# Working Document: BDI comments regarding the third revision of the EU Temporary Crisis Framework (TCF)

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**1. Europe has arrived at a critical junction in terms of its attractiveness as a business location**

The energy crisis places massive strains on companies of all sizes and all sectors, leading to considerable production losses and shutdowns in industry. Europe´s prosperity is at decline, while our U.S. counterparts have launched a unique investment programme that further squeezes industrial activities in Europe.

The BDI welcomes the Commission´s four-point action plan presented by Commission President von der Leyen and the mandate of the European Council of 15 December 2022 to develop an EU Strategy to boost competitiveness and productivity by January 2023 in response to the double challenge of short-term industrial survival in Europe in the face of high energy costs and an increasingly uneven global level playing field fuelled for example by the U.S. Inflation Reduction Act.

**2. Adjusting EU state aid rules for some years and foreseeing a time-limited adaption of EU state aid rules forms an essential part of a coordinated, strong European response to these fundamental challenges**

We support targeted and time limited adjustments to today´s temporary crisis response to maintain the short- and longer-term competitiveness of EU industries, which operate against strictest environmental standards worldwide and still remain global innovation and technology leaders in many areas that are vital for a successful transition to climate neutrality mid-century.

**3. Emergency measures to maintain Europe's industrial strength short term**

Europe´s ambition must as much be geared towards global clean tech development in Europe as towards the deployment of best technology solutions at home.

Consequently, Europe has to **vividly counter the increasing short-term trend of green leakage**, meaning that key investments in state-of-the-art $CO_2$-free plants and products are increasingly happening outside rather than within the EU, in addition to **using its proven carbon leakage measures** as long as global climate ambition gaps exist.

EU industries, notably energy intensive businesses, must not be forced to de-invest in Europe due to high energy costs, but be enabled to **apply the most modern technology at home**. As a first step to unlock longer term investments into a climate neutral future, the TCF must allow Member States to set in place short term emergency measures that reflect the dimension of the crisis. Therefore:

**4. The third revision of the TCF should start with revisiting chapter 2.4 and in particular iron out the following shortcomings, which we specify under point 5.2:**

- EBITDA criteria
- Maximum aid ceilings
- Definition of “energy intensive business” and Annex I list of energy intensive sectors
- Cumulation of aid

**5. Unlocking investments in the green transition**

The new geopolitical and energy policy realities reconfirm the need for **a technology-open transformation in all sectors** and **a drastic acceleration of the clean energy transition**.

Decarbonisation must not lead to deindustrialisation. It must contribute to the renewal of Europe as an industrial location and pave the way out of the crisis through the global future, innovation and competitiveness of its industry. As regards unlocking investments in the green transition in Europe, the **BDI advocates for the following temporary adjustments of the TCF of 28 October 2022**:

### 5.1 Recommendations for simplifying aid for the roll-out of renewable energy, including wind, solar and renewable hydrogen

- The TCF should support the introduction of the instrument of contracts for difference, including carbon contracts for difference with respect to decarbonisation aid for industry and allow the aid to also cover operational costs next to capital expenditure costs. This is of particular importance for the hydrogen market ramp-up.
- The state aid rules should allow for simple and predictable support schemes strengthening the business cases for investments in renewable energy and decarbonisation of industry.
- Companies should have the choice to use CfDs (including CCfDs) and/or PPAs.
- Access to these programmes is also particularly relevant for SMEs, including medium-sized companies that do not fall under the strict SME rules. This is the only way to ensure transformation on the ground and in the supply chains besides building high acceptance in society.
- As specified in BDI´s Climate Path Study 2021, there is a need for:
    - A renewable energy expansion offensive: In order to stimulate a faster expansion of renewable electricity generation capacity, auction volumes and compensation for renewable energies should be adjusted accordingly. Mandatory nationwide land use-quotas and bilateral contracts for difference for wind and photovoltaics, along with significantly accelerated planning, approval, and objection processes, should ensure that the expansion targets are achieved.
    - Grid expansion acceleration: This includes focusing the depth of review, setting tighter deadlines, using fictitious approvals, and building up new official capacities; for example, through a special panel at the Federal Administrative Court. The expansion required in the long term should be envisaged in advance through the perspective of a “target grid” and can also be relieved by making better use of existing lines.
    - Flexibilization of electricity consumption: Electricity distribution networks, consumers, and feeders must invest significantly in digitalization and flexibility, for which appropriate incentive regulation should be created. The introduction of incentives for customers such as matching algorithms can also lead to consumption that better supports the system.
    - Central capacity market: The ambitious increase in gas-fired power plants to ensure security of supply will likely not be sufficiently incentivized by the energy-only market. A central capacity market should therefore be created that remunerates the provision of the necessary generation capacity.

