

“Zeitenwende”: Accelerated construction of LNG terminals in Germany

CURRENT LEGISLATIVE PROPOSALS FOR FASTER CONSTRUCTION

Executive summary

- On 19 May 2022, the German Bundestag passed the LNG Acceleration Act [LNG-Beschleunigungsgesetz]. This new law simplifies the approval procedure for liquefied natural gas terminals and related facilities as well as public procurement law for corresponding projects. However, many of these simplifications solely apply to the construction of floating storage and regasification units (FSRUs). FSRUs are given preference over the construction of land-based LNG terminals.
- The State of Schleswig-Holstein likewise amended its State Water Act on 19 May 2022. The port law provisions pertaining to planning have been amended as to facilitate swifter construction of LNG terminals.
- Partial public financing for LNG terminals is subject to EU legal provisions regarding state aid. Such aid can be justified under the guidelines on state aid for climate, environmental protection and energy as energy infrastructure or port infrastructure.

With the **LNG Acceleration Act** and the **Amendment to the Schleswig-Holstein State Water Act**, the national legislature and the Schleswig-Holstein state legislature are driving the construction of LNG terminals forward in Germany.

This applies to LNG terminal authorisations (see 2.2 below) as well as the corresponding public procurement (see 2.3 below).

German lawmakers exert no influence over EU state aid law, which spells out a balance between the need for partial state funding and the protection of competition. However, this “new era” does also have an effect on the application of state aid law (see 4 below).

1. Starting point

Most recently, the Federal Republic of Germany was purchasing 96 billion cubic metres of natural gas from Russia on an annual basis.¹ That comprised around 40 %² of the nation’s total gas supply. In light of Russia’s war of aggression against Ukraine, there are now plans to meet German demand via other sources. The primary goal is to attain independence from Russian gas in order to avoid a looming supply crisis.

One central solution for procuring additional quantities of gas at short notice lies in the purchase of liquefied natural gas (LNG). Natural gas is extracted in gas-producing countries, above all the USA and Qatar, and then liquefied and brought to Germany via ship. LNG import infrastructure needs to be established along the German coastline in order to be able to bring LNG onto land, regasify it, and then send it on to consumers.

¹ Bundestag Printed Matter 20/1742, pg. 1

² Bundestag Printed Matter 20/1742, pg. 1



A basic distinction can be drawn between two types of LNG terminals. There are land-based fixed units (on-shore), and there are water-based floating storage and regasification units (FSRUs). Both terminal types are made up of three segments: (1) the water components, (2) the land components, and (3) the connection lines between the land equipment and the general gas grid.

Water terminals consist of a docking terminal (known as a jetty) via which LNG is unloaded from a tanker, and sometimes an FSRU. The jetty is a support structure firmly anchored in the water for the pipes which pump LNG from a tanker to shore. It is also where the equipment for unloading tankers is mounted. Land terminals also consist of equipment for storing and regasifying LNG.

There are now 29 terminals in operation throughout Europe, although none of them are in Germany. And this is the case despite the corresponding plans having been in development for years now across a variety of sites. In view of this watershed moment, it is important to move forward quickly now, and the legislatures on the federal and state levels have also become active. Pursuant to Annex to Sec. 2 of the LNG Acceleration Act, the construction of a total of twelve LNG terminals is being planned for six locations: Brunsbüttel (Schleswig-Holstein); Wilhelmshaven and Stade (both Lower Saxony); Hamburg; Rostock and Lubmin (both Mecklenburg-Western Pomerania).³

2. LNG Acceleration Act

The Bundestag parties which comprise the Federal Government introduced a legislative bill for accelerating the deployment of liquefied natural gas (LNG Acceleration Act – “LNGG”, in its German abbreviation).⁴ That bill saw amendment by the Committee on Climate Protection and Energy.⁵ The Bundestag passed the law⁶ on 19 May 2022 and sent it to the Bundesrat for approval. The law had been approved on 24 May 2022 and went into effect on

