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ENERGY

THE 2018 COALITION AGREEMENT – ENERGY

In terms of energy policy, the coalition agreement between the CDU, CSU and SPD of 7 February 2018 focuses on expanding renewable energies and on grid expansion. New legal provisions have been announced in the areas of renewable energies, combined heat and power, storage, and network tariffs. The coalition parties have also pledged to support LNG infrastructure.

In general political terms, the coalition agreement defines the three goals of energy policy: security of supply, reliable affordability, and environmental compatibility. To date, these goals have already been expressly set in Germany's Renewable Energy Sources Act (*Erneuerbare-Energien-Gesetz, EEG*), for example. Here, then, the coalition parties have opted for continuity in their principles as regards energy policy. But the coalition agreement also defines several specific projects that will shape energy policy over the next legislative period, and which are therefore of major significance for the energy industry.

I. Electricity market

1. Increase the share of renewable energies to 65% by 2030

The coalition aims to increase the share of renewable energies to 65% by 2030.

Gleiss Lutz commentary

This announcement represents a rise in the current targets set in the Renewable Energy Sources Act, that provided for a corridor of 40 to 45% of gross electricity consumption by 2025 and 55 to 60% by 2035. This rise will require considerable effort, as the targets already provided for in the current Act are ambitious. One reason for this is insufficient additional capacity in photovoltaic installations; following a drop in 2016, these have increased again, but still fall short of the target corridor. A second reason is that financial support for the first existing wind turbine installations will cease in 2021, which could result in the loss of around a quarter of wind power currently on the market. To meet the new targets, expansion of renewable energies will have to be significantly accelerated once again. It will therefore be necessary to adjust legislative measures if these goals are to be reached.

2. Special competitive bidding procedures in 2019 and 2020

To expand renewable energies, the paper resulting from the coalition partners' initial talks set out special competitive bidding procedures for onshore and offshore wind turbines and photovoltaic installations in 2019 and 2020, and these have now been included in the coalition agreement. In total, 4 gigawatts' capacity is to be added to onshore wind energy and the same amount again to photovoltaics. The amount of offshore power is left undefined in the coalition agreement.

Gleiss Lutz commentary

The special competitive bidding procedures will increase the target corridor in onshore wind energy and photovoltaics in these years by around 70 to 80%. At the same time, the expected expansion of the offshore corridor and implementing a special competitive bidding procedure will give legislators the option of taking into account existing projects outside the clusters defined in section 26(2) No. 2 of Germany's Offshore Wind Energy Act (*Gesetz zur Entwicklung und Förderung der Windenergie auf See*) and therefore excluded from further project development. By including such projects in the special competitive bidding procedure, legislators would be able to

clear up several constitutional concerns regarding the Offshore Wind Energy Act, which has since become the target of a number of constitutional appeals.

3. Changes to competitive bidding procedure

The coalition agreement also provides for changes to how competitive bidding procedures are tailored. Firstly, the coalition is reacting to the success of energy cooperatives formed by members of the public (*Bürgerenergiegesellschaften*). Some of the relief granted to these projects in approval procedures is to cease. In future, only projects already approved under emissions protection law will be able to take part in competitive bidding procedures. The coalition agreement nevertheless provides that diversity of players is to be maintained. How this is to be achieved is not clear.

In the light of network bottlenecks, the coalition also intends to increase steering of where additional renewable energy capacity is located. The plan is to set a minimum for all types of generation south of the main network bottleneck in the competitive bidding procedure. The aim is to improve coordination of generation and consumption location-wise.

Gleiss Lutz commentary

Energy cooperatives formed by members of the public won an increased number of contracts because of the extended deadlines for realizing projects. In onshore wind energy, this has resulted in expansion gridlock, and the future government coalition is taking measures to counter this. Because of their privileges, energy cooperatives submitting an offer have to date only needed to show that they had secured an area and were in possession of a certified wind survey. They did not need to show that they had approval under Germany's Federal Emissions Protection Act (*Bundes-Immissionsschutzgesetz*). This is now set to change. It remains to be seen what statutory instruments the coalition will use to strike a balance between this new requirement and the aim of preserving diversity of players.

Location-wise, the intended amendment to the Renewable Energy Sources Act will enable the government to influence where renewable energies are physically located. How effectively generating capacity can be steered in terms of its location and the need for grid expansion measures can be reduced will depend on the specific incentives effected by the instruments introduced by the legislature

4. Reconciliation of interests between onshore wind energy and nature conservancy / protection of local residents

As regards onshore wind turbines, the coalition partners wish to reconcile the interests of the renewables industry on the one hand with nature conservancy and the protection of local residents on the other. Specific proposals on this are not yet evident from the coalition agreement.

