Bundesnetzagentur

FAQs on hydrogen terminals.

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Preface

The construction and operation of hydrogen terminals are gaining increasing importance as part of the transformation of the energy system. With a view to the establishment of a transparent, non-discriminatory and investment-friendly market regime, the structure of regulation for this infrastructure and the prerequisites for exemption from regulation are of paramount importance. EU Member States are currently being required to transpose in national law the corresponding European requirements from Directive (EU) 2024/1788 that set out the underlying framework.

Amendments to and new provisions in the German Energy Industry Act (EnWG) resulting from this and adjustments of the EnWG to the requirements of the revised Regulation (EU) 2024/1789 of 13 June 2024, which entered into force on 5 August 2024 and, except for individual provisions, has applied since 5 February 2025, are to be expected but are still pending.

This document issued by Ruling Chamber 7 of the Bundesnetzagentur addresses frequently asked questions (FAQs) concerning the regulatory framework conditions and prerequisites for an exemption of hydrogen terminals from regulation in Germany. The answers to the questions aim to provide affected and interested parties with initial support in understanding the relevant regulatory issues.

The following statements are based on the current status of the law and intended to offer guidance in a dynamic and increasingly complex regulatory environment. They make no claim to completeness and may not be construed either as anticipating the transposition of Directive (EU) 2024/1788 in the EnWG or as binding from the perspective of Ruling Chamber 7 with regard to future administrative practice.

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1. What is a hydrogen terminal in terms of European law?

According to Article 2(46) of Regulation (EU) 2024/1789 in conjunction with Article 2(8) of Directive (EU) 2024/1788, a hydrogen terminal is "*an installation used for the offloading and transformation of liquid hydrogen or liquid ammonia into gaseous hydrogen for injection into the hydrogen network or the natural gas system or the liquefaction of gaseous hydrogen and its offloading, including ancillary services and temporary storage necessary for the transformation process and subsequent injection into the hydrogen network, but not any part of the hydrogen terminal used for storage*."

These terminals form a core interface in the hydrogen infrastructure and enable production, transport, storage and distribution to be efficiently interconnected. Depending on its scope of application, a hydrogen terminal may consist of multiple functional components such as conversion units, storage units, compressor stations and loading facilities.

The specific configuration of a hydrogen terminal depends on various factors such as the intended supply function, the available site infrastructure and connections to the hydrogen network or multimodal transport routes.

It should be pointed out here that above and beyond the current European definition of "hydrogen terminal", further energy sources containing hydrogen are already emerging as transport media in addition to liquid hydrogen and liquid ammonia in various technological approaches. These derivatives, such as synthetic methane or methanol, transport hydrogen sealed in a chemical carrier medium. The decisive factor for classification as a hydrogen terminal is that the hydrogen from the transport carrier is (re)claimed after landing and injected into the (piped) hydrogen network.

Please note: question 6 additionally addresses the distinction of the components of a hydrogen terminal in connection with its piped nature.

2. What are the responsibilities of the operator of a hydrogen terminal and what must be borne in mind regarding the ownership and operator structure?

Article 2(9) of Directive (EU) 2024/1788 defines the operator of a hydrogen terminal as "*a natural or legal person that carries out the function of offloading and transformation of liquid hydrogen or liquid ammonia into gaseous hydrogen for injection into the hydrogen network or the natural gas system or the liquefaction and offloading of gaseous hydrogen and is responsible for operating a hydrogen terminal.*" This definition already applies directly in German law via Article 2(1)(47) of Regulation (EU) 2024/1789.

The decisive factor for qualification as an operator of a hydrogen terminal according to this definition is responsibility for the terminal. In the understanding of Ruling Chamber 7, this is based on a definition of "operator" from an energy supply perspective that requires power of disposition over the facility and a certain degree of influence on the facility's operation in terms of operative and strategic control. This includes the obligations pursuant to section 11 EnWG.