³ Specifically, the following LNG terminals and locations are being planned: in Brunsbüttel, an FSRU at the port and a liquefied natural gas terminal at the German LNG Terminal; in Wilhelmshaven, an FSRU at Voslapper Groden, an FSRU at the NWO Terminal, an FSRU at Jade-Weser-Port, and a liquefied natural gas terminal at Voslapper Groden; in Stade/Bützfleth, an FSRU at the port and a liquefied natural gas terminal at the Hanseatic Energy Hub; in Hamburg/Moorburg, an FSRU at the



31 May 2022 by being published in the German Law Gazette (Bundesgesetzblatt).

2.1 Scope of application

The LNGG applies for

- the floating and fixed segments of an LNG terminal,
- the lines for connecting an LNG terminal to the general gas grid,
- the necessary waterway development and utilisation (Sec. 2 (1) LNGG) and
- the vapour and hot water pipelines needed in order to operate the floating and fixed components of an LNG terminal.

The LNGG modifies requirements regarding the authorisation of LNG terminals and simplifies public procurement procedures for their construction.

2.2 Authorisation for LNG terminals

The LNGG lays out procedural simplifications in order to accelerate the construction of LNG terminals, including

port; in Rostock, an FSRU at the port and a liquefied natural gas terminal at the port; and in Lubmin, also an FSRU.

⁴ Bundestag Printed Matter 20/1742.

⁵ Bundestag Printed Matter 20/1889.

⁶ The Bundestag ratified the legislative bill for the LNGG via Bundestag Printed Matter 20/1742 in the form of Bundestag Printed Matter 20/1889.



FSRUs. In particular, the LNGG streamlines procedural steps in the arenas of environmental impact assessment, the Federal Immission Control Act, the Federal Nature Conservation Act, the Federal Water Act, and the Energy Industry Act. There are no changes in the substantive approval requirements for LNG terminals. Those requirements will still need to be met in full.

The LNGG specifically provides for the following procedural simplifications:

2.2.1 Environmental Impact Assessment (EIA)

One of the most important changes is the omission of an EIA. An EIA fundamentally needs to be carried out for all projects listed in Annex 1 to the German Environmental Impact Assessment Act (Sec. 1 (1), (4) of that Act). This also applies for floating and fixed components as well as the connection lines of LNG terminals. Under the new LNGG, an EIA will no longer be necessary for LNG terminal construction if the specific LNG terminal is suitable for making a relevant contribution to overcoming a gas supply crisis (Sec. 4 (1) LNGG). An LNG terminal's contribution will be deemed relevant starting at an annual regasification capacity of 5 billion cubic metres.

However, this EIA exemption solely applies to FSRUs, pipelines, waterway development and utilisation, and vapour and hot water pipelines. The exemption does not apply to stationary land-based facilities for the import, offloading, storage, and regasification of liquefied natural gas according to Sec. 2 (1) no. 2 LNGG. The background to the EIA exemption is that FSRUs – and, accordingly, the pipelines and waterway development and utilisation required for their construction – are needed in the very short term in order to be able to take steps towards independence from Russian gas as early as winter 2022.⁷ An EIA waiver is justified for FSRUs because they have less impact on nature and terrain as compared to land-based LNG terminals and also are not permanent. The EIA exemption does not apply to fixed LNG terminals because of the greater impact on nature and terrain as well as their permanency. However, the procedures for fixed terminal

construction are sufficiently accelerated through the establishment of an overriding public interest, expedited contract awarding and review procedures, shorter legal proceedings, the omission of a suspensive effect, and the establishment of urgent need.⁸

In order to ensure a minimum degree of public participation, however, it is necessary for the draft approval decision for an LNG terminal to be available to the public for four days, including its justification, the main application documents, and the reasons for the EIA exemption. Sec. 4 LNGG will cease to apply at the end of 30 June 2025.

