

Europe

Tackling High Fuel Prices: Germany's New Competition Law Toolkit

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Germany has just enacted a “Fuel Measures Package” (*Kraftstoffmaß-nahmenpaket*) to counter high fuel prices. The new legislation introduces significant changes to German competition law, targeting fuel retail and wholesale markets, but with implications well beyond the fuel sector.

From now on, at the retail level, gas stations will only be allowed to increase prices once a day. At the wholesale level, refineries and fuel wholesalers will be subject to a strict price level control by the competition authority. At both levels, and also outside the fuel sector, the regulator will, once it has concluded a sector inquiry that finds competition deficits, have the broad power to “prescribe to companies all remedies [...] that are necessary to eliminate or reduce the distortion of competition,” with potential remedies ranging from granting data access, to imposing specific contract design, to even the separation of business units.

The legislator proposed and adopted these potentially far-reaching changes in an expedited procedure of just two weeks that barely left time for a critical evaluation by

the legal community. In this article, we summarize the three new key provisions mentioned above, provide initial comments and assess possible practical implications.

I. Price Regulation at Gas Stations

A. Summary of New Provisions

As a first measure, Germany introduces a strict price regulation at gas stations. Price increases will now only be possible once per day, namely at noon. Price decreases remain permissible at any time of the day. Violations may trigger fines of up to EUR 100,000, and violators will interestingly be prosecuted not by the German Federal Cartel Office (“FCO”) but by yet-to-be-determined regional authorities in the 16 Federal States (which may not necessarily be their respective cartel offices). This measure draws on a similar price regulation introduced in Austria 15 years ago (where it has since been further adjusted).

The new price regulation aims to ensure that reductions in crude oil prices are passed on to consumers, while increases in crude oil prices do not result in disproportionate retail price hikes.² In addition, the measure seeks to achieve transparency of fuel prices for car drivers. Under current German law, gas stations must report price changes to the Market Transparency Unit of the FCO in real time. The prices are then published

online so that consumers are able to find the gas station with the lowest prices. Consumers, however, frequently complained that prices had already changed once more by the time they actually reached the respective gas station – a shortcoming the new legislation seeks to address.³

B. Comments and Practical Implications

While transparency will likely be further increased by this measure, it remains to be seen whether it will lead to lower fuel prices. Empirical evidence from Austria, where this concept was first implemented, is mixed. While some studies have identified positive effects,⁴ other studies find increased profit margins for mineral oil companies,⁵ and a recent study does not even observe any statistically significant effect on prices at all.⁶ Correspondingly, the FCO's president, Andreas Mundt, publicly expressed reservations towards implementing the Austrian model in Germany.⁷

Other practical questions arise. For instance, it is unclear what will follow from setting noon as the relevant time for the only daily price increase. Commentators raised the question whether opening hours of gas stations will be affected – price increases in the evening are traditionally used to offset the higher cost of nighttime operations.⁸ Another observation is that refueling habits (so far) peak in the early

evening, between 6:00 p.m. and 8:00 p.m., while under the new regulation prices will be the lowest right before noon. It is unclear whether gas stations will have sufficient incentives to reduce prices already in the course of the afternoon to attract car drivers during peak hours, or whether prices will remain at a higher level throughout the evening to ensure that margins are not eroded by overnight costs. In the legislative proceedings, an expert had therefore suggested 8:00 p.m. as the more effective point in time.⁹

II. Price Level Control at the Wholesale Level

A. Summary of New Provisions

As a second new tool, the legislator introduces a price level control at the wholesale level, i.e. concerning ex-refinery sales and the distribution of fuel products. A new sector-specific rule (Sec. 29a Act against Restraints of Competition (“GWB”)) prohibits any fuel prices that “unreasonably” exceed costs. Costs “that would not arise [...] under competitive conditions” may not be taken into account. This prohibition applies to both market dominant undertakings, similar to the general abuse of dominance provision, and undertakings with “relative market power.” Moreover, in an effort to facilitate enforcement by the FCO, Sec. 29a GWB

shifts the burden of proof from the FCO to the affected undertakings – in two steps: As a first step, undertakings suspected of an infringement must disclose the allocation and level of the costs underpinning their pricing. This is meant to enable the FCO to assess costs more efficiently, sparing it from conducting investigations into undertakings' cost structures.¹⁰ As a second step, provided the FCO is able to demonstrate that the level of costs “significantly exceeds what is customary in the market,” undertakings must show that their costs are reasonable – instead of the FCO proving costs to be unreasonable.