It is fundamentally also conceivable for the operator of a hydrogen terminal to outsource technical operation (such as the technical monitoring and control of facilities and their maintenance and

servicing) to sufficiently qualified external service providers. Appropriate contractual provisions must then be drawn up between the operator of the hydrogen terminal and the service provider, for instance in the form of an operational management or service agreement. It must be clear from such provisions that the final right of decision/authority to give instructions lies with the energy supply operator.

It is also not imperative for the operator also to be the owner of the hydrogen terminal; the contractually granted rights of use and operation and the associated responsibilities and assignments of liability for compliance with regulatory requirements are decisive in this case. Individual components of the facility may accordingly be under different ownership. The applicable unbundling provisions must be upheld at all times in this connection.

3. How important is third-party access to hydrogen terminals and how is this regulated?

Third-party access to hydrogen terminals means that the option of making use of the infrastructure is fundamentally open to all market participants – such as importers, suppliers, industrial and commercial enterprises. Access to hydrogen terminals must be granted without discrimination and transparently on the basis of objectively justified criteria.

Access is of core importance. It supports the development of a well-functioning hydrogen market, contributes to the diversification of imports and helps to reduce dependence on individual supplier countries. In addition, it serves to strengthen Germany's strategic autonomy in the hydrogen sector and facilitates the fair treatment of all market participants.

Please note: in addition to the topic of third-party access, question 5 also addresses "negotiated access" and its importance for hydrogen terminals.

4. What do non-discrimination and transparency mean in the context of third-party access to hydrogen terminals?

Non-discrimination and transparency are core prerequisites for third-party access to hydrogen terminals. They ensure the equal treatment of all market participants, prevent the preferential treatment of affiliated companies and safeguard fair and efficient use of the infrastructure. This creates planning and investment certainty in the market and facilitates effective regulatory control. Together the two principles form the foundation for a competitive hydrogen market and make a decisive contribution to the market ramp-up of the hydrogen sector.

Non-discrimination means that operators of hydrogen terminals offer their services to all potential users on the basis of equivalent contractual conditions as long as they are in comparable situations. Access to terminal capacity and services may not be configured arbitrarily or unilaterally. Different conditions, for instance in terms of prices and contract periods, are only permissible if all market participants are aware of the reasons for them and they are objectively justified, such as by way of contractual commitment periods. Operators that are vertically integrated (ie additionally active in

the trading or production of hydrogen) may not treat parts of their own company better than external third parties.

Transparency is the core means by which non-discrimination is asserted. Operators of hydrogen terminals must publish detailed information about all the services they offer and the applicable conditions as well as technical details of the terminal that are required for effective access. Ruling Chamber 7 may require operators of hydrogen terminals to publish any additional relevant information for network users. Concerning the services offered, operators of hydrogen terminals publish numeric information about the contractually agreed and available capacity regularly and continuously and in a user-friendly, standardised manner. The operators publicise the prescribed information (quantity of hydrogen in the terminal, input and offtake volumes and available capacity of the hydrogen terminal) in a meaningful, clearly quantifiable, easily accessible and non-discriminatory manner – also for facilities from which third-party access is excluded (see question 10). This information is sent to the hydrogen network operator, which publishes it in aggregated form at least once daily for each network or sub-network determined on the basis of the applicable relevant criteria. In addition, sufficient detailed information must be published about network tariff setting, the methods for tariff setting and the tariff structure.

The aforementioned applies not just to the initial commissioning of a hydrogen terminal but also if parts of the terminal previously fulfilled a non-regulated function and capacity was marketed for this. In this case the capacity that is in future to be deployed in the regulated market for operation of the hydrogen terminal must be remarketed in a non-discriminatory and transparent manner by way of negotiated access.

5. What is negotiated access to hydrogen terminals?

Negotiated third-party access comprises access on a contractual basis, ie third parties have no direct entitlement to the use of capacity and services of hydrogen terminals such as offloading, storage or injection. Instead, access is provided via individual bilateral agreements between terminal operators and users. These agreements must have transparent underlying terms and conditions and be appropriate and free from discrimination (see question 4). The operator is fundamentally also obliged in the case of negotiated third-party access to provide the applicable capacity to third parties without discrimination.