2.2.2 Public availability and objection periods

A variety of approval procedures involving public participation are required for the construction of LNG terminals (including planning approval). Planning or approval documents fundamentally must be made available to the public for one month, after which there is a two-week period for raising objections. The LNGG shortens these periods (Sec. 5 (1) no. 1, no. 2; (7) no. 1, no. 2; Sec. 8 (1) no. 1 lit. a), lit. b) LNGG).

- The public display periods are reduced from one month to one week in each case.
- The periods during which the public can raise objections are also shortened from two weeks to one week after the end of public display.

That means public participation is being reduced and planning is being expedited accordingly. Yet the shorter public display and objection periods and limited public participation do not apply to all projects.

- When it comes to the Federal Immission Control Act, the exemptions solely apply to FSRUs and not to fixed terminal components, connection lines, waterway development, or vapour and hot water pipelines.

⁷ Bundestag Printed Matter 20/1889, pg. 10

⁸ Bundestag Printed Matter 20/1889, pg. 10



- For the scope of the Federal Water Act, the exemptions apply to FSRUs, connection lines, waterway development and utilisation, and vapour and hot water pipelines, but not for land-based terminals pursuant to Sec. 2 (1) no. 2 LNGG.
- For the Energy Industry Act, the exemption is applicable to all components pursuant to Sec. 2 (1) LNGG without limitation. However, by its very nature, planning approval under that law will exclusively apply to connection lines.

Accordingly, the acceleration provisions primarily apply to FSRUs. The preferential treatment for FSRUs compared to land-based terminals stems from the fact that FSRUs are needed immediately in order to secure the energy supply for the upcoming winter.⁹ For land-based terminals, full public participation needs to take place in view of the greater impact on nature and terrain as well as their permanency. These provisions will cease to apply at the end of 30 June 2025.

2.2.3 Public hearings

Within the framework of the approval procedures and planning approval procedures, it is fundamentally required that public hearings be held at which objections can be discussed with the project developer, the authorities, and the affected parties.

The LNGG deviates from this public hearing obligation. Public hearings for individual approval procedures will be subject to the discretion of the corresponding authorities in each case. As a general rule, the authority will refrain from holding a hearing and will only hold one if it deems doing so expedient (Sec. 5 (1) no. 3, Sec. 5 (7) no. 3, Sec. 8 (1) no. 1 lit. c) LNGG). This procedural streamline solely applies to FSRUs and not to land-based LNG terminals within the meaning of Sec. 2 (1) no. 2 LNGG. These provisions will be in effect until 30 June 2025.

2.2.4 Compensatory and replacement measures

Germany’s Federal Nature Conservation Act fundamentally requires that interventions in nature and terrain be counterbalanced by means of compensation and replacement, with the corresponding measures determined by authorities as part of the approval procedure. However, compensatory and replacement measures do need to be planned and audited, and suitable spaces need to be acquired.

In order to decouple compensation planning from project approval, the LNGG lays out an option for compensatory and replacement measures to be determined two years after approval has been issued. Once those measures have been established, the project developer will then have an additional three years to implement them (Sec. 6 LNGG). This procedural streamline solely applies to FSRUs, connection lines, waterway development and utilisation, and vapour and hot water pipelines and not to land-based LNG terminals within the meaning of Sec. 2 (1) no. 2 LNGG. For fixed terminals, it will still be necessary to establish complete compensatory and replacement measures. This provision will apply until 30 June 2025.



2.2.5 Plan justification and legal presumptions

The LNGG simplifies the auditing process itself. Many requirements which need to be audited within the scope of LNG terminal approval contain non-specific legal terms and require a review of the facts or balancing of interests.

⁹ Bundestag Printed Matter 20/1889, pg. 10



To that end, the LGG lays out a statutory plan justification as well as legal presumptions. In particular, under Sec. 3 LGG there is an *overriding public interest* in LNG terminals being constructed as swiftly as possible. This fundamental legal decision ascribes high weighting to LNG terminal construction when performing a balancing of interests, and such decisions will generally be made in favour of the LNG terminals. That makes it easier for an authority to reach a decision and expedites evaluation of the circumstances in individual cases.

