMSTEIN is a law firm specialized, *inter alia*, in public procurement law and ESG, and has dealt with hydrogen projects. If you are interested in the development of (green) hydrogen or need legal assistance, you can rely on our outstanding expertise. BLOMSTEIN will keep you informed on the *Wasserstoffbeschleunigungsgesetz*. Please feel free to reach out to Dr. Roland M. Stein, Dr. Florian Wolf, Bruno Galvão, Hanna Kurtz.