Gleiss Lutz commentary

Whether legislators will only use planning instruments (such as by tightening up the procedures for balancing interests or optimization requirements) or will provide for other compensatory measures (such as financial compensation for residents affected) remains to be seen. An example of this could be the rules introduced by the regional state of Mecklenburg-Vorpommern's act on public and municipal participation, which raises concerns under regional law.

5. Further development and modernization of CHP

The coalition agreement also pledges to continue to develop and undertake comprehensive modernization of combined heat and power. But the coalition paper states nothing more specific than this.

Gleiss Lutz commentary

The EU Commission refused to allow an extension to the EEG surcharge privileges enjoyed by new CHP installations in generation of electricity for self-consumption. In the light of this, the operators and builders of such installations would no doubt have wished for more specific statements and commitments in the coalition agreement. Reducing the EEG surcharge is crucial to the economic basis of recent CHP installations. Germany's Federal Government was unable to sufficiently demonstrate the economic necessity of this privilege to the EU Commission, but confirmed in December that it would continue to advocate that the reduction be retained. On this issue there is an urgent need for political action.

6. Focus on sector coupling and storage

Another area covered by the coalition agreement comprises the issues of sector coupling and storage. Storage

technology is to be further developed and made usable for parallel services. To meet this goal, the coalition plans to make more funds available for storage R&D and to set up a new Fraunhofer Institute for Storage Technology. In addition, stronger support is to be given to the use of thermal storage systems within the framework of district and estate-based solutions. As part of CHP installation modernization, the sites of power plants no longer required are to be made usable for major thermal storage power plants.

Gleiss Lutz commentary

The coalition agreement has picked up on one of the energy industry's key demands, namely to further develop the coupling of heat, mobility and electricity. The demand that sectors be more strongly coupled has long been a vulnerable point in Germany's energy transition. But the statements made in the agreement remain highly abstract, such that barely any tangible regulatory approaches are evident. To date, the conceptual approaches have remained largely unclear.

II. Grids

1. Optimization of existing grids and acceleration of grid expansions

Expanding renewable energies involves both strengthening grid expansion and optimizing and toughening up the existing grid. To accelerate grid expansion, as the initial coalition talks agreed, Germany's Grid Expansion Acceleration Act (*Netzausbaubeschleunigungsgesetz*) is to be revised so as to simplify the planning procedure. The coalition parties continue to emphasize the major importance of underground cables – a controversial point – which will need to be employed more frequently to advance grid expansion.

In all other respects, the grid expansion proposals remain vague. The coalition has picked up on the issue of digitalization and steps to strengthen the process, and also wants to improve cooperation between network operators. Here again though, the coalition is not pinning itself down to specific policies.

To adequately respond to the tense grid situation in future, the coalition is also planning an annual review of existing network bottlenecks as part of statutory monitoring. As of next year, the review will be used to ascertain what action is required.

Gleiss Lutz commentary

The future coalition is faced with two issues here: on the one hand, the interest in accelerating procedures; and on the other hand, the constant growth of nature conservancy requirements as well as international and EU stipulations on legal protection for the environment (as laid down in the Aarhus Convention, for example). How these two demands are to be harmonized remains largely open. As regards the issue of underground cables, both the time delay that has arisen (see 6.) and the high costs involved are likely to be sources of contention. In any event, the coalition paper does not reveal a vision of how to give a much-needed boost to grid expansion, which has been sluggish.

2. Reform of network tariffs

The costs arising from network bottlenecks are to be distributed according to responsibility for such bottlenecks. This is to be achieved through a further reform of network tariffs, taking into account the efficient use of networks. Here, the coalition parties intend to prepare an ordinance to implement standard transmission network tariffs across Germany, based on the Network Tariff Modernization Act (*Netzentgeltmodernisierungsgesetz*) already passed. Annual redispatch costs alone run into the billions. The aim now is to distribute these costs more equally, even if a significant reduction is not realistic within the foreseeable future.

Gleiss Lutz commentary

In July 2017, the Grand Coalition introduced the Network Tariff Modernization Act, providing the basis for standard transmission network tariffs across Germany from 2023. If the new government wants to keep to its original schedule, it will not have much time to prepare the ordinance provided for in Germany's Energy Industry Act (*Energiewirtschaftsgesetz*), as the Act provides for an initial adjustment stage in 2019.