This overriding public interest also needs to be taken into account in decisions regarding an early start to construction. Furthermore, a utilisation approval under water law is necessary in order to operate regasification systems (permission or permit). To such end, the LGG features a legal rule according to which the extraction and reintroduction of water generally do not result in an expectation of harmful or non-compensable water body changes pursuant to Sec. 12 (1) no. 1 of the Federal Water Act when carried out for the purpose of liquefied natural gas regasification (Sec. 7 no. 4 LGG).

The acceleration provision applies for all systems in line with Sec. 2 (1) LGG, which means FSRUs, fixed terminals, connection lines, waterway development and utilisation, and vapour and hot water pipelines. These provisions will cease to apply at the end of 30 June 2025.

2.2.6 Gas lines

The LNG terminals must be connected to the general gas grid via connection lines. The Energy Industry Act specifies that plan approval procedures and any expropriations which may be necessary must be carried out for the construction of the gas lines.

Properties on which the gas lines for LNG terminals are going to be constructed can only be used by the project developer after issuance of the plan approval decision or in the event of so-called early taking of the property.

The LGG expedites the construction of connection lines necessary for LNG terminal operation by moving forward the point in time at which early taking of possession

becomes possible. Early taking of possession of properties being expropriated fundamentally can not take place until after hearing finalisation has been issued. Due to the LGG, early possession will become possible starting directly at the end of the objection period. That means preparation work can start earlier, and the project will be accelerated overall. The LGG additionally allows for an early start to gas line construction, even when doing so causes damage which is not merely economic in nature and is irreversible, or if the project developer does not hold the requisite private third-party rights (Sec. 8 (1) no. 2, no. 3, no. 4 LGG). These provisions will cease to apply at the end of 30 June 2025.

2.3 Public procurement procedures

The LGG lays out provisions to accelerate the awarding of contracts for constructing LNG terminals. Public authorities, as the contracting parties, are simultaneously given a stronger position in the review procedure. The acceleration of procurement procedures applies for all equipment in line with Sec. 2 (1) LGG, which means FSRUs, fixed terminals, connection lines, waterway development and utilisation, and vapour and hot water pipelines.

These procedural streamlines to public procurement law will expire on 30 June 2025. That expiration will not apply to review procedures or immediate appeal procedures. Those LGG provisions will continue to be applicable even after 30 June 2025.

2.3.1 Procurement via lots

Public procurement is fundamentally required to account for the interests of small and medium-sized enterprises (Sec. 97 (4) of the German Competition Act). Accordingly, work must be divided into lots which correspond to the various specialisations and segments, and then awarded accordingly. In complex projects, this leads to many different awarding procedures as well as a great deal of coordination work for the contracting authority. This obligation can run counter to the objective of accelerating LNG terminal construction.



That is why the LGG relieves public contracting authorities of the obligation to give preference to SME interests and award services separately based on segments or specialisations (Sec. 9 (1) nos 1 and 2 LGG).

2.3.2 Applicants/bidders

The contracting authority may limit the number of candidates in awarding procedures. However, the contracting authority does have to admit at least five applicants in non-open procedures (Sec. 51 (2) sentence 1 of the Public Procurement Ordinance)

For the construction of LNG terminals, it will suffice when only one company is invited to participate in a negotiation without competition. This will definitely apply when that company is the only one capable of fulfilling the contract in compliance with the technical and time constraints due to the extreme urgency (Sec. 9 (1) no. 9 LGG).

2.3.3 Time limits

The LGG shortens various time periods throughout the entire procedure for awarding, review, and immediate appeal.

