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New Investment Opportunities in the German Energy Sector – German Energy Reform Laws Approved

Within less than four months after the Fukushima disaster, Germany enacted a comprehensive energy reform package including a nuclear power phase-out by 2022. On 8 July 2011, the Federal Council (*Bundesrat*), the representative body of the German states, approved most of the legislative proposals made by the Federal Government and resolved by the Federal Parliament (*Bundestag*) a few days earlier. The package marks a turning-point in German energy policy, and, as the government points out, is “a landmark decision for entering the age of renewable energy.”

Background

The reform package that is to implement Germany’s “energy switch” (“*Energiewende*”) was pushed through by the government at an unparalleled pace. As recently as October 2010, the Federal Parliament had resolved to extend the life span of Germany’s nuclear power plants, after the government had announced its new energy concept in September 2010. The energy concept was already looking towards renewable energy but defined nuclear power as an indispensable “bridge technology.” However, following the Fukushima Daiichi nuclear incidents, the government quickly reversed its policy and decided to drastically speed-up the process of revamping Germany’s energy system. On 14 March, the government imposed a three-month moratorium on the extension of nuclear power plant operations, including an immediate close-down of all seven German nuclear power plants commissioned prior to 1980. On 6 June, the government adopted the “key elements for faster transformation of the energy system”. The Federal Parliament approved the energy reform package presented by the government on 30 June.

The laws will only come into force after having been signed by the Federal President and published in the Federal Gazette. This procedure may take another few weeks.

Components of the energy reform package

The main components of the energy reform are (i) a staggered phase-out of all 17 German nuclear power plants by 2022, (ii) further promotion of renewable energy development and (iii) acceleration of network expansion.

Until now, German nuclear power plants have contributed almost a quarter of Germany’s total electricity production. The accelerated shut-down of Germany’s nuclear power plants forces the country to rapidly find new sources of energy. Even though the government has a clear focus on renewable energy support, conventional forms of energy production such as coal and gas will also be needed for many years to fill the gap resulting from the closure of nuclear plants. The goal to increase the proportion of gross electricity consumption contributed by electricity from renewable energy

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sources to 35% by 2020, 50 % by 2030, 65 % by 2040 and 80 % by 2050 has now been included in the German Renewable Energy Act (*EEG*). Today, renewable energies already produce about 17% of electricity consumed in Germany.

Wind power plays a central part in the new energy concept, both on- and offshore. The German government aims to push ahead with repowering existing wind power plants on land. Offshore plants in the North and Baltic Seas are to play an increasingly important role, too. They may benefit from the feed-in tariff being raised to 15 cent per kW/h. Increased tariffs are also provided for geothermal energy (25 cent per kW/h). Solar power and biomass complete the picture and continue to receive special feed-in tariffs under the German Renewable Energy Act.

Acceleration of network expansion

The German Energy Agency has calculated that another 4,400 kilometers of new high-voltage cable will be needed by 2020 to integrate electricity produced from renewable energy sources into the electricity network, in particular to transport energy from wind farms to be built along Germany's northern coastlines across the country. The reform package thus includes a new law on measures accelerating the expansion of electricity networks, which amends existing laws and, most importantly, contains a new Network Expansion Acceleration Act (*NABEG*) that implements leaner planning procedures to lay new high-voltage lines more quickly. The Federal Network Agency will become responsible for determining the regional compatibility (*Raumverträglichkeit*) of extra-high voltage lines that cross borders between German states or German national borders. In certain cases the agency will also conduct the plan determination procedure (*Planfeststellung*).

Energy efficiency

Another important element of the energy concept is energy efficiency. However, a law providing for tax incentives for energy-efficient refitting of residential buildings was turned down by the Federal Council, as states feared uncompensated tax losses as a consequence of the proposed law. It remains to be seen whether a solution can be found between the Federal Government and the states on this issue.

CCS act adopted by parliament

The day before the approval of the energy reform package by the Federal Council, parliament adopted the carbon capture and storage (CCS) act which provides for the demonstration and application of technologies for the capture, transport and permanent storage of carbon dioxide. The act forms a legal framework for testing and demonstrating carbon storage and is a prerequisite for CCS testing projects in Germany to receive EU support. CCS is a contentious issue in Germany mainly because many consider its long-term environmental impact to be uncertain.

According to the law, applications for storage facilities must be made by the end of 2016 at the latest. The storage capacity per facility must not exceed 3 million tons p.a. and the overall capacity nationwide must not exceed 8 million tons of CO₂ p.a. Licensing of demonstration storage facilities requires operators to take state-of-the-art precautionary measures against negative impacts on human beings or the environment. Furthermore, the operator of a testing facility must provide financial security for the entire cycle (i.e. until transfer of liability) and must set aside sufficient funds for aftercare of the facility.

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The act now adopted gives the federal states the right to designate areas in which a CCS project is permissible and in which it is not. This opt-out clause may effectively obviate the launch of any CCS testing project in Germany, as some states with the most promising storage locations have already indicated that they would make use of the opt-out. Other states insist on a federal solution with no opt-out in the law.

For constitutional law reasons, the CCS act needs to be approved by the Federal Council in order to come into force. It is uncertain whether the Federal Council will approve the law or request amendments. According to press releases, the Federal Council is expected to decide upon the act during the course of this month.

Outlook

The ambitious goal to drastically transform the energy system of one of the world's largest economies into "the age of renewable energies" offers unprecedented opportunities for investors, innovative technology companies and other market participants along the entire value chain in the energy sector, in particular in the renewables/cleantech segment. Apart from the feed-in tariffs under the German Renewable Energy Act, the government has implemented various incentives and support mechanisms to foster renewable energy development. To mention two examples, the recently enacted KfW Offshore Programme makes 5 billion euros available for financing offshore wind farms, and the federal government that identified energy storage as another key element in the new energy strategy will be providing a total amount of up to 200 million euros for research and development in the field of new power storage.

The consequences and economic effects of the reform package to revamp Germany's energy supply over the following decades can hardly be predicted. It is certain, however, that huge investments in energy producing facilities and network expansion will be needed. The government has already declared that importing electricity from nuclear power plants in other countries "is not an alternative".

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