### 5.2 Recommendations for simplifying aid to decarbonise the production processes of industry

The BDI appreciates the rapid development of the initial TCF in March, and the Commission´s flexibility to already adjust the TCF twice this year to give Member States more leeway in supporting companies. However, in the light of the exceptional dimension of the crisis and in the light of the ongoing development of German gas price break it has become evident that further action is needed. In concrete terms, **chapter 2.4 of the TCF of October 2022** should be urgently revisited in the following respects:

- **EBITDA criteria**:
    - The EBITDA criterion is not a suitable criterion for the current situation, because it requires companies to know the precise level of future revenues in advance. This is practically impossible and is causing considerable uncertainty for affected companies that

    rely on rapid and unbureaucratic relief measures in the current exceptional circumstances.
  - In addition, the EBITDA criteria in their present form do neither give companies a choice to either use EBITDA or EBIT, nor do they provide any flexibility concerning the reference period. Regarding the latter, different reference periods are missing, such as financial years that deviate from the calendar year or the average EBIT/EBITDA of several years as determined by companies. Finally, there is also no choice to opt-in or out of the relief measures on a monthly basis.
  - All in all, the current EBITDA criteria are hindering the effectiveness of Member States´ relief measures to compensate for additional costs due to exceptionally severe increases in natural gas and electricity prices.
  - **We recommend abandoning the EBITDA criteria in their entirety.**

- **Revisiting the maximum levels of allowed overall aid:**
  - The given thresholds in chapter 2.4 should apply "per beneficiary" (instead of "per undertaking") – affiliated and non-affiliated companies should not be discriminated against each other.
  - The given thresholds in chapter 2.4 should be substantially increased.
  - Alternatively, a new chapter should be added to the TCF introducing a practicable fast-track procedure for the expected high number of individual state aid notifications, or a separate fund solution should be found for large enterprises whose funding needs exceed the currently given maximum levels of allowed overall aid. Entry 32 of the TCF should, for example, be streamlined regarding behavioural measures (32 e). Large energy-intensive consumers are often positioned at the beginning of critical value chains. Without effective state aid options, cost increases, reduced production and insolvencies threaten to spread along subsequent supply chains.
  - The BDI is deeply concerned with recent REPowerEU decision to shift financial resources of the Innovation Fund to other projects than decarbonisation projects in the affected ETS industry. Sourced by revenues stemming from the auctioning of ETS allowances, the Innovation Fund is an important funding instrument to support the transformation of ETS installations, including via new technologies such as Direct Air Capture (DAC) or renewable hydrogen technologies. Cutting the Innovation Fund further, such as for example in favour of the Climate Social Fund, is the wrong signal for ETS sectors.

