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Germany: legal grounds for taking control of the Schwedt refinery

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On 12 May, the Bundestag voted through an amendment to the Act on ensuring the energy supply (*Energiesicherungsgesetz*). This significantly increases the scope for state interference in the activities of companies managing Germany's critical energy infrastructure. The new legislation allows the federal government to introduce a fiduciary management board within the structures of any such entity to take control of it if there is a "real danger" that it will jeopardise the electricity supply by failing to meet its obligations. This decision facilitates the establishment of a trust for six months with an option for extension – each time for a further six months. In the event that this measure is insufficient to guarantee the proper operation of the company and avoid the risk of a shortage in the power supply, the law provides the federal government – as an *ultima ratio* solution – the possibility to expropriate the company (or part of its shares) for appropriate compensation. The decision on the establishment of the trust and the expropriation will be made by decree of the Minister of Economic Affairs and Climate Action (this post is currently held by Vice-Chancellor Robert Habeck, Green Party).

The amendment was prepared, by German standards, urgently, during the war in Ukraine. The first reports of these plans emerged on 12 April, and as early as on 25 April the new regulations were adopted by the federal government and submitted to the Bundestag (via coalition groupings in order to expedite the procedure). The explanatory memorandum to the bill states that, in connection with Russia's aggression against Ukraine, the threat of a deterioration in the country's energy security has increased, which requires the creation of more far-reaching emergency response tools. The amendment still needs to be approved by the Bundesrat, and it is on the agenda of the chamber on 20 May. The document will enter into force the following day.

Commentary

- Initial legislative work on the act was accompanied by media speculation, fuelled by statements from government representatives, that the new legislation is being drafted mainly with the PCK (*Petrochemisches Kombinat*) Schwedt, Brandenburg refinery in mind and was framed in the context of Berlin's intention to stop using Russian oil in Germany – the intention to end its import by the end of this year was announced in mid-March by Vice Chancellor Habeck. According to the information he provided at the beginning of May, in cooperation with the oil industry it was possible to reduce the share of Russian oil in imports from 35% (in 2021) to 12% by the end of April. The only company that so far

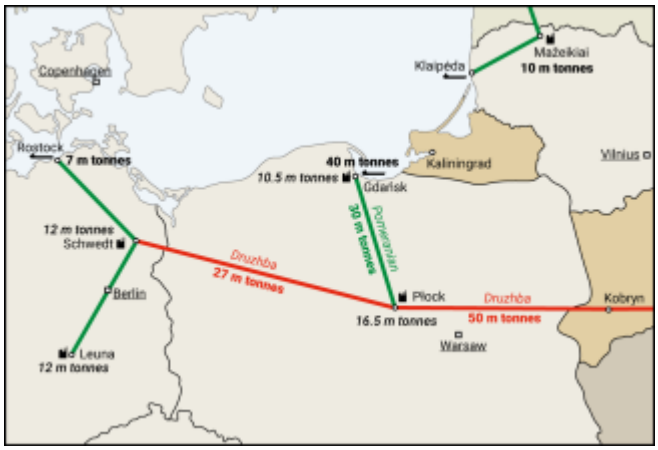
has not taken any steps towards diversification is PCK, which manages the Schwedt refinery and whose majority stake (54.17%) is held by the Russian oil company Rosneft (37.5% is held by the Netherland's Shell and 8.33% by Italy's Eni). Moreover, Rosneft wanted to take over Shell's shares, but the deal, already approved before the Federal Antimonopoly Office, was finally halted by the Federal Ministry of Economy and Climate Action (BMWK) just after Russia's invasion of Ukraine. The Schwedt facility continues to be supplied exclusively by Russian crude oil sent via Poland through the Druzhba (Friendship) oil pipeline.

- The act gives the government new tools to solve the ownership problem of the Schwedt refinery. Unlike in the case of Gazprom Germania, where BMWK has introduced a trust in connection with ownership changes carried out in violation of German law, the current form of the document did not provide Berlin with a pretext for a similar move. According to Habeck's recent statements, his department is already legally prepared to implement new regulations with regard to PCK. However, it is not a foregone conclusion that the law will be applied since, due to the precedent-setting nature of the tools, its use is treated as a last resort. Other scenarios are also being considered, including the possibility of Rosneft Deutschland declaring so-called technical bankruptcy and voluntarily offloading its shares in PCK. Since the outbreak of the war, the company is thought to have had problems with financing, as German banks were expected to start refusing to cooperate with it.
- Due to Rosneft's attitude being aimed at obstruction, Berlin views regaining control of the refinery from Rosneft as a precondition for starting the process of switching from Russian oil at the Brandenburg site. It cannot be ruled out that, in the event of the EU embargo being imposed, PCK, following the decision of its majority shareholder, will not order any non-Russian crude oil and will suspend operations of the plant which supplies almost all of Berlin, Brandenburg and Mecklenburg-Vorpommern's fuel and part of western Poland's. In cooperation with the Brandenburg authorities and the minority shareholder (Shell), BMWK worked out a plan for alternative oil supplies to the Schwedt refinery. The facility has a pipeline connection to the port of Rostock through which it may cover up to 60% of its demand (the plant processes nearly 12 million tonnes of crude oil annually). Additionally, crude oil may be imported via the oil port in Gdansk and onwards via the Pomeranian and Druzhba pipelines to Germany. Germany has also emphasised the importance of good cooperation with Poland, which has made the withdrawal of Rosneft's share in the Schwedt refinery the basic condition for it to assist Germany in reducing its dependence on Russian oil. The possibility of using this solution is, however, severely restricted by the capacity of the route already used by the second of the East German refineries, Leuna in Saxony-Anhalt. The owner of this refinery, the French company Total, decided as early as in March to move away from Russian crude and to import the oil via Poland's Naftoport. Current estimates indicate that PCK may cover approximately 70% of its annual demand via the ports of Rostock and Gdansk. Consideration is also being given to supplying the plant with crude oil from the federal oil reserve, deepening the Rostock waterway to enable it to handle larger cargoes and supplementing the refinery's supplies with rail transport. Another challenge will be to switch the installations to process crude oil with non-Russian ones. According to industry

experts, this will be a lengthy process (several weeks) and expensive. It will thus affect production costs and the competitiveness of the refinery. Berlin announced that the plan for the plant includes covering expected financial losses.

- The problem of the Schwedt refinery does not only have an economic and energy-related context, but also a strong socio-political dimension. PCK employs 1,200 people directly and another 1,800 indirectly. It is the largest and most attractive employer in the area and a major contributor to the budget of the local government. Moreover, over the decades of its operation, the refinery has become an inseparable part of the region's identity, so the prospect of stopping processing Russian oil rouses great controversy among its inhabitants, who fear for the future financial condition of the plant and their employment. They are also concerned about the likely rise in fuel prices and possible temporary fuel shortages in the states supplied by PCK. In this context, protests are being held, which the AfD and the Left Party are trying to make use of politically. These parties are demanding a rejection of the embargo or at least a special exemption for East German refineries, along the lines as the one the European Commission is proposing for Hungary, for example. Resistance from the local community is also a serious political problem for the Social Democrats, who govern both in the Uckermark district where Schwedt is located, and in Brandenburg as a whole. Moreover, the Bundestag deputy from the Uckermark district is Michael Kellner (Greens), the state secretary at BMWK and one of Habeck's closest associates.

Map. Oil import infrastructure (in eastern Germany and Poland)



Sources: PERN, German Petroleum Industry Association (MWV, from 2021 – En2X).