B. Comments and Practical Implications

When it comes to price setting, competition authorities are generally hesitant to interfere. One key practical issue of any enforcement is determining the “right” price and when it is “unreasonably” exceeded. Sec. 29a GWB attempts to make the question of the right price easier by relying on a cost-vs.-price test – prices are considered excessive if they unreasonably exceed costs.

This cost-vs.-price test is not unknown to German competition law – it is one of the recognized concepts both in the context of assessing excessive prices under the general abuse of dominance provision (Sec. 19 GWB) and under a sector-specific rule for excessive tariffs charged by energy utility

companies to their customers (Sec. 29 GWB). However, both provisions in addition rely on comparable market concepts – prices are considered excessive if they significantly exceed prices in comparable geographic or product markets or the same market in a different period. In the past, both the FCO and German courts have carried out price-level controls almost exclusively relying on the comparable market concept, whereas the cost-vs.-price concept has so far been applied only rarely, as it is considered difficult to implement.¹¹

In the legislative proceedings, one of the experts flagged similar potential practical difficulties when enforcing the concept in the context of the new Sec. 29a GWB.¹² It indeed remains to be seen how the complex, two-step evidentiary rules on the burden of proof will unfold in practice.

Remarkably, the law subjects not only dominant undertakings but also undertakings with relative market power to the new price-level control. By “relative market power,” German law means a superior bargaining position *vis-à-vis* business partners that, consequently, lack realistic alternatives to switch. This concept is a German particularity that has expanded the scope of the general abuse of dominance provision, however in that context only for exclusionary and not exploitative abuse types such as excessive prices. The

legislator thus extends price level controls to undertakings with relative market power for the first time.

In practice, for companies active in the fuel sector, these new rules combined with the reversed burden of proof will likely entail significant additional compliance efforts. Depending on the respective circumstances, companies may need to screen business relationships for potential “superior bargaining positions” and maintain cost and margin records to be in a position to produce exculpatory evidence in the event of a price control investigation. Legal uncertainties remain as to the precise definition and allocation of relevant costs, as well as to classifications such as costs that “significantly exceed what is customary in the market” or “costs that would not arise [...] under competitive conditions.”¹³

III. Individual Remedies After Sector Inquiries

A. Summary of New Provisions

As a third novelty, the enforcement of remedies following sector inquiries is streamlined – not only in the fuel sector but generally.

In Germany, as in many other jurisdictions, sector inquiries are in-depth investigations into a specific industry to analyze its

structures and competitive conditions. As they traditionally do not allow for any remedies of competitive issues identified in the course of the inquiry, in 2023, Germany gave the FCO the power to impose such remedies, ranging from granting data access, to imposing specific contract design, to even the accounting or organizational separation of business units (Sec. 32f(3) GWB).

The 2023 law has been applied in practice: In 2025, the FCO concluded a sector inquiry into refineries and fuel wholesalers, and found “competitive deficiencies.”¹⁴ Subsequently, the FCO initiated a procedure for remedies under the new law, which is currently halted pending complaints by affected companies before the Higher Regional Court of Dusseldorf (*Oberlandesgericht Düsseldorf*) against the FCO’s requests for information.¹⁵ The already ongoing FCO remedy procedure will, in the legislator's view, switch to the new law and is expected to continue once the Dusseldorf court has decided on these complaints.

The amended version of the provision (Sec. 32f GWB) significantly reduces substantive and procedural requirements for such remedies following sector inquiries. The aim of these revisions is to allow the FCO to address structural

distortions of competition more efficiently:¹⁶

- On substance, the former definition of potential addressees of remedies is removed. Previously, remedies could only be imposed on undertakings whose conduct and relevance for the market structure contributed significantly to the competitive distortion. Now, the clause does not foresee any explicit limitations. Moreover, the subsidiarity clause falls away. Previously, remedies following a sector inquiry were subsidiary to those available under the cartel and abuse of dominance rules, and could be imposed only where the general enforcement instruments were considered as likely inadequate to remedy the competitive distortions.
- On procedure, the new law simplifies things. Previously, imposing remedies required a two-stage procedure: the FCO first had to issue a declaratory finding of market distortion (stage 1: declaratory decision) before imposing remedies (stage 2: remedy decision). Now, the FCO may directly impose remedies, a declaratory finding of market distortion is no longer required.