- **Definition of "energy intensive business" and Annex I list of energy intensive sectors:**
  - The current definition of "energy intensive business" used in the TCF is based on misleading reference values ( "at least 3% of the production value or turnover in 2021 or 6% in the first half of 2022"). These do not allow to take into account price explosions from 1.1.2023 onwards. In the non-ferrous metals sector, the reference to turnover distorts the depiction of energy intensity in that high metal prices (Copper e.g. is more than 8.000 Euro / t) increase the companies' turnover significantly without increasing their earnings. Many businesses do therefore not qualify as energy intensive against this definition, which requires urgent adaptation. We therefore urgently recommend that the definition of energy intensity can also be based on gross value added. The consideration of electro-intensity based on the gross value added is already proven practice (relief scheme for the costs for RES subsidies).
  - There is a need to revise the list in Annex I of the TCF of energy-intensive sectors eligible for extended cost compensation and to clarify the indicative nature of TCF Annex I. We propose to align the TCF annex I with other lists, preferably the German EEGBesAR list, or at least the EU-CEEAG list of energy intensive sectors. The possibility given in the EU-CEEAG state aid guidelines to allow for adding further sectors to the list should also apply for the TCF list.
  - If using the CEEAG list as a reference also in TCF, it is essential to ensure consistency with broader EU Green Deal Goals. In particular, circular economy objectives should not be

weakened, such as today being the case in CEEAG when discriminating the recovery of sorted materials against the production of plastics.

- **Cumulation of aid**:
  It should be explicitly stated that aid compensating for high gas costs, aid compensating for high electricity costs and/or aid compensating for high heating/cooling costs do not cumulatively fall under the same aid ceiling.

**Beyond chapter 2.4 of the TCF:**

- The list of ETS sectors eligible for indirect cost compensation should be extended. Important loopholes remain for example in the glass industry sector.
- The decarbonisation of industry will depend on gas as a transition fuel: As specified in BDI´s Climate Path Study 2021, there remains a need for a central capacity market: The ambitious increase in gas-fired power plants to ensure security of supply will likely not be sufficiently incentivized by the energy-only market. A central capacity market should therefore be created that remunerates the provision of the necessary generation capacity.

### 5.3 Recommendations regarding support for productive investments in strategic sectors for the green transition, for example wind, solar, heat pumps, clean hydrogen, electric vehicles and batteries, and relevant critical raw materials

- Existing instruments, such as IPCEIs are an essential tool for securing European competitiveness and technological sovereignty and for promoting innovation. However, IPCEIs are only suitable in very specific situations involving many players and Member States. Also, aid is only possible until the first industrial deployment.

- IPCEIs show clear limitations as regards a (fast) large scale ramp-up of industrial production in RES technologies. For example, the solar PV supply chains are critically important for the continent's prosperity, energy security, and climate goals. Around the world, countries are raising renewable industrial ambitions, and Europe must rise with them and speed is of essence. To achieve a global level playing field in this regard, the EU rules on competition need to be made fit for future – focussed on global competitiveness – with, for example a temporary relaxing of state aid rules, targeted to critical clean technology supply chains, or a coordinated push for EU countries to wisely spend existing REPowerEU recovery funds on investments key supply chains. Also, an innovative financing mechanism to secure the new European Solar PV Industry Alliance target of 30 GW by 2025. This could look like EU-wide tenders for solar manufacturing, which provides investment stability on a 10 year basis. A re-vitalization of the ingot and wafer industry and a growth of polysilicon will not be feasible without international competitive OPEX costs (in particular energy). This support would explicitly have to cover already existing industrial scale production capacities in Europe. Finally, it is about re-creating demand in Europe for PVs manufactured in Europe.

- In order to build momentum for European industry to become a major global player, the Commission should reflect on the possibility of at least partially allowing funding for activities related to the production phase of an investment. The per se exclusion of production-related activities seems too rigid and not suitable to achieve strategic EU goals while maintaining the competitiveness of European industry, especially in view of public support in other regions. Accelerating the transformation of our economies towards climate neutrality requires a focus on enabling investment in new industrial solutions. In order to limit competition distortions, such aid should be limited to specific strategic sectors for the green transition.

- As regards hydrogen, please see point 5.4.

### 5.4 Recommendations regarding other simplified means, such as schemes to grant support to businesses via tax credits or maintaining differentiated incentives for investments in assisted regions for cohesion purposes

- Time is of the essence. Member States should have the possibility to grant aid under the TCF in a fast and unbureaucratic way. This includes the largest possible toolbox, including the possibility to grant tax credits to companies.