- **Sec. 134 of the Competition Act:** The contracting authority must notify bidders who have not successfully completed the awarding procedure that the contract is going to be concluded with another company. The contracting authority must then wait 10 or 15 days before it can finalise the contract.
- By contrast, in cases where negotiation without competition is possible or there is only one bidder, the LGG allows for omission of notification to unsuccessful bidders and for direct contract awarding. The waiting period does not have to be met (Sec. 9 (1) no. 3 LGG). Furthermore, contrary to the previous legal situation, the contract will no longer become invalid if the contracting authority has not complied with the waiting period (Sec. 9 (1) no. 4 LGG).
- **Sec. 17 (6), (8) of the Public Procurement Ordinance:** The bidding period in negotiation procedures

fundamentally must comprise at least 30 days. The LGG shortens that period to 10 days in light of the special urgency for LNG terminal construction (Sec. 9 (1) no. 8 LGG).

2.3.4 Plan justification and legal presumption

The audit process has also been streamlined in public procurement law. The overriding public interest in LNG terminal construction must also be taken into account in awarding procedures. To such end, the legal presumption is made that extremely urgent compulsory grounds are met and minimum periods cannot be applied. This makes it possible for a contracting authority to exercise the option of carrying out a negotiation procedure without competition in line with Sec. 14 (4) no. 3 of the Public Procurement Ordinance, or to have a shortened bidding period due to special urgency in line with Sec. 17 (8) of that same Ordinance.

2.3.5 Legal protection procedures under public procurement law

- **Sec. 167 (1) sentence 1 of the Competition Act:** In review procedures, the Public Procurement Chamber must reach a decision within five weeks. The Chamber can extend the decision deadline without limit in the event of difficulties as to the facts or the law.
- The LGG shortens the Procurement Chamber's decision deadline to three weeks. The deadline can be extended by a maximum of two weeks (Sec. 9 (2) no. 2 LGG).
- **Sec. 172 (1) Competition Act:** The emergency period for filing immediate appeal is reduced from two weeks to one week (Sec. 9 (3) no. 2 LGG).
- **Sec. 173 (1) sentence 2, sentence 3 of the Competition Act:** The filing of an immediate appeal has a suspensive effect on Procurement Chamber decisions. The suspensive effect is two weeks and can be extended indefinitely. The LGG shortens the suspensive effect to one week and allows for extension up to a maximum of six weeks (Sec. 9 (3) no. 3 LGG).



- **Sec. 176 (3) of the Competition Act:** The contracting authority or a bidder can request a preliminary decision on the contract during the appeal procedure. The appeal court must hand down a decision within five weeks. The LNGG shortens that period to one week (Sec. 9 (3) no. 4 LNGG).
- **Sec. 178 of the Competition Act:** The appeal court has no deadline for handing down its decision on the appeal.
- The LNGG introduces a corresponding deadline. The appeal decision must be issued within five weeks of receipt of an immediate appeal (Sec. 9 (3) no. 7 LNGG).
- **Sec. 166 of the Competition Act:** Under Sec. 166 (1) of the Unfair Competition Act, a review procedure before the Public Procurement Chamber is decided on the basis of oral proceedings. The LNGG deviates and allows for a decision to be made on the basis of the files (Sec. 9 (2) no. 1 LNGG).

2.4 Legal protection procedures before an administrative court

The LNGG speeds up legal remedy procedures. For one, objections and appeals will not have a suspensive effect (Sec. 11 (1) LNGG). For another, the only instance for appeal will be the Federal Administrative Court (Sec. 12 LNGG). This bundles proceedings and jurisdiction into one court. The acceleration provisions apply for all systems in line with Sec. 2 (1) LNGG, which means FSRUs, fixed terminals, connection lines, waterway development and utilisation, and vapour and hot water pipelines. These provisions will cease to apply at the end of 30 June 2025.

3. Schleswig-Holstein State Water Act

Via the Law of 3 May 2022, which was published on 19 May 2022 and entered force on that same day,¹⁰ the State Legislature of Schleswig-Holstein amended its Land Water

¹⁰ Schleswig-Holstein State Law Gazette No. 7, 19 May 2022, pg. 562 et seq.