Please note: not all terminal components associated with hydrogen fall within the scope of application of negotiated third-party access (see question 6).

6. Which components of a hydrogen terminal are exempted from third-party access due to its pipeline-bound nature?

Not all components are subject to the access regulation, in this case the negotiated third-party access. The decisive factor is whether the applicable component is linked functionally with the process of transformation and injection into the hydrogen network. The core starting point is the pipeline-bound nature of the facility, ie orientation to that part of the infrastructure that is ultimately used for injection into the hydrogen network.

Third-party access thus applies to components that are a functional part of the transformation process and therefore a prerequisite for injection into the network. These components are deemed to be an integral part of the hydrogen terminal and must also be made accessible to third parties to the extent necessary for injection in proportion to their transformation capacity.

By contrast, those components that are not directly connected to the network or injection interface and not required for it to function are exempted from third-party access. They are typically used for flexibility, linepacking or interim storage for commercial reasons. These components do not count as part of the hydrogen terminal and are therefore not subject to negotiated access pursuant to the access regulation, but can be operated as separate hydrogen terminal components.

Other supporting infrastructures such as truck loading are only subject to negotiated access if they are required functionally for the overall process of transformation and injection into the hydrogen network. Only this part of the capacity is subject to the regulatory framework.

7. Which requirements apply to the capacity products for the purposes of negotiated access and how must terminal capacity be offered and assigned?

Operators of hydrogen terminals are free to configure their products and services flexibly as long as they ensure that all potential market participants receive access to newly available or extended capacity on equal terms. A legal framework for this is provided by Regulation (EU) 2024/1789, in particular Articles 8, 11 and 34.

In order to prevent barriers to market access, products and services must be configured and assigned objectively, transparently and without discrimination and be based on transparent criteria published in advance (see also question 4).

The maximum available capacity must be offered as a rule. Restrictions are only permissible if necessitated by objective technical reasons or measures for safeguarding system integrity and safe operation.

Product configuration & allocation procedure:

- Products must be compatible with the connected transport networks.
- The range of products offered should adapt flexibly to market needs.
- Products may not be artificially made scarce but must be made available in line with market requirements and transparently.
- Operators must announce in good time and in a user-friendly and standardised format when and under which conditions (eg contract periods, flexibility options, booking deadlines) capacity is available, how it can be obtained and under which rules it will be allocated.
- Based on the provisions of the LNG Ordinance (section 6(1) sentence 1 LNGV), Ruling Chamber 7 considers a lead time of at least ten working days between announcement and commencement of the booking period to be appropriate for the initial long-term capacity allocation.
- Minimum booking quantities may only be stipulated for technical reasons in order to avoid market entry barriers (see Article 8(6) of Regulation (EU) 2024/1789).

- An established and recognised instrument for transparent and non-discriminatory (long-term) capacity allocation is the open season procedure. It is a two-stage allocation procedure that is deployed particularly in investment and market ramp-up phases. Interested market participants first indicate their capacity needs in a non-binding expression of interest. This is followed by a binding booking phase in which specific booking requests are submitted and contracts concluded. This procedure creates planning certainty for operators and market participants and has been successfully deployed for years for LNG terminals.

Allocation mechanisms & congestion management:

- Operators of hydrogen terminals must implement and publish mechanisms for capacity allocation. The allocation method must not impede the market entry of new participants and must not restrict competition.
- Ruling Chamber 7 considers the first-come-first-served approach to be suitable only if there is sufficient capacity. A requirement of this procedure is for allocation to be transparently documented so that no discrimination arises.
- Objective allocation procedures are required in the event of excess demand. Pro rata allocation or an auction are suitable options here for an efficient and fair procedure.
- Should only one single user request capacity, exclusive allocation is permissible – including for vertically integrated participants or co-investors – as long as the original offer was open to all.