3. Retention of a single German bidding zone

The coalition expressly supports retention of a single German bidding zone.

Gleiss Lutz commentary

This point in the programme results from the electricity price zone debate in Germany. Initially, the *Bundesnetzagentur* (Federal Network Agency) raised the possibility of splitting this zone because grid expansion

was insufficient, especially after the delays to the major power routes of Suedlink and Suedostlink. This is clearly not in keeping with the political will of the future coalition, however. In December 2017 (while still acting as caretaker government), this coalition had stopped such a split by establishing a single German bidding zone with the Electricity Grid Charges Ordinance (*Stromnetzzugangsverordnung*). Nevertheless, the option of splitting Germany into various pricing zones remains a point of discussion for the European Commission. Should Germany fail to meet its grid expansion goals by 2025, the Commission could opt to use its power to take decisions on its own as provided for in the new Clean Energy Package and redraw the bidding zones. This would then make Germany's support for a single pricing zone a waste of time and effort.

III. Further issues

Beyond electricity market and grid issues, the coalition also wants to give a new impetus to other energy matters and use the existing opportunities for growth and employment.

1. Establishing an LNG infrastructure

Establishing an LNG infrastructure is specifically mentioned. The measures envisaged for it remain vague.

Gleiss Lutz commentary

On strategic grounds, the previous government also expressed interest in diversifying Germany's gas sources and transport routes. The importance of this point is emphasized by the inclusion of LNG infrastructure expansion in the coalition agreement. But no specific content is evident from the coalition agreement on this point. The coalition parties state that Germany should become "a site for LNG infrastructure", and leave the matter at that. This may bring the construction of a receiving terminal for LNG in Germany a step closer.

2. Retention of additional trade tax relief for landlord-to-tenant electricity supply

In the coalition agreement, the parties also referred to the planned revision of Germany's Trade Tax Act (*Gewerbesteuerengesetz*), which will retain the additional trade tax relief for landlord-to-tenant electricity supply by housing associations.

Gleiss Lutz commentary

Now incorporated into the coalition agreement, the intention to amend the Trade Tax Act accordingly was originally included in the Landlord-to-Tenant Electricity Act (*Mieterstromgesetz*) as drafted by the ministry, but not carried over to the official draft bill proposed by the then government. The new coalition appears to want another go at getting this amendment through.

3. Access to international markets for German energy companies

German know-how in the energy industry, especially in renewable energies, is to be better targeted in terms of economic policy, so as to exploit potential for growth and employment. Primarily, this aims to improve export opportunities for German companies on international markets. It also aims to establish energy partnerships in international formats and energy institutions in order to facilitate German industry's market access.

Gleiss Lutz commentary

The German energy transition, especially energy products that are "made in Germany", continue to attract major international attention. International markets are a key growth factor for German installation manufacturers and companies working in energy technology and digitalization. It is to be hoped that the coalition parties will go beyond the measures set out in the coalition agreement (energy partnership development, global energy policy networking) and make German energy products easier to export in real ways.

IV. Resümee

The coalition agreement incorporates some aspects of current discussions of energy policy and develops initial solutions for them, while leaving other problems aside. The energy-related sections of the agreement centre around expansion of renewable energies and grids. Here, the agreement strongly veers between very specific content on the one hand, such as the special competitive bidding procedures, and very open, general imperatives, such as support for combined heat and power or the reconciliation of interests sought with regard to onshore wind turbines.

Responsibility for energy policy remains unchanged: the Federal Ministry of Economics will continue to handle the

matter. This indicates a certain degree of continuity on the working level, which is of major importance in the energy transition. But despite this continuity on the working level and the continuation of the Grand Coalition, a change in political emphasis is by no means ruled out, as a member of Germany's conservative CDU party will be taking over as minister from the Social Democrats.

Core areas of energy policy have been left out of the coalition agreement, however. The agreement does not address the issues of tax and other contributions, even though relief would bring advantages in terms of energy and economic policy. The political roadmap is also murky when it comes to grid and capacity reserves. Given the necessity of the coal exit, a market economy concept is needed here. The coalition agreement also misses an opportunity to engage in CO2 pricing outside of EU emissions trading, as many have urged. It would have been desirable to synchronize this with EU emissions trading on the cost side.

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Energy

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