Act (“LWG SH”, in its German abbreviation) and introduced provisions to accelerate LNG terminal construction. The LWG SH makes reference to systems which at least primarily serve the purpose of energy supply, climate protection, or adaptation to the consequences of climate change. As energy supply systems, LNG terminals fall under the LWG SH amendment.

Some of these changes are analogous to those laid out in the LNGG and likewise consist of procedural streamlining. In contrast to the LNGG, however, the LWG SH scope of application does not make a distinction between FSRUs and fixed terminals. The simplifications apply to all LNG terminal facilities at a port – be they floating or fixed. The LWG SH specifically introduces the following provisions for LNG terminals:



3.1 Balancing of interests during planning approval in line with port law

LNG terminals along the coast require port facilities which still need to be constructed. Under Sec. 95 (1) LWG SH, the construction or substantial modification of a port requires a planning approval procedure under port law. That procedure must feature a comprehensive balancing of interests. LNG terminals may only receive approval if the balancing of interests ends in favour of the LNG terminal and the public interest in the LNG terminal’s construction outweighs the impairments and disadvantages it will cause.



The specifics for that balancing of interests are laid out in favour of LNG terminals.¹¹ The balancing process must presume that public interest generally prevails unless particularly weighty public interests stand in opposition or interests protected by fundamental rights of particular weight will be irreparably impaired. The justification for this lies in that securing the energy supply is of crucial importance. Since LNG terminals are only given priority *as a general rule*, proportionality does remain intact (Sec. 95 (1) sentence 2-4 LWG SH).

3.2. No suspensive effect

Legal challenges to planning approval decisions fundamentally have a suspensive effect (Sec. 80 (1) of the Administrative Court Code). The suspensive effect will only be omitted if explicitly specified by special law. No such provision had been made thus far when it comes to planning approval under port law under Sec. 95 LWG SH. That has been changed now. Legal challenges to a planning approval decision which has approved LNG systems no longer have a suspensive effect (Sec. 95 (6) LWG SH). This also applies to legal action against preliminary orders via which a planning approval authority permits preparatory measures (Sec. 95b (2) LWG SH).

3.3 Plan justification and need

The issuance of a planning approval decision fundamentally requires a plan justification. That means the planning approval authority must come to a positive decision that the specific LNG terminal up for approval is necessary and that there is a need for it.

In the future, the authority will no longer have to carry out this review in full scope because the LWG SH establishes in law that LNG terminal construction is necessary based on grounds of overriding public interest and public safety, and that there is a need to such end. LNG terminals can only be built in Germany at a few locations. In Schleswig-Holstein, LNG system construction is planned exclusively for Brunsbüttel (one FSRU and one LNG terminal).

Accordingly, their necessity has been established. The planning approval authority no longer has to examine the individual need, which shortens the duration of an approval procedure (Sec. 95a LWG SH).

3.4 Approval for LNG terminals by section

As detailed above, LNG terminals comprise floating equipment, fixed equipment and the connection lines to the gas grid. The LWG SH amendment now allows for the approval of individual independent sections or stages. However, that can only be done provided it will remain possible in the future to account for the overall project’s impact on the environment after the approval of the individual stage or section. That, in return, requires a forecast report stating that there are no insurmountable hindrances standing in the way of overall project implementation.¹² This leads to a procedural streamline in that the audit scope for a project section is small compared to the audit scope for the overall project. An audit can be carried out more quickly and construction measures can be initiated earlier, i.e. after approval has been issued for the corresponding section¹³ (Sec. 95b (1) LWG SH).



3.5 Authorisation for early measures

A developer fundamentally may only start construction after the planning approval decision has been issued and become final. As there is public interest in and particular urgency to accelerated LNG terminal construction, the planning approval authority now holds the power to

¹¹ Schleswig-Holstein State Parliament Printed Matter 19/3814, pg. 7.

¹² Schleswig-Holstein State Parliament Printed Matter 19/3814, pg. 9.