Remarketing:

- Unused capacity must immediately be offered on the primary market by the terminal operator (use-it-or-lose-it approach).
- Users may sell on their contractually agreed capacity on the secondary market.
- As of 5 February 2026, operators of hydrogen terminals must individually or jointly[1] make available a transparent, non-discriminatory booking platform for users of hydrogen terminals so that users can offer their contractually agreed capacity on the secondary market.

8. Must operators of hydrogen terminals reserve capacity for future users as part of negotiated access?

According to European law, there is no obligation to reserve capacity for future users as long as the entire capacity is covered by existing demand (Article 8(6) of the Gas Regulation).

However, Ruling Chamber 7 considers it expedient, in view of the requirements and experience from the LNG sector, for operators of hydrogen terminals to set part of the annual throughput capacity aside for short-term bookings. A reserve quota serves to ensure that new market participants can also obtain access to the infrastructure at short notice and prevents long-term contracts from completely blocking capacity. At the same time, sufficient planning certainty remains for operators

[1] This must comply with the provisions of European and national antitrust law.

to safeguard investments via long-term contracts. This promotes transparent, non-discriminatory access and strengthens the security of supply.

9. How are the rules for negotiated third-party access enforced?

Fair and non-discriminatory access to network capacity is a fundamental requirement for effective competition in the hydrogen market.

The terminal operator and potential user negotiate the conditions of access between themselves. Operators have scope here to set out objective, transparent and non-discriminatory criteria for access and to publish such criteria in their "access rules". The parties negotiate the contractual conditions with each other in good faith. If operators of hydrogen terminals offer different customers the same service, they must base this on equivalent contractual conditions.

As an independent regulatory authority, the Bundesnetzagentur (here Ruling Chamber 7) monitors the operators of hydrogen terminals to ensure they do not abuse their dominant position in the market, for example through discrimination in the allocation of capacity or by denying access to competitors. The Bundesnetzagentur has at its disposal the supervisory measures set out in the EnWG for enforcing these obligations.

Furthermore, pursuant to Article 36(2) of Directive (EU) 2024/1788, the Bundesnetzagentur may impose access-improving measures to protect competition and safeguard non-discriminatory access.

In this way Ruling Chamber 7 ensures that hydrogen terminals function as an integral part of an open and sustainable hydrogen economy.

10. Can operators of hydrogen terminals be exempted from the obligation to provide third-party access?

Operators of hydrogen terminals must normally grant third parties access to the infrastructure against payment of a tariff in order to promote competition and the security of supply. However, operators of new or significantly expanded hydrogen terminals can be temporarily exempted from the statutory requirements under certain conditions. This can also affect negotiated third-party access. However, the principles of transparency and non-discrimination must continue to be upheld even in the event of exemption from the provision of access.

The following seven cumulative requirements must always be fulfilled for an exemption (see Article 78(1)(a) to (g) of Regulation (EU) 2024/1789):

- Competition and security of supply

  The investment enhances competition in hydrogen supply and enhances security of supply.

- Contribution to decarbonisation and EU targets

The investment contributes to decarbonisation and the achievement of the Union's climate and energy targets and was decided by applying the energy efficiency first principle.

- Investment risk

  The level of risk attached to the investment is such that the investment would not take place unless an exemption is granted.

- Independence from the network operator

  The infrastructure is owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built.

- Tariff provisions:

  tariffs are levied on users of that infrastructure

- No detriment to the market and the security of supply

  The exemption is not detrimental to competition in the relevant markets which are likely to be affected by the investment, to the proper functioning of the internal integrated market for hydrogen, to the proper functioning of the regulated systems concerned, to decarbonisation or to the security of supply of the Union.

- No EU funding

  The infrastructure has not received Union financial assistance (support from the Connecting Europe Facility) for works under Regulation (EU) 2021/1153 of the European Parliament and of the Council.