- President von der Leyen has announced to significantly increase the notification thresholds for certain forms of state aid with regard to the green transformation process (such as aid for renewable energy deployments; aid for decarbonising industrial processes; enhanced investment support schemes for production of strategic green transition goods and targeted aid for new production projects in strategic clean tech value chains). This is very welcome in order to speed up procedures and reduce the bureaucratic burden. Such high notification thresholds should either be implemented in the TCF itself or in a fast amendment of the General Block Exemption Regulation (GBER).

- The announced revision of the GBER should be used as a chance to provide the best possible support to Member States and companies in decarbonizing and achieving the European climate targets, while at the same time guaranteeing the preservation of the industrial base in Europe. Rapid adjustments are needed here, particularly with regard to raising the notification thresholds and maximum aid intensities for key technologies or the development of new climate-neutral technologies. BDI has also welcomed the proposed extension of the GBER to further facilitate public support for the EU's green transition in Chapter 7 of the GBER and urges the Commission to rapidly adapt the new measures.

- **The TCF amendment should explore the use of Production Tax Credits, notably in the case of hydrogen production**. The production of clean hydrogen is very strongly promoted by the IRA, using Production Tax Credits (PTCs) as an OPEX-based promotion instrument. Depending on the CO2 intensity ("life cycle emissions") of the hydrogen, a tax credit of up to $3 per kg H2 is granted. The subsidy runs for a period of 10 years and applies to all plants whose construction is started before 1 January 2033. To be eligible, the plant must be located in the USA, but the hydrogen produced can also be exported. In addition, the IRA allows for a combination and stringing together of tax credits, e.g. for renewable energies. Moreover, the IRA does not stand alone, but complements already existing H2 initiatives, such as the CAPEX-based promotion of the so-called Hydrogen Hubs.

  The PTCs will lead to a significant improvement in the economics of green and blue versus grey hydrogen. It can be assumed that when the IRA comes into force, production costs for green hydrogen may drop to slightly above $1/kg. Thus, the US will become one of the most competitive places in the world for the production of clean hydrogen and "green" products will become increasingly competitive with conventional alternatives. Of particular importance is the IRA's approach of looking at the entire production chain and its openness to technology by focusing on the CO2 intensity of the hydrogen produced instead of thetechnologies used.

  The funding landscapes for hydrogen are very complex at both national and European level. At the EU level, hydrogen is promoted, among other things, through the so-called Important Projects of Common European Interest (IPCEI), which receive state aid from the respective member states if they meet a wide range of criteria and after approval by the EU Commission. At the national level, the development of the hydrogen economy is promoted primarily through funds from the Climate and Transformation Fund. These are proceeds from national and European emissions trading. The Federal Ministry of Economics and Technology, for example, promotes so-called real laboratories of the energy transition, in which companies

and research institutions develop new technologies and test them under real life conditions on an industrial scale. In addition, the first draft of a funding guideline for climate protection agreements has recently been circulated, but still contains many unanswered questions and has not yet been agreed on within the German government. Once adopted, the funding guideline must also be approved by the EU Commission.

**Such options should be well taken into account in the pending review of the TCF.**

## 6. Conclusions

All in all, Europe´s response to the combined challenge of high energy costs and the impact of the IRA is about revamping its own industrial policy by paving its way out of the crisis as a climate neutral industrial continent. Next to adjusting EU state aid rules a series of further measures will be necessary for allowing these state aid measures to deliver on the ground, including from an energy and climate policy perspective:

- Designing additionality proofs for renewable hydrogen production when using electricity from the grid via National Energy and Climate plans (NECPs) instead of at the level of each individual company (reshape article 27.3 RED)
- Developing EU funding instruments consistently and using e.g. the Connecting Europe Facility or future Sovereignty Fund for the ramp up phase of innovative technologies, such as hydrogen.

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