¹³ Schleswig-Holstein State Parliament Printed Matter 19/3814, pg. 9.



permit preparatory measures or partial measures via temporary order. By way of exception, this also applies for irreversible measures whose consequences cannot be undone, provided that construction of the LNG terminal causes merely economic damage and monetary compensation is paid for such damage. To the extent such measures end up being declared impermissible, the previous conditions must be reinstated (Sec. 95b (2) LWG SH).

4. State aid for LNG terminals

Accelerated LNG infrastructure expansion in Germany will require procedural simplifications not only for the licensing and contracting procedures, but financial resources as well. This infrastructure is expensive and presumably will not always turn out to be cost-effective. That is why the EU is providing €300 billion in funding, of which €72 billion will come in the form of grants and €225 billion in the form of loans.¹⁴ In view of the public interest in supply security, the state can make public funds available for these projects. It must do so in line with EU laws on state aid. This offers sufficient flexibility to make “entering a new era” possible, while also safeguarding competition on the internal market.

4.1 The elements of state aid

When a state promotes LNG terminal construction, the elements of state aid pursuant to Art. 107 (1) TFEU are generally met. In this sense, aid consists of state favouring granted to a company in a manner capable of affecting trade between Member States and distorting competition. State funding for LNG terminals strengthens the position of the LNG terminal operator, the operator of the connecting lines, or other parties like port infrastructure companies who receive public funding in order to expand their port infrastructure such that a return on investment is yielded which is not in line with the market.

¹⁴ Press statement by President von der Leyen on the Commission’s proposals regarding REPowerEU, defence investment gaps and the relief and reconstruction of Ukraine, 18 May 2022, available at https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_3164.

¹⁵ COM, Decision of 17 June 2021, SA.55526, Greece, LNG Terminal Alexandroupolis, no. 100.

Furthermore, gas is a commodity which is traded across borders on the internal market, such that competition may be distorted and trade between Member States may be affected.¹⁵

4.2 Justification for state aid

State aid for LNG terminal construction can – if there is no exemption in place – be approved by the European Commission. Yet the corresponding legal foundation is not always clear and depends on the scope of the project being funded. The European Commission bases aid approval for LNG terminals predominantly on Art. 107 (3) (c) TFEU in conjunction with Section 4.9 of the Guidelines on state aid for climate, environmental protection and energy (“CEEAG”)¹⁶. However, if a measure exclusively concerns port infrastructure (such as a jetty), then it will likely be eligible for approval as aid to port infrastructure under Art. 107 para. 3 lit c. TFEU.



4.2.1 State aid for climate, environmental protection and energy

LNG terminals comprise energy infrastructure. That is because LNG terminals serve to secure the energy supply and, as necessary infrastructure, are a prerequisite to a functioning energy market. Accordingly, LNG terminal construction is fundamentally subject to the CEEAG.

¹⁶ European Commission Guidelines on state aid for climate, environmental protection and energy 2022, C(2022) 481 finalised version of 27 January 2022.



This especially applies for construction of a complete LNG terminal (floating equipment, fixed equipment, and connection lines) or its expansion,¹⁷ because an LNG terminal will then be assessed as a single overall project. In particular, standard port infrastructure, like berths¹⁸ and jetties,¹⁹ is also financed via state aid, the approval of which is governed by the CEEAG. If LNG terminal aid is being provided not for the overall project but rather for individual LNG terminal sections, then at least the state aid for the construction of connection lines for connecting the fixed equipment to the general gas grid must be based on the CEEAG. The same will apply to land-based facilities which are not port infrastructure (e.g. storage tanks, regasification equipment, etc.).

The CEEAG declare LNG terminal construction to be an objective of common interest.²⁰ Accordingly, developing LNG infrastructure is in line with the European Union’s objectives for a secure energy supply as enshrined in Art. 194 TFEU. Furthermore, LNG terminals serve to improve diversification in various energy sources as well as to reduce dependence on Russia.²¹ That was underlined by the European Commission in a joint statement with the United States of America on 25 March 2022:

*“The European Commission will work with the governments of EU Member States to accelerate their regulatory procedures to review and determine approvals for LNG import infrastructure, **to include fixed facilities and related pipelines to support imports using floating storage regasification unit vessels, and fixed LNG import terminals.**”²²*

[Bold formatting not in the original].