The above-mentioned conditions (Article 78(1)(a) to (g) of Regulation (EU) 2024/1789) are reviewed under consideration of the principle of solidarity in the energy sector. The Bundesnetzagentur takes account of the situation in other affected Member States and offsets possible negative effects with the beneficial effects on its territory.

The following requirements must additionally be fulfilled for an exemption:

- Observance of the rules and mechanisms for management and allocation of capacity (Article 78(6) third subparagraph of Regulation (EU) 2024/1789):

  The terminal-specific rules and mechanisms prescribed by Ruling Chamber 7 must be observed for the management and allocation of capacity.

- Proof of market interest:

  Sufficient concrete proof must be supplied of a market interest based on the terminal-specific rules and mechanisms for management and allocation of capacity.

The applicant must provide proof of fulfilment of the aforementioned conditions in the application for exemption submitted to Ruling Chamber 7 (see question 13). The Ruling Chamber may consult the Bundeskartellamt during the procedure in order to clarify antitrust issues (section 58(4) EnWG)

as the Bundeskartellamt must ultimately also declare its agreement to the granting of an exemption (see question 12).

11. Which obligations apply notwithstanding the granting of an exemption?

In accordance with Article 78(1) of Regulation (EU) 2024/1789, there are certain provisions from which a hydrogen terminal cannot be exempted. Certain statutory provisions therefore continue to remain incumbent on the operators of hydrogen terminals even if an exemption is granted, such as:

- Transparency requirements (see Article 34(5) and (6) in conjunction with Article 78(1) of Regulation (EU) 2024/1789).

In addition, an exemption may only apply to the extent necessary for hedging the investment risks. Exemptions are therefore normally only granted with secondary conditions, such as:

- a time limit for the exemption (particularly depending on the amortisation period and durations of long-term contracts) and
- deadlines for the start of construction and commercial operation in order to meet the requirements of Article 78(10) of Regulation (EU) 2024/1789.

12. What is the procedure for granting an exemption to hydrogen terminals?

Based on the experience of Ruling Chamber 7 with exemptions in the field of LNG terminals, a procedure for orientation purposes may *ideally* be configured as follows:

1. Formal opening of procedure

The procedure is formally opened as soon as the application for an exemption submitted by the project developer is received by Ruling Chamber 7.

Ruling Chamber 7 informs the European Commission, the Bundeskartellamt and the federal state regulatory authority concerned about the opening of the procedure. The opening of the procedure is simultaneously published on the website of the Bundesnetzagentur.

2. Completeness check

A completeness check of the application documents follows. Ruling Chamber 7 requests any missing documents or information.

3. Rules and mechanisms for management and allocation of capacity

Following submission of the complete application, Ruling Chamber 7 sets out the terminal-specific rules and mechanisms for management and allocation of capacity.

4. Expression of interest procedure

The applicant conducts an expression of interest procedure using the prescribed terminal-specific rules and mechanisms for management and allocation of capacity.

5. Draft decision

Ruling Chamber 7 subsequently prepares a draft decision.

6. Hearing of applicant and participation of authorities

A hearing of the applicant on the draft decision and the participation of other authorities then take place (section 58 EnWG). Amendments to the draft decision may be carried out on the basis of feedback from the applicant or participating authorities.

7. Preliminary decision

In the next stage, Ruling Chamber 7 issues a preliminary decision on the exemption and transmits it to the European Commission for notification.

8. Notification by the European Commission

The European Commission has a deadline of 50 working days for notification of the exemption by Ruling Chamber 7. This can be extended once by a further 50 days if the European Commission requests additional information.

9. Implementation of any changes

In the event of any changes required by the European Commission, Ruling Chamber 7 has one month in which to implement them. The final decision is made available to the applicant and subsequently published on the website of the Bundesnetzagentur.

Please note: This is a procedure based on exemption procedures for LNG facilities carried out by Ruling Chamber 7 in the past. It is outlined for orientation purposes only. The duration of the individual procedural steps depends on a large number of unforeseeable factors and cannot be forecast with certainty. It is likewise not possible to rule out additional procedural steps becoming necessary in the course of the procedure.

