



**LEGAL FRAMEWORK AND
ANALYSIS OF THE FIRST PILOT
AUCTION OF THE EUROPEAN
BANK OF HYDROGEN**

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Legal Framework and Analysis of the first Pilot Auction of the European Bank of Hydrogen

- ❖ **This Memo Concerns:** This memo is valuable for policy makers, legal teams, producers, investors and stakeholders aiming at being involved in the auction.
- ❖ **The Pilot Auction Benefits:** The memo aids in decision making and strategic planning while offers a legal roadmap, ensuring compliance with Eu and Greek laws, thereby reducing legal risks and facilitating a successful auction.
- ❖ **Deadline for the first Bid:** Producers can bid for support until 8th of February 2024.

I. Introduction

The below analysis offers a comprehensive legal analysis and guidance regarding the European Bank of Hydrogen's (EBH) inaugural pilot auction.¹ This analysis is grounded in the current regulatory landscape

¹ Commission launches first European Hydrogen Bank auction with €800 million of subsidies for renewable hydrogen production, available at [https://ec.europa.eu/commission/presscorner/detail/en/IP_23_5982].



of the European Union, with a focus on energy, competition, and environmental laws. The objective is to address potential legal challenges while proposing strategies to ensure compliance and minimize risk.

II. The Pilot Auction: An Overview

The European Commission has launched the first auction under the European Hydrogen Bank, aiming to boost renewable hydrogen production in Europe. This auction, supported by €800 million from emissions trading revenues, offers a premium to bridge the cost gap between renewable and non-renewable hydrogen production. Producers can bid for EU support based on a proposed price premium per kilogram of hydrogen, capped at 4.5€/kg. **The bid deadline is 8 February 2024**, with results announced in April 2024, and Grant Agreements signed within nine months of the call closure.

The EBH's inaugural pilot auction marks a significant advancement in hydrogen energy within the EU's energy market. The auction's objective is to facilitate the sale and distribution of hydrogen energy products and services, thereby contributing to the EU's renewable energy goals. This section should include specifics about the auction mechanism, the types of hydrogen products or services offered, and the profile of potential bidders.

III. Applicable Legal Framework

- A. EU Renewable Energy and Hydrogen Market Regulations:** The auction must strictly adhere to EU directives related to renewable energy, notably the Renewable Energy Directive (RED) and the Internal Market for Electricity Directive. These directives establish requirements for the promotion of energy from renewable sources and set rules for the EU electricity market, which are crucial for integrating hydrogen as a renewable energy source.
- B. Competition and State Aid Laws:** It is essential to analyze the auction under EU competition law, specifically the Treaty on the Functioning of the European Union (TFEU), which prohibits anti-competitive agreements and abuse of market dominance. Additionally, the auction must comply with EU state aid rules to ensure that public funds are used in a way that does not distort competition and trade in the EU.
- C. Contractual and Investment Framework:** Legal considerations for the auction's contractual framework must include adherence to the principles of EU contract law, ensuring clarity in terms and conditions, obligations, and rights of the parties involved. The investment framework should be scrutinized to ensure compliance with the EU's guidelines on public investment and private sector participation in energy projects.
- D. Environmental Regulations and Sustainability:** The auction must comply with the EU's environmental laws, such as the Environmental Impact Assessment Directive and the EU Green Deal. This includes assessing the environmental impact of hydrogen production and ensuring that the auctioned projects contribute to the EU's sustainability goals and carbon neutrality objectives.
- E. Greek Energy and Environmental Laws:** For participants in Greece, compliance with national laws concerning energy production, environmental protection, and renewable energy incentives is necessary. This includes adherence to Greek legislation on energy market operations, renewable energy sources, and national environmental impact assessment procedures.



- F. Eligibility Criteria for Participants:** The EHB should set eligibility criteria that are in line with EU directives and national laws. These criteria should include financial stability, technical expertise, compliance with environmental standards, and adherence to safety and security regulations. The criteria must also be non-discriminatory and transparent to ensure fair access for all potential participants, including those from Greece.

IV. Risk Assessment and Mitigation Strategies

In addition to the previously mentioned risks, specific concerns arise regarding Greek participants. These include risks associated with potential non-compliance with Greek national laws and regulations, and the challenge of ensuring fair and equitable treatment of Greek entities in line with EU principles. Mitigation strategies should include a detailed review of Greek legal requirements, consultation with Greek legal experts, and the establishment of a transparent and fair participant selection process.

V. Conclusion and Recommendations

In conclusion, the EHB's pilot auction presents a significant opportunity to contribute to the EU's renewable energy goals, with specific implications for Greek participants. It is recommended that the European Bank of Hydrogen ensures comprehensive compliance with both EU and Greek legal frameworks, establishes clear eligibility criteria for participants, and adopts a proactive approach to mitigate risks associated with Greek laws and regulations.

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