¹⁷ COM, Decision of 18 March 2016, SA.42889, Finland, LNG terminal Hamina, no. 71; COM, Decision of 17 June 2021, SA.50905, Poland, LNG terminal Swinoujscie, no. 50; COM, Decision of 8 December 2020, SA.55388, Cyprus, LNG terminal Vasilokos, no. 76; COM, Decision of 31 July 2019, SA.51983, Croatia, LNG terminal Krk, no. 64.

¹⁸ COM, Decision of 17 June 2021, SA.50905, Poland, LNG terminal Swinoujscie, no. 8.

¹⁹ COM, Decision of 8 December 2020, SA.55388, Cyprus, LNG Terminal Vasilokos, no. 12.

²⁰ COM, Decision of 17 June 2021, SA.50905, Poland, LNG terminal Swinoujscie, no. 50.

²¹ COM, Decision of 17 June 2021, SA.55526, Greece, LNG terminal Alexandroupolis, no. 161.

²² Joint Statement between the European Commission and the United States on European Energy Security, 25 March 2022, available at

Investing in LNG terminal expansion will foster the goal of connecting all Member States to the EU’s regional gas market. It will also reduce the risk of supply disruption in the respective Member States.²³

LNG terminal construction furthermore supports the integration of various energy sources and energy supply in underdeveloped grids. That, in turn, promotes competition in the electricity sector of a Member State, which can ultimately lead to lower electricity costs for end consumers. These kinds of projects also improve sustainability. By using gas to replace expensive and environment-damaging heavy fuel oil for power generation, LNG terminals are expected to reduce CO2 emissions.²⁴

The promotion of LNG terminals also contributes to the introduction of alternative fuels in the transport sector, which in turn has a positive impact on the environment by reducing air pollution. That means it is helping the EU to meet its greenhouse gas reduction targets.²⁵

The importance of these objectives within the European Union was also underlined by partial inclusion of LNG terminals in the EU’s list of Projects of Common Interest.²⁶

4.2.2 State aid for port infrastructure

The Commission has established in its decision-making practice that jetties represent port infrastructure.²⁷ That means plant components can be port infrastructure and part of an LNG terminal simultaneously. When state aid is exclusively for LNG terminal sections which are port infrastructure, there are indications that the COM will approve

https://ec.europa.eu/commission/presscorner/detail/de/state-ment_22_2041.

²³ COM, Decision of 20 November 2020, SA.57032, Lithuania, LNG terminal Klaipėda, no. 53.

²⁴ COM, Decision of 8 December 2020, SA.55388, Cyprus, LNG terminal Vasilokos, no. 85.

²⁵ COM, Decision of 18 March 2016, SA.42889, Finland, LNG terminal Hamina, no. 73.

²⁶ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 as relates to the EU’s list of Projects of Common Interest

²⁷ COM, Decision of 20 November 2013, SA.36740, Lithuania, State Aid for Klaipėdos Nafta - LNG terminal, no. 10: “... LNG Terminal requires that additional port infrastructure is developed. It involves in particular the construction of the offshore jetty facility”



it on the basis of Art. 107 (3) (c) TFEU or – if conditions are met – that it can be exempted under Art. 56b of the General Block Exemption Regulation (“**GBER**”).

5. Outlook

We are now entering a new era in planning, environmental, procedural, public procurement, and state aid law. The LNG Acceleration Act is one example to such end. Now it will be essential that these laws meet all higher-ranking requirements laid out in EU and constitutional law, and that they be implemented wisely and correctly and with sufficient human resources. It may then also be possible to make up for some of the time lost before 24 February 2022 in the ambitious projects along the German coast. That, in turn, will be beneficial for independence and supply security.

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