13. How is proof of fulfilment of the requirements for an exemption provided?

Based on previous exemption decisions in the field of LNG terminals, the following possible evidence, not to be construed as exhaustive, can be derived for the application documents in addition to the project description and a declaration from the operator:

- Competition and security of supply (Article 78(1)(a) of Regulation (EU) 2024/1789)

  The exemption requires the investment to enhance competition in hydrogen supply and security of supply. Proof could take the form of a market study containing a forecast of supply and its expansion (for instance by illustrating the diversification of import sources).

- Contribution to decarbonisation and EU targets (Article 78(1)(b) of Regulation (EU) 2024/1789)

  Proof is also required that the investment contributes to decarbonisation and the achievement of the Union's climate and energy targets and was decided by applying the energy efficiency first principle. The investment makes a contribution if it demonstrably has a positive effect for which evidence is supplied by the applicant. The more substantiated and transparent the evidence is, the greater the likelihood of a positive decision outcome.

- Investment risk (Article 78(1)(c) of Regulation (EU) 2024/1789)

  The applicant must also demonstrate that the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted. This can be accomplished by way of a financing analysis, a business case and an investment risk report, for example.

- Independence from the network operator (Article 78(1)(d) of Regulation (EU) 2024/1789)

  It is necessary for the infrastructure to be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built. This serves to ensure legal and organisational separation. To this end the applicant must submit corporate law documents (eg commercial register extract, organisational chart and governance structure).

- Tariff provisions (Article 78(1)(e) of Regulation (EU) 2024/1789)

  The applicant must supply proof that tariffs are levied on the users of this infrastructure. For example, this can take the form of a tariff calculation, a model calculation for cost allocation and a sample contract.

- No detriment to the market and the security of supply (Article 78(1)(f) of Regulation (EU) 2024/1789)

  Proof must be supplied that the exemption is not detrimental to competition in the relevant markets which are likely to be affected by the investment, to the proper functioning of the internal integrated market for hydrogen, to the proper functioning of the regulated systems

concerned, to decarbonisation or to the security of supply of the Union. This can take the form of a competition impact assessment, a market integration report and a network compatibility analysis, for example.

- No EU funding (Article 78(1)(g) of Regulation (EU) 2024/1789)

  A review is conducted to ensure that the infrastructure has not received Union financial assistance (support from the Connecting Europe Facility) for works under Regulation (EU) 2021/1153 of the European Parliament and of the Council. This necessitates a declaration by the applicant, among other things.

The aforementioned conditions (Article 78(1)(a) to (g) of Regulation (EU) 2024/1789) are reviewed under consideration of the principle of solidarity in the energy sector. The Bundesnetzagentur takes account of the situation in other affected Member States and offsets possible negative effects with the beneficial effects on its territory.

- Calculation of market demand using the prescribed rules and mechanisms for management and allocation of capacity (Article 78(6) third subparagraph of Regulation (EU) 2024/1789):

  The applicant is required to conduct an expression of interest/open season procedure using the terminal-specific rules and mechanisms for management and allocation of capacity. Sufficiently substantiated proof must be provided of the result of the market survey. The result of a non-binding open season procedure is unlikely to suffice. Based on its experience in the field of LNG terminals, Ruling Chamber 7 considers proof of conclusion of Heads of Agreements or final long-term contracts to be suitable.

Please note: The interpretation and practical implementation of requirements have not yet been substantiated by decisions of Ruling Chamber 7 in the field of hydrogen terminals. For lack of relevant precedents, operators of hydrogen terminals are obliged to demonstrate in a substantiated manner on the basis of previous decisions in the field of LNG terminals with suitable documents, reports and contractual evidence that the respective requirements are fulfilled in each specific case. All evidence must convince both Ruling Chamber 7 and the European Commission.

The applicant is obliged to play an active part in the approval procedure and submit all documents, information and evidence required for the review completely and on time.