B. Comments and Practical Implications

The speed of the legislative process – just two weeks between the draft bill and its entering into force – casts doubt on whether these changes are sufficiently balanced, particularly in light of the fact that the provision is not limited to the fuel sector. The current version of Sec. 32f GWB was adopted in 2023 following a comprehensive legislative process spanning one year and two months. In the course of the legislative process, there was a comprehensive expert consultation to which legal scholars contributed, as a result of which the provision underwent significant changes compared to the initial draft bill.

A key practical concern related to the revised version of Sec. 32f GWB will likely be the broadened substantive scope. Based on its wording, the revised regime appears to allow for remedies on undertakings that have not even contributed to the distortion of competition but rather simply operate in a market that exhibits competitive deficiencies. However, the FCO will need to interpret the new rule in line with constitutional and EU law principles, namely the principles of fault and proportionality.¹⁷ In any case, this broadened scope means additional legal uncertainty for all companies active in sectors that have been subject to a sector inquiry (since 2023).

The simplified procedure eliminates the need for a declaratory decision, and thus a tool that commentators identified as a helpful trigger and basis for potential settlements in practice.¹⁸ The single-stage procedure will also affect judicial reviews. Instead of separate judicial reviews of both above-mentioned stages of a remedy procedure, there will be one single judicial review. Judicial challenges of investigatory measures such as the pending challenges of the FCO's requests for information remain admissible.

IV. Conclusions and Outlook

With the objective of addressing high fuel prices, Germany's Fuel Measures Package brings about a significant expansion of competition law instruments. At the retail level, gas station operators will need to adapt to a strict price regulation. At the wholesale level, companies may face scrutiny of their pricing, with the unusual reversed burden of proof meaning they have to demonstrate the allocation, level, and reasonable nature of their costs. This may trigger additional compliance efforts.

Moreover, sector inquiries may result in more severe consequences across all sectors. In particular, the new provisions will affect companies in sectors where the FCO has concluded a sector inquiry – this mainly concerns refineries and fuel wholesalers. Technically, albeit this appears unlikely, companies active in EV charging infrastructure and household waste could also be affected, given that the FCO concluded sector inquiries after the introduction of Sec. 32f GWB in 2023.

That said, during the legislative process many politicians voiced concerns that the measures do not go far enough. Various state ministers and members of parliament have argued for an "windfall tax" (*Übergewinnsteuer*) for fuel companies.¹⁹ The German Minister of Finance is even considering fuel price caps that could be adjusted on a weekly basis, similar to those implemented in Luxembourg.²⁰ First of all, though, it remains to be seen how the new competition law toolkit is implemented.

¹ Dr. Lukas Rengier is Counsel and Dr. Friedrich Preetz, LL.M. (King's College London) Associate in Hogan Lovells' Antitrust, Competition and Economic Regulation practice group. Both advised a major oil company in the legislative procedure.

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¹² Jens-Uwe Franck, Submission for the hearing before the Committee on Economic Affairs and Energy of the German Bundestag on the “Fuel Measures Package” (Mar. 20, 2026), <https://www.bundestag.de/resource/blob/1156862/Stellungnahme-Prof-Dr-Franck.pdf>.

¹³ Expert Advisory Board to the German Federal Government and Legislators on Competition

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¹⁴ FCO, Final Report on the Sector Inquiry into Refineries and Wholesale Fuel Trade (2025), p. 188 et seq.

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¹⁶ German Bundestag, Draft Fuel Measures Package of the coalition parties CDU/CSU and SPD (Mar. 17, 2026).

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¹⁸ Jürgen Kühling & Thimo Engelbracht, *Sec. 32f GWB, H. Verpflichtungszusagen im Zusammenhang mit Abhilfemaßnahmen (Abs. 6)*, in *Wettbewerbsrecht* (Ulrich Immenga & Ernst-Joachim Mestmäcker, 2024).

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