

Client Alert

Energy

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News on Potential Relaxation of EU Green Hydrogen Rules

In June 2023 the European Union (“EU”) adopted its definition of green hydrogen and derivatives (known as “renewable fuels of non-biological origin”, or “RFNBO”).¹ See our previous [client alert summarising the key aspects of the RFNBO rules](#). Based on these rules, the European Commission (“EC”) recently announced preliminary approval of the first certification schemes to verify and certify compliance.²

The RFNBO definition was the subject of intense debate, particularly over the strictness of the EC’s criteria for when electricity used in electrolysis – and therefore the resulting hydrogen – can be considered renewable. However, in view of the likelihood that Europe will miss its RFNBO production and import targets, momentum for these rules to be relaxed is growing again. Could a revision to the RFNBO rules become part of the new EC’s agenda for a “clean industrial deal”?

GERMANY’S MINISTER HABECK LOBBIES THE EC TO REVISE THE RFNBO RULES

Last week saw the German government’s latest intervention into the EU’s green hydrogen debate. In a leaked letter penned by Germany’s Federal Minister for the Economy, Robert Habeck, to outgoing EU Energy Commissioner, Kadri Simson, Habeck argues³ that the EU should postpone:

- the “additionality” requirement until 2035 – the additionality rules for RFNBOs require hydrogen to use only new-build, unsubsidised renewable power and will currently kick-in from 2028 – this would effectively allow more time for RFNBO projects currently under development to be financed and constructed; and
- the “temporal correlation” requirement until 2031 – the current rules require hourly time-matching of the quantity of renewable electricity produced with the quantity consumed in hydrogen production from 2030, which significantly increases the cost of RFNBO production.



Germany played a key role in fighting for the strict RFNBO rules we have today. Habeck acknowledges this in his letter, saying, with hindsight, “these requirements were still too high and are slowing down the ramp up of the projects for the production of renewable hydrogen”. The concern expressed by Habeck, echoing those from various private sector stakeholders around the world, is that if the rules for green hydrogen during early market formation are too strict, the nascent industry risks being stifled before it has even taken off.

This intervention comes amid renewed calls to revisit some of the policy decisions that lay behind the drafting of the RFNBO delegated acts adopted in 2023, following the European elections earlier this year.

CAN THE RFNBO DELEGATED ACT BE REVISED?

Yes, though the process will take time and likely require a full stakeholder consultation. The EC is required under the revised Renewable Energy Directive (“**RED**”)⁴ to submit a report to the European Parliament and Council by July 2028 assessing the impact of the RFNBO rules on operators. In particular, this should “*assess the impact on the availability and affordability of renewable fuels of non-biological origin for industry and transport sectors and on the ability of the Union to achieve its targets for renewable fuels of non-biological origin taking into account the Union strategy for imported and domestic hydrogen*”.

Many involved in the development of green hydrogen production projects have, since draft rules were leaked in 2021, been arguing that the EC was heading in a direction that was too strict, jeopardising its own hydrogen targets. Habeck’s letter now makes the same point.

When the new EC takes office later this year, it could bring the timeline for this review forward (nothing prevents the report being delivered before the July 2028 deadline) and propose legislative changes to the RFNBO delegated act that sets the relevant rules.

CONCLUSIONS

This latest development comes in the context of several other ongoing regulatory processes relevant to green and blue hydrogen in the EU as well as in the US.

In the EU, the EC is expected to publish a proposed delegated act defining “low-carbon hydrogen”, which includes hydrogen produced from natural gas with carbon capture and storage as well as hydrogen produced using nuclear electricity. Based on leaked drafts during its development, this low-carbon hydrogen delegated act will borrow heavily from the RFNBO delegated act, which is a concern for some in the industry. Meanwhile, in the US, the Section 45V guidelines defining “clean hydrogen” are still not yet adopted, and there remains enormous debate about whether the EU’s approach is the right one – a fortnight ago [66 congresspeople sent an open letter](#) defending it. See our [client alert summarising the debate on the definition of clean hydrogen](#) under the Inflation Reduction Act.

The King & Spalding Global Hydrogen Industry Team is at the forefront of developments in the sector globally and is actively advising clients navigate these regulatory challenges on many of the first and largest projects around the world.



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¹ Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin
² The “international voluntary schemes” recently received the “positive technical assessment” of their scheme documents by the EC, which is the first major part of formal approval by the EC. See [here](#) for the full list.
³ See the letter as published by politico.eu: [here](#).
⁴ Article 27(6)